

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9382 OF 2015

Smt. Kantabai w/o Datta Chavan	..Petitioner
V/s.	
Municipal Council, Sonpeth and Ors.	..Respondents

Mr. Pradeep Shahane and Parag Shahane for the Petitioner.
Mr. A.S. Shinde, AGP for the Respondent/State.
Mr. Amit Mukhedkar for Respondent No.1.

CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, J.J.

RESERVED ON : 30 JULY 2022
PRONOUNCED ON : 22 AUGUST 2022

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA NITIN
CHAVAN
Date: 2022.08.22
15:26:43 +0530

(Signed judgment is pronounced by Sandipkumar C. More, J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules, 1960 as C.V. Bhadang, J. is sitting at Mumbai)

JUDGMENT (PER : C.V.BHADANG, J.)

. Rule made returnable forthwith. The learned counsel for Respondent waives service. By consent of parties, matter heard finally at the stage of admission.

2. By this petition under Article 226 of the Constitution of India, the Petitioner is seeking employment as *safai kamgar* on the principal of “legal heirship” as per the recommendations of *Lad* Committee. The Petitioner is also seeking a declaration that her

husband late Datta Chavan had acquired a status of regular permanent *safai kamgar* w.e.f. 01.11.1996. in view of *Lad* committee recommendations, upon completion of 3 years service. Lastly, the Petitioner is seeking all retiral benefits of her husband late Datta Chavan such as family pension, gratuity and other monetary benefits.

3. Late Datta Chavan, the husband of the Petitioner, had joined service of the first Respondent-Municipal Council, Sonpeth District Parbhani, as a daily wage worker on 01.11.1993. Datta Chavan expired on 04.05.2010 after completing near about 18 years of service.

4. The Petitioner filed various representations herself and through *Maharashtra Rajya Bahujan Kamgar Sangh* ('Union' for short) seeking employment for the Petitioner by 'legal heirship' in view of the recommendations of *Lad* Committee on account of death of her husband. The representations did not evoke any favourable response. On 21.03.2012, the issue was discussed in a meeting before Government Labour Officer, Parbhani, however, to no avail. It is in these circumstances, the Petitioner has filed this petition seeking the aforesaid reliefs.

5. Respondent No.1 has filed an affidavit-in-reply of Chief Officer Smt. Sonam Deshmukh dated 10.02.2020. It is contended that the petition suffers from delay and laches, inasmuch as Datta Chavan expired on 04.05.2010 and the present

petition is filed in June 2015. It is submitted that there is inordinate and unexplained delay in approaching this Court. It is contended that as of now the age of the Petitioner ought to be 45 years or above and therefore, issuance of an appointment to the Petitioner as a Sweeper would not be feasible. The Petitioner has become age barred. It is contended that Datta Chavan was working as a sweeper on daily wage basis and not against any vacant/sanctioned post. It is therefore, contended that Petitioner is not entitled for appointment on compassionate basis. It is contended that there are total 11 approved class-IV posts of sweeper on the establishment of Respondent-Municipal Council and all the posts are filled up by regular employees and there is no post available to accommodate the Petitioner. It is therefore, contended that the claim for compassionate employment is not justified or acceptable.

6. It is contended that the minutes of meeting held before the Government Labour Officer on 21.03.2012 would show that already it was informed that the claim of the Petitioner cannot be considered as her husband was not a permanent employee.

7. It is pointed out that the State Government has formulated a scheme as per circular dated 30.06.1994 for appointment of legal heirs of the employees working under the Municipal Council on "heirship basis". However, such employment can be provided against vacant post. It is submitted that the said scheme was formulated on the recommendations made by Lad committee and

various standing orders/circulars were issued in that regard on 31.01.2005, 23.03.2006 and 29.09.2005 which contemplated that such appointment cannot be made in the absence of the vacant post.

8. We have heard the learned counsel for the parties. Perused record.

9. The learned counsel for the Petitioner has submitted that late Datta Chavan had served for more than 18 years before his death and as per the applicable provisions, the Respondent No.1 Municipal Council was required to take steps for granting permanent/semi-permanent status to Datta Chavan. It is submitted that inaction of the Respondent No.1 in this behalf has resulted into serious prejudice to the Petitioner. He, therefore, submitted that the Petitioner is entitled to a declaration granting deemed date of permanency to late Datta Chavan and all the retiral benefits including gratuity. Secondly, it is submitted that the Petitioner is entitled to be appointed on the basis of heirship according to the recommendations of Lad committee and various government resolutions issued from time-to-time. It is submitted that Respondent No.1 has failed to take steps on the basis of the various representations made. On behalf of the Petitioner, reliance is placed on the decision of this Court in Writ Petition No. 5611 of 2014 dated 06.04.2015 (Karbhari Narayan Harbade v/s. State of Maharashtra and others) and the order passed in Writ

Petition No. 9390 of 2015 on 11.03.2020. Gawalanbai Vishwanath Upade v/s. Municipal Council Sonpeth, Parbhani. Reliance is also placed on the decision of this Court in Writ Petition No. 12405 of 2019 in Maharashtra Gramin Bank and ors. v/s. Bharatibai Ramesh Kambale and the decision of the Supreme court in State of Jharkhand & Ors. v/s Jitendra Kumar Srivastava and Anr.¹. Lastly reliance is placed on the Government Resolution dated 21.10.2011 pertaining to the implementation of Lad/Page Committee recommendations relating to the appointment on 'heirship basis'.

10. The learned counsel for the Respondent No.1 has submitted that late Datta Chavan was appointed on daily wage basis and the appointment was neither a permanent appointment nor against a vacant post. It is, therefore, submitted that the Petitioner is not entitled to appointment on heirship basis according to Lad/Page committee recommendations. It is submitted that the petition also suffers from delay and laches and is liable to be rejected.

11. We have considered the submissions made. The Government vide Resolution dated 05.11.1992 had notified the parameters for appointment of the legal representatives of the eligible employees working with Municipal Councils/Municipal Corporations on a 'heirship basis'. By a subsequent Government Resolution dated 30.06.1994, certain clarifications were issued. It

¹ (2013) 12 SCC 210

appears that the Government thereafter has issued Government Resolutions from time-to-time governing the conditions and the parameters for appointment on the basis of the recommendations of Lad committee. The Petitioner has referred to the Government Resolution dated 21.10.2011 in which the Government has taken note of the delay in processing of such claims and has issued appropriate directions for expeditious disposal of such applications/claims.

12. In the present petition, the Petitioner is coming with the grievance that late Datta Chavan was not conferred with permanent status and therefore, sought deemed date of permanency along with retirement benefits and gratuity after his death. Secondly, the Petitioner is seeking appointment on the basis of the recommendations of Lad committee. The record discloses that the issue was discussed in the meeting dated 21.03.2012 before the Government Labour Officer at Parbhani. A perusal of minutes at agenda Item no. 3 show that on behalf of the Respondent-Municipal Council, it was claimed that late Datta Chavan was working on a daily wage basis and therefore, his legal representatives are not entitled for appointment on the heirship basis. A perusal of the minutes further show that insofar as the gratuity is concerned, it was agreed that the Respondent-Municipal Council shall take a decision in accordance with law. Insofar as the grant of permanent status is concerned, it was claimed that it was the responsibility of the State Government.

13. It is necessary to note that no decision of the Respondent-Municipal Council on the basis of the claim and the representations made by and on behalf of the Petitioner has been brought to our notice. The inaction in this regard is for the first time sought to be supported on the ground that the Petitioner is not entitled to any of the reliefs. However, we find that it is for the Respondent-Municipal Council in the first instance to take a decision in the matter at appropriate level which can be communicated to the Petitioner. A perusal of the Government Resolution dated 21.10.2011 would make it clear that such claims/ applications are required to be dealt with expeditiously. Insofar as the claim of gratuity is concerned, the minutes of meeting dated 21.03.2012 would show that on behalf of the Respondent-Municipal Council, it was agreed that a decision would be taken in accordance with law. There is nothing on record to show whether a decision was taken in this regard.

14. Considering the over all circumstances, we find that it would be appropriate if the Respondent-Municipal Council reconsiders the claim on its own merits and in accordance with law.

15. In such circumstances, the following order is passed:

ORDER

(i) The writ petition is partly allowed.

(ii) The Respondent-Municipal Council shall

decide the claim/representations made by and on behalf of the Petitioner on their own merits and in accordance with law within a period six months from the receipt hereof.

(iii) It would be open to Respondent No.1 to call for any further information/documents from the Petitioner, if find necessary.

(iv) Rival contentions of the parties on merits of the claim are left open.

Rule is partly made absolute in the aforesaid terms, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.