

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

WRIT PETITION NO. 13197 OF 2017

Rahuri Municipal Council.
Through the Chief Officer,
R/o Rahuri Municipal Quarter,
Tq.Rahuri, District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Vijay Rangnath Dhanedhar,
Age : 37 years, Occupation : Nil,
R/o Katore Galli, Rahuri Nagar
Parishad Colony, Tal.Rahuri,
District Ahmednagar.
- 2 Somnath Arjun More,
Age : 35 years, Occupation : Nil,
R/o Katore Galli, Rahuri Nagar
Parishad Colony, Tal.Rahuri,
District Ahmednagar.
- 3 Chandrakant Kisan Patekar,
Age : 43 years, Occupation : Nil,
R/o Katore Galli, Rahuri Nagar
Parishad Colony, Tal.Rahuri,
District Ahmednagar.
- 4 Commissioner/ Director,
Directorate of Municipal Administration,
Administrative Transport Service Building,
3rd Floor, Nagar Pochkhanwala Road,
Worli, Mumbai-30.

...RESPONDENTS

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Advocate for the Petitioner : Shri Ramesh V. Naiknavare.

Advocate for Respondents 1 to 3 : Shri Parag V. Barde.

AGP for Respondent 4 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th November, 2018

Oral Judgment :

1 This matter was heard on 21.11.2018 and the following order was passed :-

1. *Considering the impugned orders, I have called upon the learned counsel for the petitioner/Municipal Council to either reinstate the respondents pursuant to the impugned judgment or deposit 30% of the back wages as are granted and full wages from the period of October, 2017, on month to month basis till the petition is pending.*
2. *Learned counsel seeks time to take instructions and make a statement on 28/11/2018.*
3. *As such, stand over to 28/11/2018, in the urgent admissions category."*

2 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3 The Petitioner/ Municipal Council is aggrieved by the judgment of the Industrial Court dated 28.08.2017 by which, Revision (ULP) No.6/2009 filed by Respondents Nos.1 to 3/ Workers was allowed, the judgment and order dated 31.01.2019 delivered by the Labour Court dismissing Complaint (ULP) No.48/2006 was set aside and these workers were directed to be reinstated as "Safai Kamgars" with continuity and 30%

back wages.

4 The learned Advocate for the Petitioner/ Municipal Council contends as follows :-

- (a) The scheme for facilitating the compassionate appointment is available in the Petitioner Municipal Council.
- (b) Respondent Nos.1 to 3 / workers, namely, Vijay Dhanedhar, Somnath More and Chandrakant Patekar, were appointed on compassionate basis after their parents retired from service of the Municipal Council.
- (c) The scheme for compassionate appointment, inter alia, provides for engaging a legal heir of the retired employee provided the retired employee has worked as "Safai Kamgar". There are some other areas where compassionate appointment is permissible, but those are not relevant with the case in hand.
- (d) Since it was noticed that none of the parents of these workers were working as "Safai Kamgars", their appointments were cancelled and they had approached the Labour Court, which dismissed the ULP complaint.
- (e) The Industrial Court, by the impugned judgment, set aside the judgment of the Labour Court.

5 The learned Advocate appearing on behalf of the Respondents/ original Complainants before the Labour Court, submits as under :-

- (a) This is the third round of litigation of these workers.
- (b) They have approached this Court earlier in Writ Petition No.5531/2012, which was decided on 10.12.2014 and in Writ Petition No.11042/2015, which was decided on 06.02.2017.
- (c) The parents of these workers were earlier shown to be labourers when they had actually performed the work of "Safai Kamgar". They were commonly known as "Gutter Kamgar" as they used to work only in neck-deep gutters and drainage pipes and used to clean the garbage within the area of the Municipal Council.
- (d) These workers proved on the basis of oral and documentary evidence before the Industrial Court that their parents had been working as "Safai Kamgar".
- (e) The Industrial Court quashed and set aside the judgment of the Labour Court (dismissing their complaint) and concluded that as the parents of these workers were working as "Safai Kamgar", these workers were entitled to compassionate appointment and hence, their engagement on compassionate

basis was justified.

6 I have considered the impugned judgment in the light of the submissions of the learned Advocates and I have also considered the record available, which indicates that this is the third round of litigation upto to this Court. In the earlier round of litigation in Writ Petition No.5531/2012, this Court had considered the entire scheme of compassionate appointment and had concluded that the children of such parents, who were working as "Safai Kamgar", would be eligible for appointment on compassionate basis. It was recorded in paragraph 12 of the order dated 10.12.2014 that several parents were working as "Mukadam" or "Kamgar" and their legal heirs were appointed on compassionate basis and were given the work of "Safai Kamgars". The judgment of the Industrial Court rejecting the revision proceedings was, therefore, set aside and the matter was remitted.

7 In Writ Petition No.11042/2015, this Court considered that the issue as to whether, the parents of these workers were working as "Safai Kamgar" or not, was not considered by the Industrial Court and the ULP revision was mechanically dismissed. Hence, this Court specifically directed the Industrial Court to decide important aspects involved in the matter, which is evident from paragraph 9 of the order dated 06.02.2017, which reads as under :-

- "9. *In the light of the above, this petition is partly allowed to the extent of quashing and setting aside the judgment of the Industrial Court dated 09/06/2015. Revision (ULP) No.6/2009 is remitted to the Industrial Court to be considered afresh on the following conditions :-*
- [a] The litigating sides shall appear before the Industrial Court on 24/02/2017 and formal notices need not be issued by the Industrial Court.*
 - [b] The Industrial Court shall call for record and proceedings from the Labour Court, Ahmednagar in Complaint (ULP) No.48/2006 and consider all the documents exhibited and proved by oral evidence.*
 - [c] It shall scrutinize the evidence recorded by both the sides including the cross-examination of Mr.Hadap.*
 - [d] The Industrial Court shall consider whether the parents of the petitioners were regularly discharging their duties as 'Safai Kamgar' and only on such conclusion, it shall scrutinize the claims of these petitioners, considering that there is a possibility that the parents of the petitioners may have occasionally or intermittently worked as 'Safai Kamgar' which will not make their nature of duties as those of a 'Safai Kamgar'.*
10. *Rule is made partly absolute in the above terms."*

8 I find from the impugned judgment of the Industrial Court that it has considered the entire evidence that was placed before the Labour Court. Evidence led by the workers before the Labour Court was considered in which, they had stated their nature of duties, which they were performing and which their parents were performing as "Safai Kamgar", "Bhangi" and "Gutter Kamgar" though they were designated as "Kamgar". The Industrial Court, after considering the entire record and the oral and documentary evidence, concluded that it was proved that the parents of these workers were working as "Safai Kamgar" and hence, their

designation from "Kamgar" to "Safai Kamgar" was rightly altered. The Petitioner Municipal Council admitted before the Labour Court that the Lad Committee recommendations were applicable to the "Safai Kamgar" working in the Health Department under the Municipal Councils or Municipal Corporations.

9 The witness of the Petitioner Shri Pramod Hadap admitted in evidence that several children of the persons, who were working as "Kamgar", were given the benefits of the Lad Committee and the Barve Committee recommendations. They were still in employment. Shri Hadap then admitted, on the basis of the resolutions of the Municipal Council, that the parents of these workers were designated as "Safai Kamgar".

After considering the entire record, the Industrial Court delivered its impugned judgment running into 35 pages and answered the issue that was framed by this Court vide its order dated 06.02.2017.

10 Considering the above and keeping in view that the oral and documentary evidence was considered threadbare, in view of the orders of this Court, by the Industrial Court and the conclusions drawn by the Industrial Court being just and proper, I do not find any reason to cause an interference in the impugned judgment. The Industrial Court has rendered the conclusions on the basis of the evidence before it and on the basis of several admissions given by the witnesses of the Municipal Council. The impugned judgment, therefore, cannot be branded as being

perverse or erroneous. I do not think that gross injustice has been caused to the Petitioner/ Municipal Council.

11 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)