

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

WRIT PETITION NO.11455 OF 2017

Laxmi D/o. Kishan Dhillod,
Age : 24 years, Occu : Nil,
R/o. Galli No.5, Near Masjid,
Bhim Nagar, Bhausinghpura,
Tq. Aurangabad, District Aurangabad.

..... PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Rural Development Department
Mantralaya, Mumbai -32.
- 2) Municipal Corporation Aurangabad
Aurangabad, through its
Commissioner.

... RESPONDENTS

Mr. S.B. Khan, Advocate for the petitioner
Mr. S.S. Dande, AGP for the respondent/State
Mr. N.S. Tekale h/f Mr. A. R. Vaidya, Advocate for respondent No.2.

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE,JJ.**

DATED : 16.07.2019

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel for the appearing parties finally by consent.

2. Succinctly stated, the factual position appears to be that petitioner's mother Rajwantibai Kisan Dhillod had been working as a "Safai Kamgar" with respondent No.2- Corporation since 1996. She had been working as a class-IV servant and her services had been permanently approved by the corporation.

3. In 2011 in the course of employment she died burning accidentally taking place. It appears that immediately elder brother of petitioner had lodged an application seeking appointment. The family left behind by deceased mother had been in dire need of employment. In order to bring request for appointment in place of mother in tune with the scheme for such appointment and with a view to comply with the same, family members in order to authenticate their succession had lodged proceedings seeking succession certificate. During pendency of proceedings, the members had resiled to a situation wherein petitioner be appointed in deceased mother's place and accordingly, an application came to be submitted and the same has been responded to referring to that the application is time barred. It is this communication which is impugned in the present writ petition.

4. Learned counsel for the petitioner purports to submit that laudable object sought to be achieved under the decisions of the government and compassionate scheme cannot be obfuscated and entitlement of petitioner for appointment in her mother's place could not be questioned. Benefit should not be negated on technicalities. He submits that it would have to be referred to that despite application being made after death of mother for appointment by brother, it had not been acted upon nor responded to. The family members in tune with the scheme under decision of the State dated 21-10-2011 have given consent to nominate petitioner and the same ought to receive its due.

5. He submits that as a matter of fact application by petitioner is in continuation of the application by his brother filed within the time limit

prescribed under said decision and the object under the same is not immiscible with the scheme for appointment and the application does reflect that. He therefore submits that while family is in dire need of employment the same ought to be given primacy lest object under the scheme would be frustrated.

6. The request in writ petition is being resisted on the ground that the application is belated.

7. The circumstances show that an application had been filed within prescribed time limit pursuant to decision of 2011 referred to above and that the family pursuant to the scheme under decision dated 21-10-2011 1(क) had nominated the petitioner. The scheme, it appears entitles one person from the family for appointment. The corporation had neither acted upon the application nor had declined the request. Family members, it appears have consented for petitioner's nomination and it is only when the petitioner persisted the impugned communication has been issued. It is not denied that an application for appointment from family member had been filed well within the prescribed time. Having regard to the intent underlying the decision dated 21-10-2011, in these peculiar circumstances, it appears it would be expedient that the petitioner's request under his application would be properly considered. In the circumstances, respondent No.2 shall consider the claim of the petitioner for appointment pursuant to the scheme under decision dated 21-10-2011 and issue appropriate orders. The impugned communication dated 07-05-2015 in the circumstances is set aside.

8. Rule made is absolutely accordingly. The petition is disposed of.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]