

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5320/2016

Shri Ankesh s/o Janbaji Jambhulkar

...Versus...

Nagpur Municipal Corporation, Civil Lines, Nagpur, through its Commissioner
and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Smt. Neeta Jog, Advocate for petitioner
Shri S.N. Bhattad, Advocate for respondent nos.1 and 2

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 09.12.2016

By this petition, the petitioner seeks a declaration that the petitioner was entitled to be appointed in a Class-III post from the date of his first appointment on 7.8.1993 and the respondent – Corporation was at fault in not appointing the petitioner in a Class-III post, though he was entitled to the same. The petitioner seeks a direction against the respondent to take action on the proposal sent by the respondent no.2 to the respondent no.1 for considering the candidature of the petitioner in a Class-III post.

The relief sought by the petitioner cannot be granted. The petitioner was appointed on compassionate ground as early as in the year 1993. The petitioner was appointed in a Class-IV post and the petitioner accepted the appointment and joined the duties on the said post. After the petitioner was appointed in the

Class-IV post on compassionate ground, the petitioner started making representations to the respondent – Corporation that the petitioner should have been appointed in a Class-III post and not in Class-IV post. The representations of the petitioner were not favourably considered. The petitioner then filed a complaint before the Industrial Court for regularization of his services on the post of Meter Reader – Lower Division Clerk, as the petitioner was qualified to hold the said post and was asked to perform the duties of a Meter Reader – Lower Division Clerk. The petitioner had also made a prayer in the said complaint to place the petitioner on the post of Lower Division Clerk –Meter Reader in Class-III post with retrospective effect, i.e., from the date on which he completed 240 days of service. The Industrial Court, however, dismissed the complaint filed by the petitioner and the petitioner filed Writ Petition No.12/2013, challenging the order of the Industrial Court. The writ petition was also dismissed by the order, dated 15.3.2013. After the writ petition was dismissed on 15.3.2013, the petitioner has filed the instant petition on 29.2.2016, seeking the declaration as aforesaid.

The declaration sought by the petitioner cannot be granted. It is well settled by the judgments of the Hon'ble Supreme Court that when a compassionate appointment is granted and a person is appointed on a particular post, the claim would get exhausted and he/she would not have a right to claim that he/she was entitled to be appointed on a higher post and not the post to which he/she was appointed. It would be necessary to refer to the judgments of the Hon'ble Supreme Court, reported in *(1994) 6 Supreme Court Cases 560* and *(1996) 4 Supreme*

Court Cases 546 in this regard.

It is necessary to note that though the petitioner was appointed in a Class-IV post in the year 1993 and the petitioner was aggrieved by the said decision, the petition is not filed in the year 1994 or within a short time thereafter. The present petition is filed more than 23 years from the date of petitioner's initial appointment. The petition suffers from laches and is liable to be dismissed for the same. Even if the respondent no.2 had made a proposal to the respondent no.1 for considering the appointment of the petitioner in a Class-III post, the respondent no.1 was not obliged to consider the proposal and decide it in favour of the petitioner, more so, in view of the settled position of law. Once the complaint filed by the petitioner was dismissed by the Industrial Court on merits and the said order attained finality after the High Court dismissed the writ petition, the petitioner should not have filed the instant writ petition, merely by referring to a proposal sent by the respondent no.2 to the respondent no.1.

Since the prayers made in the writ petition cannot be granted, in the circumstances of the case, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE