

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

WRIT PETITION NO. 5501 OF 2016

Shrirampur Municipal Council,
Shrirampur, Through its Chief Officer

... Petitioner
(Orig. Respondent)

Versus

Mangesh s/o Sahebrao Bagul
Age: 36 years, Occu: Labourer,
R/o. Laxminarayan Nagar, Sonawane Wasti,
Gondhavani Road, Ward No.1,
Shrirampur, Dist. Ahmednagar

... Respondent
(Orig. Complainant)

....

Shri V. S. Bedre, Advocate for the petitioner
Shri P. V. Barde, Advocate for the respondent

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 17th FEBRUARY, 2021

PRONOUNCED ON : 10th JUNE, 2021

ORDER :-

. The challenge in this writ petition is to the judgment and order dated 21.10.2015, passed by the Member, Industrial Court, Ahmednagar in Complaint (ULP) No.66 of 2012. By the impugned judgment and order, the petitioner – Shrirampur Municipal Council has been directed to appoint the respondent (complainant) as a Sweeper.

2. The facts leading to the present petition are as under:-

Smt. Hirabai, mother of the respondent (complainant) was serving as a Sweeper with the petitioner – Municipal Council. She retired on superannuation on 31.05.2012. In view of recommendations of Lad & Barve committee, one of the children of the retired Sweeper is entitle to be appointed to the post of Sweeper. The respondent belongs to the Scheduled Caste. He read upto 9th standard. He is otherwise eligible for appointment to the post of the Sweeper. The respondent, therefore, made an application to the petitioner – Municipal Council, seeking appointment as a Sweeper. His request was turned down. The respondent, therefore, preferred Complaint (ULP) No.62 of 2012. The learned Member, Industrial Court, Ahmednagar, allowed the same. Hence, the petition.

3. Heard.

Shri V. S. Bedre, learned Advocate for the petitioner – Municipal Council, would submit that there was no relationship as the employer and the employee between the petitioner and the respondent. The Complaint (ULP) was therefore not maintainable. The learned Advocate would further submit that the mother of the

respondent was working on temporary post. As per the revised staffing pattern, the post of a Sweeper held by her, has been abolished. In view of the guidelines issued in regard to the appointment as per the recommendations of Lad & Barve committee, the respondent was not entitled for appointment. Smt. Hirabai's other children may compete with the claim raised by the respondent. According to the learned Advocate, the impugned judgment and order is therefore, not sustainable. He, ultimately, urged for allowing the writ petition.

4. Shri P. V. Barde, learned Advocate for the respondent, would on the other hand, submit that Smt. Hirabai was a permanent employee. She retired on superannuation, after having put in number of years of service. In view of the recommendations of Lad & Barve committee, the respondent is entitled for appointment to the post of Sweeper. According to the learned Advocate, no interference with the impugned order is therefore called for.

5. Admittedly, Smt. Hirabai – mother of the respondent, had been serving as a Sweeper with the petitioner – Municipal Council. She retired on superannuation in May – 2012. Lad & Barve committee had recommended for giving an appointment to one, who

would be the Class-I heirs of a retired Class-IV employee, particularly, a Sweeper. The recommendations have been accepted by the State of Maharashtra. Those recommendations have also been applicable to the Municipal Administrations in the State. So far as regards question of maintainability of the complaint is concerned, this Court, vide judgment and order dated 06.01.2016, in Writ Petition No.4360 of 2013 (***Shaikh Anwar Shaikh Lala vs Mahatma Phule Krishi Vidyapeeth and others***), has observed thus:

“8. He relies upon the observations of this Court in the matter of Ahmednagar Municipal Corporation Vs. Madhukar Chandrabhan Galphade and others – Writ Petition No.938 of 2008, decided on 18.3.2009, in support of his case. Paragraph No.4 of the said judgment reads as under:-

“4. Petitioner has also raised objection to the entertainability of the complaint on the ground that there is no relationship of employer and employee between the parties and as such the industrial court has no jurisdiction to entertain the complaint. It is to be noted that the complainant is seeking relief in respect of employment under the award reached between the employer and the union of the employees. The benefits are conferred on the employee in respect of securing employment for the heirs of such retiring employees. The complainant as such can ask for the benefits accruable to his father on the strength of an award reached between the employer and the employee who was admittedly an employee of the petitioner – Municipal Council. Objection raised in respect of entertainability of the complaint therefore does not call for any

consideration. There is no merit in the petition. Petition therefore stands rejected summarily.”

9. *He then places reliance upon the conclusions of this Court, dated 3.3.2015 in the matter of Udgir Municipal Council Vs. The State of Maharashtra and others – Writ Petition No.5507 of 2014, wherein this Court, while considering a similar situation has concluded in paragraph No.9 as follows:-*

“9. So far as appointment claimed by respondent No.3 as per recommendations of Lad committee is concerned, in its stricter sense, it cannot be construed as compassionate appointment. As per the Government Resolution dated 19.10.2004, Exh.C, legal heirs of an employee, who was working as Safai Kamgar or Scavengers, are entitled for appointment as per recommendations of Lad Committee. It is also clear from the contents of said Resolution that such appointment can be made after retirement of such employee who was working as Safai Kamgar or Scavenger. Respondent No.3, certainly is an affected person, approached the Industrial Court with a grievance that because of unfair labour practice adopted by the employer, he was deprived of getting appointment on compassionate ground, though is entitled under the above stated Government Resolution based upon recommendations of Lad Committee. In view of the Government Resolution, as referred in the judgment, the legal heirs of employee is entitled for compassionate appointment. Thus, respondent No.3 steps in the shoes of his father and there is notional extension of relationship between the petitioner and respondent No.3 in this backdrop. Learned counsel for the petitioner has placed his reliance on the above mentioned cases which are altogether on different point and thus cannot be made applicable to the facts and circumstances of the present case. Those cases are on the point of denial of employee employer relationship on usual ground. However,

the facts of the present case are peculiar and moreover the Division bench of this Court had also granted liberty to respondent No.3 to approach the Industrial Court for redressal of his grievances. In my considered opinion, the complaint is therefore, maintainable before the Industrial Court and the learned Member, Industrial Court has rightly entertained the same.”

The complaint has been held to be maintainable.

6. The facts of the present case would indicate that the son of a retired Class-IV employee of the petitioner – Municipal Council, is seeking enforcement of right to seek employment in view of the recommendations of Lad & Barve committee, which have been accepted by the State and made applicable to the Municipal Administrations in the State of Maharashtra, as well. On the question of merit of the matter, it is to be stated that the mother of the respondent was a Class-IV employee. True, she was made permanent on the post of Sweeper pursuant to the order passed by the Labour/Industrial Court. Once she came to be appointment as a Sweeper, there could remain no distinction inter-se, the Sweepers, particularly, one appointed by virtue of the Court order and the other on following due procedure of recruitment. It is true that by virtue of order dated 24.05.2005 issued by the Director of Municipal Administration, on retirement of an employee holding a temporary

post, such post is to be abolished. It may also be true that the petitioner – Municipal Council may not have Sweeper's post in its Water Supply Department, with which the respondent's mother was serving as a Sweeper. Once the recommendations of Lad & Barve committee have been accepted by the State and made applicable to all the Municipal Councils in the State, the petitioner – Municipal Council is bound by the same and is therefore under obligation to provide the respondent, if he is otherwise eligible, an employment on the post of a Sweeper on account of retirement of his mother on Class-IV post (Sweeper). It is reiterated that no distinction can be made so far as regards grant of appointment by virtue of succession to Class-IV employee appointed pursuant to the order of the Court, and who has been duly appointed. Admittedly, the mother of the respondent was made permanent by virtue of the order passed by the Labour/Industrial Court. The said order attained finality. She retired on superannuation after having put in not less than 20 years of service. The respondent being her son, became eligible for appointment on Class-IV post by virtue of recommendations of Lad & Barve committee. The Industrial Court has therefore rightly allowed the complaint.

7. In the facts and circumstances of the case, no interference is called for with the impugned order. The petition fails and is therefore, dismissed.

[R. G. AVACHAT, J.]

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