

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

**901 WRIT PETITION NO.12734 OF 2016
WITH CA/10175/2017 IN WP/12734/2016**

ANITA BALASAHEB GAIKWAD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Kamble Dinkar G.
AGP for Respondent No.1 : Mr. S.B. Pulkundwar
Advocate for Respondent No.2 : Mr. S.S. Bora
...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 17th JULY, 2021

PER COURT:-

1. By this petition, these petitioners pray for compassionate appointment. This petition was filed on 01.08.2016. These petitioners have put-forth prayer clause (B) as under:

“B. The respondent No.2 may kindly be directed to appoint the petitioners on the post of Sweeper/Peon in Class-IV cadre within two months or as directed by this Hon’ble Court.”

2. We have considered the strenuous submissions of the learned advocate for the petitioners and respondent no.2-Corporation and the learned AGP for respondent no.1, Urban Development Department, State of Maharashtra. With their assistance, we have gone through the petition paper book.

3. Considering the details tendered by the petitioners, it appears that petitioner no.1 is 40 years of age today. Petitioner no.2 is 33 years of age. Petitioner no.3 is 63 years old. Petitioner no.4 is 34 years old. Petitioner no.5 is 40 years old and Petitioner no.6 is 65 years old.

(2)

4. It is conceded that some of these petitioners are now married and well settled in life having children. The details about the deaths of the husbands/fathers of the petitioners supplied in a separate chart, which we have marked as 'X' for identification, are as under:

Sr. No.	Name of the petitioners	Date of Appointment	Date of death	Relation	Date of Application
1	Anita W/o Balasaheb Gaikwad	31/08/01	11/01/11	Husband	17/01/11
2	Rachappa S/o Ashok Birjdar	31/01/01	15/03/07	Father	30/03/07
3	Sushila W/o Ankush Kure,	31/08/01	08/04/08	Husband	12/05/08
4	Ratan S/o Ashok Tambe	31/08/01	18/02/15	Father	22/10/15
5	Ashok S/o Kondiba Kharat,	31/08/01	25/12/11	Father	11/01/12
6	Kamlabai W/o Bhimrao Ughede,	31/08/01	10/03/06	Husband	05/06/06

5. The learned advocate for the corporation has drawn our attention to it's affidavit in reply. It is informed that 252 daily wagers were regularized as a onetime measure by the corporation on 31.08.2001. The Urban Development Department had put a condition on the corporation that as this is a onetime measure, after the posts occupied by these 252 daily wagers would fall vacant, the posts shall be abolished and there shall be no further recruitment on the said posts as they are being created as super numerary posts.

6. It is further informed that considering the request made by these petitioners and similarly situated persons, the corporation had earlier sought guidance from the State. The Deputy Director Municipal Administration, by it's communication dated 17.03.2006, cautioned the authorities that compassionate appointment should not be made in a high

handed manner without obtaining the permission of the municipal administration.

7. One person namely Rahul Devidas Kamble had approached the Labour Court in complaint ULP No.22 of 2017 and by judgment dated 17.11.2018, the Labour Court partly allowed the complaint directing reinstatement of Rahul, who was earlier taken in employment and then disengaged as the State did not accord its approval for such appointment.

8. In another matter, where the Labour Court had granted reinstatement to Saheb Yadavrao Rakshe, the Municipal Corporation Parbhani had approached this Court in Writ Petition No.4907 of 2019. By order dated 25.06.2019, this Court had recorded the submissions of the litigating parties in paragraph nos.3 to 8 as under:

“3. The learned Advocate for the petitioner/Corporation points out that the proposal of the respondent was forwarded for seeking regularization as he was working on daily wages as a "safai kamgar" from 04/10/1993. The proposal forwarded by the petitioner dated 28/03/2018 also indicates that it was mentioned that the respondent/workman was relieved from employment as he had completed 55 years as a daily wager. The dispute as to whether a daily wager would work till the age of 55 as against a regular class IV employee, whose retirement age is 60 years, is a subject matter of WP No.4424/2017, which is pending before this Court.

4. Learned Advocate for the petitioner further points out the communication dated 26/09/2018, which is a reminder to the department of Urban Development, Mantralaya that those 96 workers, who had worked as daily wagers as safai kamgar in between 11/03/1993 till 27/03/2000, can be granted regularization. He further indicates from an earlier

communication dated 01/06/2016 vide which a reminder was forwarded to the Urban Development Department to regularize such daily wagers who have been working in between 11/03/1993 to 27/03/2000. In the list of safai kamgars working on daily wages, the name of the respondent is at Sr.No.15. He, therefore, submits that the Municipal Corporation has no bias or prejudice against the respondent. There can be no allegation that the petitioner is indulging in "pick and choose" policy. The petitioner cannot act on its own and is guided by the dictates of the Urban Development Department, State of Maharashtra.

5. He then points out the communication dated 15/12/2018 received from the Desk Officer, Urban Development Department, Mantralaya addressed to the Commissioner of the petitioner, that those daily wagers who are working on and after 10/03/1993 and who are still in employment, can be granted regularization. He submits that, as a consequence of the said communication, the petitioner has been restrained by the State Government from considering the case of the respondent/workman.

6. I find from the record that the Corporation has completely mis-handled the case of this respondent/workman. The Director of Municipal Administration, State of Maharashtra, issued a letter to all the Chief Officers of various Municipal Councils on 22/08/2006 directing that those daily wagers, who have completed 55 years of service, should be removed from employment. The petitioner, then a Municipal Council, got converted into a Municipal Corporation subsequently. It is in this backdrop that some of the workers were terminated and they approached the Labour Court through reference cases. Several of such daily wagers have secured protective orders from the Labour Court and some, as like the respondent herein, have succeeded before the Labour Court as a distinction cannot be made between daily wagers and permanent employees concerning the age of retirement. The petitioner/Corporation has reinstated several such workmen, who have been protected by the Labour Court/Industrial Court,

as the case may be.

7. I find from a communication addressed by the petitioner/Corporation dated 28/03/2018 to the Principal Secretary, Urban Development Department, Mantralaya that there were 355 positions of safai kamgar in the Class IV category. 239 have to be filled in by direct recruitment and there are 116 positions vacant.

8. Considering the above, it is quite clear that the respondent was working from 04/10/1993 till 30/09/2016. He, therefore, falls in the service band of 11/03/1993 to 27/03/2000, who were declared to be eligible for regularization by the Urban Development Department. A recent GR dated 05/02/2019 would also indicate that these workmen would be eligible for regularization.”

9. It is obvious from the order of this Court reproduced above, that the issue was with regard to whether the retirement age of such daily wagers could be 55 years or 58 years and as the issue was pending with the government, this Court had partly allowed the petition and had allowed Saheb Yadavrao Rakshe to continue in employment in view of the statement made by the corporation.

10. It is undisputed, in the light of the crystalised position in law that compassionate appointment is granted only to provide immediate succour to the unfortunate family which lost a sole bread earner while in employment. In catena of judgements, the Hon'ble Apex Court has concluded that with passage of time and if the candidates are settled in life, the purpose of granting compassionate appointment is lost, (***Umesh Kumar Nagpal V/s. State of Haryana, (1994) 4 SCC 138 and Local Administration Department and another V/s. M. Selvanayagam @ Kumaravelu, (2011) 13 SCC 42***). In the instant case, the husband of

petitioner no.1 has passed away more than 10 years ago. The father of petitioner no.2 has passed away more than 14 years ago. The husband of petitioner no.3 passed away more than 13 years ago. The father of petitioner no.4 passed away more than 6 years ago. The father of petitioner no.5 has passed away about 10 years ago and the husband of petitioner no.6 has passed away more than 15 years ago.

11. The learned advocate for the petitioners submits that the names of these petitioners have already been listed in the wait-list of applicants seeking compassionate appointment. We do not wish to comment on the said statement for the reason that if there is no legal impediment and the corporation is willing to grant employment to these petitioners, despite the passage of time as noted above, we have no reason to express any opinion.

12. However, considering the factual matrix before us and the crystalised position of law, we do not find that we can exercise our extraordinary jurisdiction under Article 226 of the Constitution of India to direct the corporation to grant compassionate appointment to these petitioners.

13. In view of the above, this petition is disposed off. Pending civil application would not survive and stands disposed off.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)