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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 199 of 2018**

{Arising out of Order dated 16.1.2017 passed in Writ Petition (S) No. 4776 of 2017 by the learned Single Judge}

1. Commissioner, Municipal Corporation, Raipur Nigam Head Office, Near Mahila Police Thana, Gandhi Udayan, District Raipur, Chhattisgarh, Pin Code 492009
2. Municipal Corporation Raipur, Through the Commissioner, Municipal Corporation Raipur Nigam Head Office, Near Mahila Police Thana, Gandhi Udayan, District Raipur, Chhattisgarh, Pin Code 492009.

---- Appellants**Versus**

1. Nadeem Ansari S/o Late Abdul Naiem Ansari, aged about 26 years, R/o Behind Raipur Bakery, Moulana Aizaz, Baijnathpara, District Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through its Special Secretary, Urban Administration and Development Department, Indrawati Bhawan, Block D, Fourth Floor, New Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.
For Respondent No. 1	: Shri Amrito Das, Advocate.
For Respondent/State	: Shri Y.S.Thakur, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****18/06/2018**

1. This writ appeal is by the Municipal Corporation, Raipur; for short 'the Corporation'.
2. We have heard the learned senior counsel for the Appellant-Corporation, the learned Additional Advocate General and the learned counsel for the 1st Respondent, who filed the writ petition from which this appeal arises.
3. The 1st Respondent-writ petitioner lost his father, who died in harness while serving the Municipal Corporation. The 1st Respondent applied for

compassionate appointment. That was turned down by the Commissioner of the Corporation. The writ petitioner filed an appeal against that decision to the Mayor-in-Council which upturned the decision of the Commissioner and directed compassionate appointment. Since the officers of the Corporation did not give effect to the said decision of the Mayor-in-Council, the writ petition was instituted seeking directions. The learned Single Judge found no ground for the Corporation to refuse appointment. Hence, the impugned order was issued by the learned Single Judge.

4. Hearing the learned senior counsel for the Appellant-Corporation, we see that the fundamental issue is largely on the question relatable to jurisdiction of the Mayor-in-Council and the stand of the Municipal Commissioner and the Municipal Establishment that the Mayor-in-Council had no authority to be the appellate forum to decide on compassionate appointment cases. The pointed argument is that Section 403 of the Municipal Corporation Act does not give room for any such decision making by the Mayor-in-Council.
5. We have bestowed our anxious consideration to the totality of the facts and circumstances. We see that while there is merit in the plea of the Commissioner and the Corporation that the Mayor-in-Council could not have sat in judgment as an appellate authority over the Commissioner's decision on the question of compassionate appointment, we also cannot but observe that on the totality of the facts and circumstances, the writ petitioner needed a more sympathetic approach from the Municipal authorities, particularly while dealing with his application for compassionate appointment. Though we would not express elaborately, we may indicate that the Police had given character clearance for the 1st Respondent. However, the Corporation authorities appear to have zeroed in on material to show that the 1st Respondent was, at some point

of time, imposed with a fine of Rs. 50/- under the Gambling Act, which according to the learned counsel for the 1st Respondent, is not one relatable to any instance of moral turpitude. We do not express either way on that issue since we are of the view that this is an abundantly fit case where the application for compassionate appointment as made by the writ petitioner-Nadeen Ansari ought to be considered *de novo* by the Commissioner of the Municipal Corporation, Raipur ignoring the length of time that has gone through during the pendency of this writ petition or otherwise.

6. In the result, vacating the order of the learned Single Judge and the decision that was rendered by the Mayor-in-Council, on the basis of which this writ petition was instituted, this writ appeal is ordered directing the Appellant-Corporation and its Commissioner to have the application of the 1st Respondent-writ petitioner, Nadeem Ansari considered sympathetically and issue requisite orders within an outer limit of two months from the date of receipt of a copy of this judgment.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE