

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1610 OF 2021

Smt. Varsha wd/o Dilip Akhare,
aged about 45 years, occupation :
household work, r/o Lane No.4,
Gajanan Nagar, Dabki Road,
Akola, Taluq and District Akola.

... Petitioner

- Versus -

1) State of Maharashtra, through
the Secretary, Urban Development,
Mantralaya, Mumbai – 32.

2) Commissioner, Akola City
Municipal Corporation, M.G. Road,
Akola, Taluq and District Akola.

... Respondents

Shri C.A. Joshi, Advocate for petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for respondent
no.1.

Shri Anjan De, Advocate for respondent no.2.

CORAM : SUNIL B. SHUKRE AND
S.M. MODAK, JJ.

DATED : APRIL 22, 2021

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Hearing was conducted through Video Conferencing and the learned Counsel for the parties agreed that the audio and visual quality was proper.

2) Rule, returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3) Shri Anjan De, learned Counsel for the respondent no.2, has made a statement on instructions that the appointment granted to Sushma Rajesh Gade, which was an out-of-turn appointment, by the predecessor of the present Commissioner, was illegal and in no circumstances, could have been granted to her by giving her precedence over and above the other candidates, who stood much above Sushma Rajesh Gade in the waiting list of candidates to be appointed on compassionate basis. He submits that such statement has been made by the respondent no.2 on oath in the affidavit-in-reply filed by him. However, the affidavit-in-reply at present is not forming part of the record. We have no reason to discard the statement so made across the Bar by Shri Anjan De upon seeking instructions from the respondent no.2. In fact, genuineness of the

event disclosed by the statement is also not disputed by Shri Joshi, learned Counsel for the petitioner, as he submits that now the petitioner is not seeking cancellation of the appointment granted to Sushma Rajesh Gade and he is only seeking direction to the respondent no.2 to grant employment to the petitioner on compassionate ground prior to 25/4/2021 by treating her as a separate class and, therefore, giving her precedence over all the candidates standing above her in the waiting list for compassionate appointments.

4) Once it is seen that illegal appointment of Sushma Rajesh Gade is now being cancelled, the ground of unequal and discriminatory treatment to the petitioner would not be available. This is also admitted by Shri Joshi, learned Counsel for the petitioner. Now the only question that remains is as to whether or not candidate like the petitioner, who stands at serial no.47, could be treated separately and could be appointed on compassionate basis by ignoring the claims of all other 46 candidates, who are listed above her in the waiting list.

5) Shri Joshi, learned Counsel for the petitioner, submits that the

question is required to be examined from different perspective and if it is done, answer that would spring forth therefrom would be in the affirmative. He further submits that not because the petitioner is crossing the age of 45 years on 24/4/2021 that she should be appointed on compassionate basis, but because there are 801 posts of Class “C” and “D” employees, which are lying vacant on the establishments of different Municipal Corporations and Municipal Councils in the State of Maharashtra.

6) The aforesaid submission indicates that now the petitioner is also giving up her ground of appointing her on compassionate basis by ignoring the claims of other candidates, who stand above her in the waiting list. Even otherwise, this ground holds no water as admittedly there is no policy framed by the respondent no.2 to consider making of appointments of such candidates, who are completing age of 45 years on a certain date. Unless and until there is a policy prescribed in this regard, no candidate can raise such a ground and seek a direction to an employer for giving him or her such appointment. Therefore, on this ground, this petition cannot be allowed.

7) As regards the claim of the petitioner that because there are 801 vacancies existing, she must be accommodated on any of those vacancies before she completes 45 years of age, we must say that even this ground is not tenable in law for the reason that ultimately it is for the employer to decide in his discretion and wisdom as to when and in what number the vacant posts should be filled up by him. If the employer has not taken any decision in this regard, there is no law existing, which would compel an employer to hastily decide the issue. The employer is required to take into account several factors, which are relevant for making administration of the Office effective. We are thus of the view that even for the reason of existence of certain number of vacancies, direction cannot be issued to the respondent no.2 for absorbing the petitioner on compassionate basis.

8) In the circumstances, this petition is devoid of any merit and it deserves to be dismissed. The petition stands dismissed. Rule is discharged. No costs.

JUDGE

JUDGE

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