

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9207 OF 2014

The Chief Officer,
Shirdi Municipal Council, Shirdi,
Tq. Rahata, Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The Director,
Directorate of Municipal Administration
Government Transport Service Building
3rd Floor, Sir Pochkhanwala Road,
Worli, Mumbai.

2. Smt. Sangeeta Nandkumar Dalavi
Age: 36 years, Occu.: Household,
R/o Nanduri Road,
Pandharinath Nagar, Shirdi,
Tq. Rahata, Dist. Ahmednagar.

..RESPONDENTS

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Mr. V.D. Hon, Senior Advocate holding for Mr. A.V. Hon, Advocate
for petitioner.

Mr. V.S. Badakh, AGP for Respondent No.1.

Mr. P.V. Barde, Advocate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 9th FEBRUARY, 2016**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The petitioner is a municipal council who is aggrieved by the judgment and order dated 07.08.2014 delivered by the Industrial Court, Ahmednagar by which Complaint ULP No. 116/2012 filed by Respondent No.2 herein has been partly allowed.

3. The petitioner submits that one Mr. Nandkumar Vitthal Dalavi (presently deceased) was working with the petitioner-Council on daily wages. He had approached the Industrial Tribunal in Reference IDA No. 1/1997 which was allowed and the said Nandkumar Vitthal Dalavi was granted permanency on the post of Cashier with effect from 01.07.1992. He continued in employment till his demise on 04.09.2006.

4. Respondent No.2 is the wife of the deceased Nandkumar Dalavi who preferred Complaint ULP No. 116/2012 before the Industrial Court praying for being appointed on compassionate basis in place of her husband who has passed away while in service. The petitioner opposed the said complaint by its written statement and prayed for the dismissal of the complaint. It is not

disputed that after Nandkumar passed away on 04.09.2006, Respondent No.2, wife filed an application on 27.09.2006 praying for compassionate appointment. The Industrial Court by the impugned judgment has partly allowed the complaint and has issued the following directions:-

- “1. *The complaint is partly allowed.*
2. *It is declared that respondent have engaged in unfair labour practices under items 5, 9 and 10 of Sch. IV of the Act.*
3. *Respondents are directed to cease and desist from engaging in such unfair labour practices forthwith.*
4. *Respondent No.2 is directed to appoint the complainant on compassionate grounds on the basis of her qualification on any Class IV post within a period of two months from the date of this order.”*

5. Mr. Hon, learned Senior Counsel for the petitioner has severely criticised the impugned judgment. His contention is that it was specifically averred in the written statement that Clause 48(b) of the Government Resolution dated 01.08.2006 would disentitle the wife of the deceased for seeking compassionate appointment.

The said aspect has not been properly understood by the Industrial Tribunal and hence the impugned judgment.

6. Mr. Hon has drawn my attention to Clause 48(b) of the said Government Resolution dated 01.08.2006 to contend that the legal heirs of daily wagers and those employees who have been taken on temporary establishment prior to 10.03.1993, would be disentitled from claiming appointment on compassionate basis.

7. Mr. Hon has then drawn my attention to the circular dated 31.08.2006 issued by the Directorate of Municipal Administration and the circular dated 17.03.2006 especially Clause 11 below the annexure to contend that the legal heirs of those employees who were appointed on daily wages and have been absorbed by the petitioner on or before 10.03.1993, would be disentitled from seeking compassionate appointment.

8. Mr. Hon has then drawn my attention to the circular dated 23.03.2006 and Clause 18 below the annexure to reiterate that the legal heirs of those employees who have been absorbed by

the State as a stand alone case, would be disentitled from seeking compassionate appointment.

9. Mr. Hon therefore submits that considering the Government Resolution dated 01.08.2006, read with circular dated 31.08.2006, none of the legal heirs of the deceased would be entitled for appointment on compassionate basis.

10. Mr. Barde, learned Counsel for the Respondent No.2 – widow of the deceased, submits that an application for compassionate appointment was made on 27.09.2006 i.e. within 23 days from the date of the demise of her husband (on 04.09.2006). There is no dispute that the deceased was a permanent employee with effect from 01.07.1992 after the Industrial Tribunal granted him the benefits of permanency. He further submits that the petitioner has challenged the judgment of the Industrial Tribunal before this Court and its writ petition was also dismissed.

11. Mr. Barde then relies upon the order dated 24.10.2013 delivered by this Court (Coram: S.V. Gangapurwala, J.) in Writ

Petition No. 6050/2013 and 6067/2013 by which the two petitions filed by this petitioner itself has been dismissed and the judgment of the Industrial Court granting compassionate appointment to the legal heirs of the deceased was sustained. He submits that this Court had relied upon the Government Resolution dated 10.08.2007 and 10.09.2007 by which the legal heir of a safai kamgar who died in service was held entitled for appointment on compassionate basis.

12. Mr. Barde submits that since the date of permanency of the deceased which is 01.07.1992 is no longer disputed, clause 48(b) of the Government Resolution dated 01.08.2006 would not disentitle the Respondent No.2 from seeking compassionate appointment. He submits that the case of Respondent No.2 is covered by Clause 47 of the said Government Resolution and she does not fall in the explanation below Clause 48. He submits that the deceased was working in Group 'C' (क in marathi) as a Class-III employee. He died while on duty. Clause 47 therefore entitles Respondent No.2 to compassionate appointment since her husband

was working in category/Class 'C' and has died while in employment. He submits that the petitioner is conveniently ignoring Clause 47 of the said Government Resolution. He therefore prays for the dismissal of this petition.

13. I have considered the submissions of the learned Counsel.

14. This Court by its order dated 24.10.2013 referred to hereinabove in the matter of the instant petitioner Municipal Council has observed in paragraph nos. 2, 3, 5, 6, 7, 8 and 9 as under:-

2. The Industrial Court directed the present petitioner to provide employment to Santosh Ashok Pandit and Sunil Bhagirath Garud on compassionate ground on account of the death of their father, who were working on the post of Safai Kamgar and further directed to send proposal for approval to the appropriate authority.

3. Ms. Palve, learned counsel for the petitioner submits that the Judgment and Order passed by the Industrial Court is perse illegal and not in consonance with the

Govt. Resolution dated 01/08/2006, so also the Lad Committee report. The Govt. Resolution relied by the Industrial Court is not applicable in the present case. According to the learned counsel, the deceased father of the said persons were not appointed on the sanctioned posts and they were appointed on daily wages. They were directed to be made permanent as per the orders passed by the Court. As such, the Lad Committee report does not entitle them to be appointed on compassionate ground. If an employee dies by the natural death, then his heirs are not entitled to be appointed on compassionate ground. The learned counsel submits that in fact the complaint itself was not maintainable. No unfair labour practice has been committed by the petitioner.

5. The Court while passing the impugned Judgment, relied on the Govt. Resolution dated 10/08/2007 and 10/09/2007. Vide the Govt. Resolution dated 10/08/2007, it has been made clear that the compassionate appointment can be made to the legal representatives of Safai Kamgar. Vide Govt. Resolution dated 10/08/2007, it has also been made clear that even if the Safai Kamgar dies while in service, his legal representative can be appointed on compassionate ground.

6. Even the condition of the deceased to be in service for twenty (20) years has been relaxed vide Govt. Resolution dated 10/09/2007.

7. It is not disputed that the father of said Santosh and Sunil were directed to be made permanent from the sanctioned posts i.e. from the year 1992 to 1995 and they died while in service. The Industrial Court observed that in view of the said Govt. Resolutions, they will be entitled for the benefit for appointment on compassionate ground.

8. I do not see any error committed by the Industrial Court while passing the impugned order.

9. In light of the above, the Writ Petitions are dismissed. No costs.

15. Mr. Hon has canvassed that when this Court delivered the order dated 24.10.2013 reproduced above, the Government Resolution dated 01.08.2006 was not brought to the notice of this Court. This Court had relied upon the Government Resolution dated 10.08.2007 and 10.09.2007 and hence the view taken by this Court in the said order dated 24.10.2013, would not have any binding effect on this Court while dealing with the instant matter.

16. I have considered the effect of the Government Resolution dated 01.08.2006. The title of the Government Resolution is with regard to recruitment on regular establishment in the Municipal Councils and was by way of improvised conditions for recruitment on regular establishments as well as for appointment on compassionate basis.

17. Considering the title and the provisions of the Government Resolution dated 01.08.2006, the circular dated 17.03.2006 and the annexure thereunder which has been referred to by the petitioner with regard to Clause 11, would no longer be applicable. The said circular dated 17.03.2006 was with regard to causing appointments on compassionate basis in the Municipal Councils. Clause 11 indicates that the legal heirs of the daily wagers who have been absorbed in service by the State prior to 10.03.1993, would not be entitled for compassionate appointment.

18. That circular has therefore been superceded by the Government Resolution dated 01.08.2006 which was introduced for

improvising the conditions by which the recruitment to the municipal councils on compassionate basis could be carried out.

19. As such, the Government Resolution dated 01.08.2006 needs consideration. Clause 47 of the Government Resolution clearly indicates that the legal heirs of employees in category 'C' and 'D' and who have passed away while in service would be entitled for appointment on compassionate basis. Clause 48 is with regard to the disentitlement of legal heirs whose parents have retired from employment and/or whose parents were daily wagers with the councils. So also, Clause 48(b) indicates that the legal heirs of such employees who have been absorbed on 'temporary establishment' would not be entitled for compassionate appointment.

20. I find that the case of the Respondent No.2 neither falls under clause 48(a) nor under 48(b). The case of the Respondent No.2 squarely falls under clause 47, considering the fact that her deceased husband was working in Class 'C', had passed away while in service and was a permanent employee.

21. In the light of the above, I do not find that the Industrial Court has committed any error in granting compassionate appointment to Respondent No.2. The impugned judgment is neither perverse nor erroneous to the extent of entertaining the claim of the respondent.

22. In Clause 52 of the Government Resolution dated 01.08.2006, the State Government has provided the manner of creating a list of eligible candidates for appointment on compassionate basis. Clause 52(a) indicates that the list of eligible candidates for compassionate appointment whose deceased parents were working in category/class 'C' and 'D', should be a common waiting list. Clause 52(b) indicates that the seniority list of the eligible candidates for compassionate appointment should be on the basis of the date on which the application for compassionate appointment has been made.

23. Considering the above provisions, the judgment of the Industrial Court can be modified only to the extent of directing the

petitioner to enlist Respondent No.2 in the list of eligible candidates for compassionate appointment as per Clause 52 (a) and (b) considering the date of her application which is 27.09.2006. By entering her name in the list of eligible candidates by virtue of her application dated 27.09.2006, her claim can be considered for appointment on compassionate basis as per seniority.

24. The Apex Court in the case of ***Canara Bank and Another Vs. M. Maheshkumar*** reported in **2016 (1) MLJ 594** (February issue) has observed in paragraph no.7 as under:-

7. *Law with regard to employment on compassionate ground for dependant of a deceased employee is well settled. In Sushma Gosain & Ors. vs. Union of India & Ors., (1989) 4 SCC 468, this Court held as thus:*

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such

appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The settled law which has been reiterated in various cases has been succinctly elucidated in MGB Gramin Bank vs. Chakrawarti Singh, (2014) 13 SCC 583, wherein it was observed that compassionate appointment cannot be granted as of right and the application to be decided as expeditiously as possible and held as under:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that

without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years." (Underlining added)".

25. In the light of the view taken by the Apex Court as above, the case of Respondent No.2 shall not be kept pending since the Apex Court has taken a view that appointment on compassionate basis should be provided immediately to redeem the family in distress. It is improper to keep such cases pending for years.

26. As such, by the time the petitioner grants such appointment to the Respondent No.2, it be noted that if Respondent

No.2 crosses the age of 40 years, that shall not be an impediment for her appointment.

27. This petition is therefore partly allowed by modifying Clause (4) of the impugned order to be replaced by the directions set out in paragraph nos. 23, 25 and 26 above. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)