

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.721 OF 2015

Shri Narayan Avinash Madkholkar v/s. The Sindhudurg Zilla Parishad		...Petitioner ...Respondent
Mr.V.S.Gokhale for the Petitioner. Mr.Neel G.Helekar for the Respondent.	...	

**CORAM : ANOOP V. MOHTA &
A.A.SAYED, JJ.**

DATED : 2 APRIL 2016

ORDER:

Rule. Returnable forthwith. Heard finally by consent of parties.

2. The Petitioner has filed this Petition, as the Petitioner's deceased father who was working with the Respondent, on temporary basis, expired on 21 June 2008. The Petitioner's father was appointed as Bore Well Pump Mechanic, Class-III in District Service Grade-III on 31-3-1982 with the Respondent. However, by order dated 19-12-1983 he was terminated. The said termination order was challenged by the deceased father of the Petitioner before the Labour Court at Kolhapur. After hearing both parties, ultimately order of reinstatement was passed on 9-12-2002, though without backwages. The said order remained unchallenged. The Petitioner's father

based upon the said had been working with the Respondent till his death, i.e. 21-6-2008.

3. The Petitioner being entitled as stated, based upon the Government Resolution dated 26-10-1994, as the same has been adopted by the Respondent, preferred an Application for his appointment as a Class-III employee on compassionate ground on 19-8-2008. The Respondent in spite of repeated persuasions, ultimately by order dated 10-2-2014 rejected the claim of the Petitioner mainly on the ground that the Petitioner's father could not be treated as Government Servant as contemplated under the Resolution so referred above and therefore denied his claim.

4. Admittedly the Petitioner's father was working with the Respondent after the order of reinstatement. The order of reinstatement was clear with regard to continuity of his service, i.e. from the date of appointment but without backwages. Considering this part of the order and the the fact that the Petitioner's father was working with the Respondent after reinstatement since 9-2-2002 till 21-6-2008, in our view, there is no reason to deny the claim of the Petitioner, if otherwise entitled for the appointment on compassionate ground.

5. The submission was made in the Affidavit filed by the Respondent that the deceased employee was in employment of Zilla Parishad on temporary basis on temporary post.

6. In the facts and circumstances of the case, it is unsustainable reason to reject the claim of the Petitioner. The Government Resolution has been adopted by the Respondent. Therefore, they are bound by the principles so laid down in the Government Resolution. To say that the Petitioner's father was not a Government Servant and therefore the Petitioner is not entitled for the compassionate appointment, in our view, is unacceptable.

7. The Petitioner has placed on record a list of candidates to whom the Respondent has appointed based upon the said Government Resolution on compassionate ground.

8. In the facts and circumstances of the case, therefore, denial of the same to the Petitioner, in our opinion, is unsustainable. Therefore, we are inclined to allow the Petition in the following terms:

- (i) The impugned order dated 10-2-2010 addressed by the Respondent to the Petitioner is quashed and set aside;

(ii) The Respondent is directed to consider the case of the Petitioner in accordance with law and in view of the above observations, as early as possible and preferably within four weeks from today;

(iii) Rule is made absolute accordingly. No order as to costs.

Parties to act on an ordinary copy of this order duly authenticated by the Registry.

(A.A. SAYED, J.)

(ANOOP V. MOHTA J.)