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

WRIT PETITION NO.5121 OF 2017

Rahul s/o Ramesh Mune,
Age: 26 years, Occu: Nil,
R/o. Lakar Galli, Pathardi,
Tq. Pathardi, Dist. Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department
Mantralaya, Mumbai-32

2. The Commissioner/Director,
Municipal Administration,
Mumbai-30

3. The District Collector,
Ahmednagar

4. The Municipal Council Pathardi,
Tq. Pathardi, Dist. Ahmednagar,
Through its Chief Officer

..RESPONDENTS

Mr A. G. Ambetkar, Advocate for petitioner;
Mr G. O. Wattamwar, A.G.P. for respondent Nos.1 to 3;
Mr R. V. Naiknavare, Advocate for respondent No.4

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 6th September, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioner at length.

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2. The petitioner is before this Court with the prayer clauses (B) and (C). Insofar as prayer clause (B) is concerned, the petitioner cannot seek directions for issuance of writ of mandamus /orders for appointment of the petitioner and at the most, he can certainly pray for consideration of his claim, as such, we are not inclined to consider prayer clause (B) at the threshold.

3. Insofar as prayer clause (C) is concerned, it raises the challenge to the order dated 20th March, 2017, passed by respondent No.4 Chief Officer of Municipal Council, Pathardi, District Ahmednagar. The petitioner is a son of one Ramesh Yadavrao Mune who was in the service of Health Department attached to Pathardi Municipal Council and he was permanent employee of the Council. Mr. Ramesh Yadavrao Mune expired on 9th September, 2005. It seems that in an earlier round of application, the petitioner was before this Court in Writ Petition No.6582 of 2015. It was submitted before this Court that father of the petitioner died on 9th September, 2005 when he was in service of Municipal Council and on 15th October, 2005 mother of the petitioner filed application seeking appointment on compassionate ground. The application was pending for considerable period. The petitioner, at that time, was a minor and he filed application seeking appointment on compassionate ground on 17th October, 2018 after attaining the age of majority. The mother of petitioner died on 9th November, 2006. It was submitted before this Court that the petitioner is entitled for

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consideration of claim in view of the policy or scheme framed by the State Government. Considering the fact that the application is pending before the authority, the Division Bench thought it fit to dispose the writ petition with direction to respondent No.4 to decide the application on its own merits within a stipulated period i.e. six months from the date of the order.

4. The petitioner is challenging the order dated 20th March, 2017. The Chief Officer of the Municipal Council by assigning the reasons rejected the application. The Chief Officer in the said order stated that the petitioner attained majority on 1st October, 2018 and this date is reckoned in view of the birth date of the petitioner i.e. 2nd October, 1990 and the Chief Officer further state that the petitioner ought to have submitted an application within one year i.e. on or before 1st October, 2009. Then there is a reference made to the Government Resolution dated 22nd August, 2005 for the stipulation of the period and then Chief Officer states that as the application of the petitioner was beyond the period of one year, the claim of the petitioner cannot be considered and as such, the application was rejected.

5. Learned Counsel for the petitioner vehemently submitted that the order of the Chief Officer is unsustainable and he placed reliance on the G.R. dated 21st September, 2017 as well as the judgment of the Division Bench of this Court at Nagpur Bench in the matter of **Ritesh Vilasrao Gotmare vs. State of Maharashtra and another** reported in 2013 (5)

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Bom.C.R. 612 in support of his submission.

6. On going through the above referred Govt. Resolution as well as the judgment relied on by the learned Counsel for the petitioner, we are unable to accept his submissions. The G.R. dated 21st September, 2017 is a policy of the State Government taking into consideration all earlier Govt. Resolutions in respect of the claims made for seeking appointment on compassionate ground. The schedule A of the said G.R. specifies that the family members of these employees are entitled to receive the benefits of compassionate appointment. Then there is a reference to the posts on which the compassionate appointment can be made. Broadly these are the group of C and Group D posts. It is then made clear that those posts under the domain of Public Service Commission or even these executive posts which are in Group C cannot be filled in by the appointment on compassionate grounds. Then there is a reference to the entitlement of the family members. Clause-(10) is very relevant for our purposes and it deals with the stipulation of period to submit application seeking compassionate appointment. Sub clause (E) of Clause (10) states that the application is to be submitted within one year. Though initially the policy of State Government for stipulation period was of one year, by sub clause (E) of Clause (10), the period is extended to three years from one year and it is stated that the legal heirs of the deceased employee must submit application within three years from the date of death of employee. Then it is stated that in case of a minor, he can submit his application within one year after attaining majority and the period is

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extended by two years meaning thereby in any case, the minor must submit the application within three years from the date of attaining the majority. The above referred sub clause further states that the powers to condone the delay of these two years vests with the administrative head of the department.

7. Considering the dates in the present matter, the petitioner submitted his first application on 17th October, 2011 i.e. 16 days after three years of attaining the age of majority by him. Thus, this period was even beyond the powers being vested with the authority to condone the delay. Considering this peculiar and particular factual aspects of the matter, we are unable to accept the submission of learned Counsel for the petitioner. We clearly say and we have no hesitation to say that the G.R. dated 21st September, 2017 is of no help to the petitioner. The judgment relied on by the learned Counsel for the petitioner in the matter of **Ritesh Vilas Gotmare** (supra) is clearly distinguishable on the facts. As such, this judgment is also of no help to the petitioner.

8. Considering all these above referred aspects, we are of the opinion that the petition is devoid of merits and deserves to be dismissed and same is accordingly dismissed.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)