

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

WRIT PETITION NO. 746 OF 2016

Ravikiran Prakash Patkari

..PETITIONER

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. U.R. Awate, Advocate for petitioner.

Mr. S.B. Joshi, A.G.P. for respondent no.1 – State.

Mr. S.P. Shah, Advocate for respondent no.2.

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CORAM : S.V. GANGAPURWALA AND

R.G. AVACHAT, JJ.

DATED : 26th OCTOBER, 2018

ORDER :

The petitioner assails the communication dated 23rd October, 2015 issued by the Deputy Commissioner, Municipal Corporation, Dhule, thereby refusing to absorb the petitioner on permanent basis on the post of Clerk, so also seeks difference of salary from the initial date of appointment.

2. Mr. Awate, the learned Counsel for the petitioner submits that the father of the petitioner was working as an Assistant Teacher with the erstwhile Municipal Council, Dhule since 1974. On 24th June, 1991, the father of the petitioner died during the course of his employment. The

petitioner applied to the Municipal Council, Dhule for appointment on compassionate ground. The request of the petitioner was considered. The then Chief Executive Magistrate, Municipal Council, Dhule appointed the petitioner on compassionate ground on the post of Clerk on temporary basis. The petitioner approached respondent no.2 to absorb him on permanent basis on the post of Clerk. However, the request is not considered. The learned Counsel submits that the petitioner was appointed on compassionate ground on temporary basis under order dated 06th July, 1996. Subsequently, in the year 1998, the respondent appointed another candidate, Mrs. Naik also on compassionate ground on the post of Clerk. By order dated 24th June, 2000, the respondent appointed ten more persons on compassionate ground on the vacant posts. The post, on which the petitioner was appointed, was also vacant post. In fact, noting is made by the officers of the Municipal Council, Dhule that injustice has been caused to the petitioner and the petitioner is required to be regularized. The learned Counsel submits that the respondents are required to regularize the service of the petitioner.

3. Mr. Shah, the learned Counsel for respondent no.2 – Municipal Corporation submits that the petition deserves to be dismissed on the ground of delay and laches. The petitioner approached this Court after 20 years. No plausible explanation is given. The petitioner cannot maintain the claim after

such a long period. The learned Counsel relies on the judgment of the Apex Court in the case of *New Delhi Municipal Council Vs. Pan Singh and Others (2007) 9 SCC 278*. The learned Counsel submits that the petitioner, at the relevant time, did not make any grievance. Ten persons appointed in the year 2000 on compassionate ground as clerk were appointed after seeking permission of the Collector. While appointing the petitioner, permission of the Collector is not obtained. It cannot be said that the petitioner has been legitimately appointed. The learned Counsel submits that the seniority list of the employees of the respondent Municipal Corporation is published in the year 2003. Name of the petitioner does not appear in the said list. The petitioner did not raise objection to that list. Now, after such a long period has approached this Court. The petition is afterthought. The appointment order issued to the petitioner on 06th July, 1996 is a conditional appointment order. The learned Counsel submits that there was no vacant post on which the petitioner could be appointed on permanent basis. In view of that the petitioner was appointed on temporary basis.

4. We have considered the submissions canvassed by the learned Counsel for the parties. The present petition is an illustration of the manner in which the Municipal Council has engaged itself in appointing the persons on compassionate ground. The petitioner was appointed on the place of his

father on compassionate ground on a temporary basis under the appointment order dated 06th July, 1996 issued by the Chief Officer of the erstwhile Municipal Council, Dhule. The respondent appointed one lady candidate in the year 1998 on the vacant post of Clerk on compassionate ground. Thereafter in the year 2000 more vacancies existed for the post of Clerk and respondent no.2 – Municipal Council made appointments of ten persons on the compassionate ground to the post of Clerk and they are made permanent. Even assuming the contentions of respondent no.2 – Municipal Council that in the year 1996, when the petitioner was appointed, there was no vacant post, still there was no impediment for the Municipal Council to consider the petitioner on permanent basis when the post became available in the year 1998 or 2000. The petitioner accepted the appointment order on the ground that he will be made permanent as and when the posts became vacant. However, when the vacancy was available, as per the case of respondent no.2, persons are appointed on compassionate ground on the post of Clerk in the year 1998 and 2000, there was no impediment for respondent no.2 – Municipal Corporation to make the petitioner permanent.

5. While appointing the persons on compassionate ground, the selection process is not required to be adhered to. Appointment on compassionate ground is an exception to the merit. Of course, respondent

no.2 is required to consider that the candidate possesses requisite qualification for the said post. It is not the case of the respondent that the petitioner does not possess the requisite qualification for the post of Clerk. The attitude of respondent no.2 – Municipal Corporation in picking and choosing the candidate for appointment on compassionate ground without considering the priority of the applications made, cannot be appreciated.

6. Office note dated 23rd September, 2015 is placed on record. It shows that injustice has been caused to the petitioner. Undoubtedly, the petitioner had applied for appointment on compassionate ground in earlier point of time to the persons, who were subsequently appointed in the year 1998 and 2000. The appointment order issued to one Mrs. Naik on the post of clerk on 15th June, 1998 on compassionate ground is on account of the death of her husband on 01st December, 1997, whereas, in case of petitioner, the father of the petitioner died on 24th June, 1991 and the petitioner had made an application and temporary appointment order was issued to him on 06th July, 1996. Same is the case with regard to the appointments of ten persons made on compassionate ground on the post of Clerk under appointment order dated 24th June, 2000. It is not disputed by the respondents that these persons are treated as regular employees. Even their seniority list is published in the year 2003.

7. The respondents have raised ground of delay and latches. In fact respondent no.2 – Municipal Corporation being a Public Body and instrumentality of the State, cannot show a favourable attitude to some employees and discriminate other employees. In the present case, the petitioner certainly has been discriminated. The respondents have failed in their duty to abide by the Government Resolutions issued from time to time in making appointment on compassionate ground. When the post became available for appointment on compassionate ground, the petitioner was required to be absorbed as permanent employee. We asked the learned Counsel for respondent no.2 as to availability of vacant posts of Clerk, it is submitted that the posts are vacant. However, because of expenditure, same are not filled in.

8. Considering the fact that the posts are vacant, it would be appropriate to direct the respondents to treat the petitioner as permanent employee from 2004. We have referred to this year because seniority list was published in the year 2003. Though, we direct the respondents to grant permanency and regularization to the petitioner from the year 2004, we make it clear that he would not be entitled to claim any difference in emoluments till date of this order because he has approached this Court late and the delay in filing the petition should not entitle him for the financial

benefits. However, period from 2004 shall be counted for all other purposes. We are also not granting permanency from 1996-97 because the petitioner, at the relevant time, in the year 1998 and 2000 , when the appointments are made on compassionate ground, did not raise objection. Writ petition is accordingly partly allowed. No costs.

SSD (R.G. AVACHAT, J.)

(S.V. GANGAPURWALA, J.)