

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1758 OF 2018

Sau. Sarita w/o. Babalu Narhare,
Aged about 36 years, Occ. Household,
r/o. Ward No.1, Warud, Tq.Warud,
District Amravati.

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PETITIONER

// VERSUS //

- 1.State of Maharashtra,
Through the Secretary of Urban
Development and Municipal
Administration Department,
Mantralaya, Mumbai-32.
- 2.Director,
Municipal Council,
Administration Directorate,
Warali, Mumbai-30.
- 3.Regional Director,
Municipal Council Administration,
Amravati Division, Amravati.

4. Collector,
Amravati District,
Amravati.

5. Chief Officer,
Nagar Parishad, Warud,
Tq. Warud, District Amravati.

6. Sau. Mala w/o. Vikram Samundre,
Aged about 34 years, Occ.
Household, r/o. Ashok Nagar,
Near Vaishali Nagar Ghat,
Nagpur, Tq. and District Nagpur.

7. Smt. Maya Prakash Narhare,
Aged : Adult, Occ. Service
(Sweeper), r/o. Ward No.1,
Warud, Tq. Warud, District
Amravati.

..... RESPONDENTS

Mr.S.U.Nemade, Advocate for the petitioner.
Mr.N.R.Patil, A.G.P. for respondent nos. 1 to 4.
Mr.N.R.Saboo, Advocate for respondent no.5.
Mr.Parag Kadu, Advocate for respondent nos. 6 and 7.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 7.12.2020.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. Rule. Rule made returnable forthwith. Heard finally by consent.

2. This petition challenges the claim being staked by respondent no.6 to her appointment to the post of Sweeper against the vacancy which has arisen after retirement of respondent no.7 from the same post w.e.f. 20.3.2018. Just before the retirement, the retirement being the voluntary retirement, respondent no.7, as per Office circular dated 31.1.2005, nominated her daughter, respondent no.6 to be considered for being appointed as Sweeper against the vacancy that would arise after her retirement. Such nomination which was firstly made by her on 20.7.2016, was reiterated by respondent no.7 several times thereafter. Last of her such reiteration was on 21.3.2018 when she informed the Municipal Authorities that she was nominating her daughter, respondent no.6, to be considered for being appointed as Sweeper in her place, believing that, after her retirement, no one else but respondent no.6 being the daughter, who had been divorced from her husband, would be staying with her and would also be taking proper care of her. This was questioned by the petitioner contending that the first

request was made by respondent no.7 for considering the name of respondent no.6 for such appointment, respondent no.6 did not fall in the eligible categories of legal heirs as mentioned in paragraph no.6 of Circular dated 31.1.2005. The petitioner contended that, at that point of time, respondent no.6 was the married daughter and therefore, she could not have been nominated by respondent no.7. The petitioner apprehended that her such claim might be rejected by the Authorities and therefore, the petitioner has approached this Court seeking mandamus against the Authorities.

3. So far as certain facts are concerned, we would like to state them here there being no dispute about these facts. The post of Sweeper which was to be considered for appointment was the one which was occupied by respondent no.7. She filed an application for grant of permission for her voluntary retirement and it was accepted w.e.f. 20.3.2018. Respondent no.6 is the daughter of respondent no.7. Her marriage with one Vikram Samundre was solemnized in the year 2005. Some matrimonial

differences arose between the two and the marriage came to be dissolved by the decree of divorce granted by 2nd Joint Civil Judge (Sr.Dn.), Amravati in Hindu Marriage Petition No.221 of 2016 on 2.5.2017. The petitioner is also in relation with respondent no.7, she being the daughter-in-law of respondent no.7. Respondent no.7 had nominated respondent no.6 to be appointed as Sweeper in her place firstly on 20.7.2016, secondly on 23.8.2016 and lastly on 21.3.2018.

4. Now, let us consider the requirements of Circular dated 31.1.2005, which has been modified by subsequent Circular dated 11.8.2006. According to the Circular dated 31.1.2005, certain categories of legal heirs are eligible for being considered for hereditary appointments. The appointment to the post of Sweeper is considered to be hereditary as per the recommendations of 'Lad Committee', which have been largely accepted by the State Government. The categories are as under :

- a) husband/wife.
- b) son/daughter-in-law.
- c) unmarried daughter.
- d) widow/divorced sister.
- e) widow/divorced daughter.

5. There is also an annexure to the Circular aforementioned as submitted by Mr.Nemade, learned Counsel for the petitioner. In the annexure, the category of divorced daughter has been excluded and only rest of the categories find their mention in the annexure. The annexure being only in the nature of clarification of Circular dated 31.1.2005, would not change what is substantively in the Circular and therefore, any exclusion of category of divorced daughter would not mean that this category, which is mentioned in the Circular, also stands excluded from the Circular.

6. Later on, some modification was carried on in the Circular dated 31.1.2005 and this modification could be

found in the Circular dated 11.8.2006. Apart from the categories mentioned in the Circular dated 31.1.2005, one more category was added and it was category of near relative who would give written undertaking of taking care of the concerned employee. In this category, it has also been clarified that if such near relative is not available, any other person who would be nominated by the concerned employee could be considered for making such hereditary appointment.

7. In the present case, we find on facts that respondent no.6 fulfills the criteria of not only Circular dated 31.1.2005, but also subsequent Circular dated 11.8.2006. Last of the nomination of the name of respondent no.6 took place on 21.3.2018 and at that time, undisputedly, respondent no.6 fell in the category of petitioner's divorced daughter. Secondly, respondent no.6 also fell in the category of nominated legal heir in terms of Circular dated 11.8.2006. Thus, on both these counts, respondent no.6 fulfills the criteria and whereas there being no nomination in favour of the petitioner, she would not

fulfull atleast the parameter of the nominated employee. Of course, the petitioner does fulfill the requirement of being daughter-in-law and would fit in one of the categories of Circular dated 31.1.2005 as well as 11.8.2006. But, merely because the petitioner falls into one of the permitted categories, that by itself would not be sufficient for the petitioner to claim as a matter of right employment on hereditary basis by virtue of Circular dated 31.1.2005 as modified by subsequent Circular dated 11.8.2006. The reason being that it is the wish of the concerned employee which has been given importance in the subsequent circular dated 11.8.2006. It is stated in the Circular itself that since the right to hereditary appointment basically belongs to Sweeper working in the Municipal Council and concomitant with his such right, it would be only for him to consider as to who would be the fittest person in his eye who would take his proper care after his retirement. With this view in mind that the Authorities have given right of nomination to the employee of Municipal Council and expected that such right of nomination would be a dominant consideration for making hereditary appointments. As stated earlier,

respondent no.6 having been repeatedly nominated by respondent no.7, the Authorities of Municipal Council would have to go only by such nomination, if they were to comply with the directions stated in Circular dated 11.8.2006 and respect the wish of their employee. In the result, we find that there is no substance in the petition. The petitioner having no better right than respondent nos. 6, the petition stands dismissed. Rule is discharged. No costs.

JUDGE

JUDGE

[jaiswal]

