

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.658 OF 2015

Smt. Yenubai Kardak
wife of Late Mr. Kishan Kardak
and another

...Petitioners.

Versus

Municipal Corporation of
Greater Mumbai and others

...Respondents

....

Mr. Altaf C. Khan for the Petitioner.
None for the BMC.

....

**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

9th AUGUST, 2017.

P.C.:

1. Learned Counsel for the Petitioner submits that the Petitioner No.1 expired. The Petitioner No.2 is the nephew of deceased Ashok Kardak, an ex-employee of the Corporation. The Respondent No.3 claims to be the wife of the deceased Ashok Kardak. In accordance with the Preferential Treatment Service Rules (for short 'P.T. Rules'), she was appointed in the year 2009.
2. The Petitioner No.2 Mukund Kardak raises objection to the appointment of the Respondent No.3 on the grounds that;

- (a) Respondent No.3 is not wife of deceased Ashok Kardak as she got married to another person from whom she has three children;
- (b) Based on false record, appointment order was secured by Respondent No.3;
- (c) In case, the appointment of the Respondent No.3 is cancelled, the Petitioner would be the beneficiary of the Rules.

3. We find an affidavit filed by Smt. Rajlaxmi Bhalchandra Pansar, Administrative Officer (Solid Waste Management) of the Corporation. Para 4 (a), (b), (c), and (d) of the said affidavit states as under:

“4. I say that the brief facts of the case are as given below:-

a) I say that Late Shri Ashok Kardak was an employee of the Respondent Corporation and after his death his wife Respondent No.3 herein made an application for grant of P.T. Case. I say that the deceased Shri Ashok Kardan had nominated his wife Mrs. Ujwala Ashok Kardan as his legal heir. As per circular No. MDD/5023 dated 22.7.1980 the wife of the deceased is entitled for P.T. cas as per the priority list. Hereto annexed and marked as EXHIBIT 1 is the copy of the said circular dated 22.7.1980;

b) I say that the wife of the deceased Ashok Kardak had submitted an application along with relevant documents. After scrutiny of the documents the P.T. case was sanctioned in favour of Respondent No.3;

c) I say that it is the contention of the Petitioner that Respondent No.3 is not the wife of the deceased Ashok Kardak and the Respondent No.3 is falsely claiming to be the wife of the deceased Ashok Kardak. However as stated above the nomination form filled by the deceased

Ashok Kardak shows the name of the Respondent No.3 as the nominee and the said was not changed any time thereafter. Hereto annexed and marked as EXHIBIT 2 is the Copy of the nomination form filled by the deceased Ashok Kardak;

d) I say that the Petitioner No.2 had lodged complaint with the office of the Respondent herein claiming that the Respondent No.3 is not the wife of the deceased Ashok Kardak and he is the nephew of the deceased who is looking after the Petitioner No.1 who is very old and thus he is entitled for the job by way of P.T. Case;

e) I say that the Respondent No.2 was asked to submit documents to support the allegations made by him such as divorce papers of Respondent No.3 and deceased Ashok Kardak, proof of remarriage of Respondent No.3, succession certificate from the court. However, no such documents are produced by the Petitioners to substantiate their allegations. I say that as per the Circular at Exhibit-I, Rule 6 the Nephew is not included in the list of the family members.

4. The Deponent further stated that the Petitioner No.1 (deceased) had filed Writ Petition No.2500 of 2011, which was withdrawn by her.

5. The Deponent stated that, as per the Circular annexed at Exhibit-1 Rule 6, nephew is not included in the list of family members.

6. The deceased Ashok Kardak had nominated his wife-Respondent No.3 Mrs. Ujwala Ashok Kardak as a legal heir and as per Circular dated 22.07.1980, the wife of the deceased is entitled for benefit under the P.T. Rules.

7. We do not find that the Petitioner has any *locus* to challenge the appointment of the Respondent No.3 as he is not included in the list of family members. There is no merit in the Petition. The Writ Petition is dismissed.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)