

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5040 OF 2008

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs. Sadashiv Eknath Jadhav & Ors.	...Respondents

**WITH
WRIT PETITION NO. 5049 OF 2008**

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs. Shantaram Narayan Sabale & Ors.	...Respondents

**WITH
WRIT PETITION NO. 5042 OF 2008**

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs. Mandabai Dagdu Shertate & Ors.	...Respondents

**WITH
WRIT PETITION NO. 5043 OF 2008**

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs. Madhav Anant Nagarkar & Ors.	...Respondents

**WITH
WRIT PETITION NO. 5044 OF 2008**

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs. Nana Pandharinath Thete & Ors.	...Respondents

WITH
WRIT PETITION NO. 5045 OF 2008

The Commissioner,
Nashik Municipal Corporation ...Petitioner
vs.
Govind Nivrutti Shring & Ors. ...Respondents

WITH
WRIT PETITION NO. 5046 OF 2008

The Commissioner,
Nashik Municipal Corporation ...Petitioner
vs.
Nashik Mahanagarpalika Kamgar
Karmachari Sanghatana & Ors. ...Respondents

WITH
WRIT PETITION NO. 5047 OF 2008

The Commissioner,
Nashik Municipal Corporation ...Petitioner
vs.
Nashik Mahanagarpalika Kamgar
Karmachari Sanghatana & Ors. ...Respondents

WITH
WRIT PETITION NO. 5048 OF 2008

The Commissioner,
Nashik Municipal Corporation ...Petitioner
vs.
Nashik Mahanagarpalika Kamgar
Karmachari Sanghatana & Ors. ...Respondents

WITH
WRIT PETITION NO. 5050 OF 2008

The Commissioner,
Nashik Municipal Corporation ...Petitioner
vs.
Ambadas Ramchandra Vidhate & Ors. ...Respondents

WITH
WRIT PETITION NO. 5259 OF 2008

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs.	
Dinkar Baburao Bhangare & Ors.	...Respondents

WITH
WRIT PETITION NO. 5377 OF 2008

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs.	
Barku Pitambar Patil & Ors.	...Respondents

WITH
WRIT PETITION NO. 5378 OF 2008

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs.	
Madhukar Vishram Alhat & Ors.	...Respondents

WITH
WRIT PETITION NO. 5379 OF 2008

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs.	
Sukhadev Budha Badade & Ors.	...Respondents

WITH
WRIT PETITION NO. 5380 OF 2008

The Commissioner, Nashik Municipal Corporation	...Petitioner
vs.	
Namdeo Trimbak Mandalik & Ors.	...Respondents

WITH

WRIT PETITION NO. 5381 OF 2008

The Commissioner,
Nashik Municipal Corporation

...Petitioner

vs.

Latabai Shamram Markad & Ors.

...Respondents

WITH

WRIT PETITION NO. 5382 OF 2008

The Commissioner,
Nashik Municipal Corporation

...Petitioner

vs.

Sugandhbai Narayan Waghmare & Ors.

...Respondents

Mr.M.L. Patil for Petitioner in all writ petitions.

Ms.Seema Sarnaik for Respondent Nos.1 and 2 in all writ petitions except WP 5049/2008.

Mr.Ashok Gade for Respondent Nos.1 and 2 in WP 5049/2008.

CORAM : S.C. GUPTE, J.

DATE : 11/16 DECEMBER 2019

ORAL JUDGMENT :

Heard learned Counsel for the parties.

2 This group of writ petitions concerns compassionate appointments to be made by the State, in these cases, by Nashik Municipal Corporation, on the basis of applicable G.Rs.

3 Brief facts indicate that originally, there was a G.R. issued by the Administration Department of the State (G.R. dated 26 October 1994) which *inter alia* formulated a modified scheme of appointments with the State on compassionate grounds. This scheme *inter alia* envisaged that family members of Government employees, who had prematurely retired

on account of T.B., cancer or other serious illnesses, on the basis of certificates issued by competent medical officers, were entitled to be appointed under the State on posts in categories 'C' and 'D' on compassionate grounds. This G.R. was modified later by two more G.Rs., i.e. G.R. dated 23 August 1996 and G.R. dated 28 March 2001. Under the G.Rs., compassionate appointments were *inter alia* limited to retired Government employees, who had prematurely retired on account of only cancer, paralysis or accident. Besides, the G.Rs. would apply only to family members of those Government employees, who had retired prematurely from service before completing the age of 50 years on account of either cancer or paralysis or accident.

4 Mr. Patil, learned Counsel appearing for the Municipal Corporation, submits relevant particulars in all these petitions. These particulars clearly indicate that in all these cases, the concerned employees had retired after the G.R. of 2001 came into effect. Their medical certificates were all dated after the G.R. of 28 March 2001; the retirement orders were all passed thereafter; and based on these retirement orders, applications were made by their family members for being appointed under the scheme of compassionate appointments. In all these cases, the employees had prematurely retired on account of illnesses other than cancer, paralysis or accident. Their applications were accordingly not accepted or acted upon by the Municipal Corporation. The concerned employees, along with the Applicants, carried the matter before the Industrial Court at Nashik on a complaint of unfair labour practice. It was alleged that the family members of the concerned prematurely retired employees were entitled to the benefit of compassionate scheme and were improperly denied appointments under the State. It was submitted that the

new G.R. of 28 March 2001 did not apply to the facts of their case. The Industrial Court held in their favour and allowed their complaints directing the Municipal Corporation to consider the appointment of individual complainants in all these cases, purportedly on the ground that their applications for medical check-up, in response to which their disability was identified by a competent medical officer, were made prior to 28 March 2001; besides the G.R. issued on 28 March 2001 was not within the knowledge of the complainants or even of the corporation; and that, accordingly, their cases were liable to be determined on the basis of the original existing G.R., i.e. the G.R. of 23 August 1996. The court observed that there was an agreement between the corporation and the union of its employees to provide employment to family members of the employees on compassionate grounds under the relevant scheme/s of the State. The court observed that there was a breach of this binding agreement and that, accordingly, the corporation had committed unfair labour practices under Items 5, 6, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, by not providing appointments on compassionate grounds to the concerned complainants.

5 There is a serious infirmity in the impugned orders passed by the Industrial Court in all these cases. The relevant date for considering the breach as well as the terms of the scheme of compassionate appointments was 28 March 2001. In each of these cases, the certificates of disability were themselves issued after 28 March 2001. The retirement orders and premature retirements of the concerned employees were all subsequent to 28 March 2001. The applications for compassionate appointments made on the basis of these disability certificates and premature retirements were, thus, liable to be considered under the scheme, which was in force with

effect from 28 March 2001. That some of these employees may have applied for medical check-up prior to 28 March 2001 is neither here nor there.

6 The judgment of Calcutta High court in the case of **Kulesh Chandra Mondal vs. State of West Bengal**¹, on which reliance appears to have been placed by the Industrial Court for its order, is clearly distinguishable on facts. In that case, Mondal, the original applicant (petitioner before the court), who was a State employee, had submitted an application to the respondent council for being declared permanently disabled / incapacitated for life before attaining the age of 58 years, which was the relevant age for application of the concerned scheme of compassionate appointments in that case. In spite of submission of this application, no medical board was constituted for a long time to examine Mondal. Subsequently, pursuant to an order passed by the Calcutta High Court, the medical board examined Mondal and declared him permanently disabled. This declaration was made on 10 December 1997, by which time Mondal had crossed the age of 58 years. Since the certificate of disability was subsequent to attainment of 58 years of age, the family member's application for compassionate appointment was denied. It was in these circumstances that the court struck down the order of rejection of his application. The court observed that it was due to laches or lapses on the part of the concerned respondents that the medical board was not constituted within a reasonable time after submission of the concerned employee's application; the medical board, in the premises, could not declare him as permanently disabled before attaining the age of 58 years. The court was of the view that the respondent authority, being guilty of

1 2007 (115) FLR-549

delay and laches, could not be permitted to take advantage of its own lapses in denying the rightful and legitimate claim of the applicant. These facts are clearly distinguishable from the facts of our case. In our case, the scheme is for appointment of family members of permanently retired individual employees. In all these cases, by the time the medical certificates were obtained and the concerned employees were prematurely retired, and applications for compassionate appointments were made on the basis of such retirements, the law had already changed. The new law specified only three categories of illnesses for application of the scheme. As we have noted above, the concerned employees did not fall in either of these categories and their family members were, accordingly, not entitled to be appointed under the compassionate scheme.

7 Learned Counsel for the Respondents submits that the corporation itself had resolved on 20 October 2003 that family members of nine employees who had prematurely retired on account of medical reasons were entitled to appointments under the compassionate scheme, though these employees had retired for illnesses other than the aforesaid three categories. Mr. Patil informs the court that this resolution has not been acted upon by the Municipal Corporation. Mr. Patil submits that besides, from the resolution relied upon by the Respondents, the illnesses of the concerned retired employees are not apparent. He also submits that such resolution cannot entitle the concerned Respondents to compassionate appointments in the face of the applicable G.R. referred to above. Learned Counsel is right there. From the resolution relied upon by the Respondents, it is not apparent that any of the nine employees referred to therein had prematurely retired on account of any illness other than the three illnesses referred to above. Besides, such resolution cannot entitle the concerned

Applicants to compassionate appointments in the face of the law applicable under the G.R. of 28 March 2001.

9 The impugned orders accordingly cannot be sustained. Rule is made absolute, in the premises, and the petitions are allowed by quashing and setting aside the impugned order passed by the Industrial Court at Nashik in the individual cases of Respondents to these petitions, and dismissing all complaints of unfair labour practice.

(S.C. GUPTE, J.)

Sanskruti
A.
Thakur

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signed by
Sanskruti A.
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