

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3160 OF 2015

SUMAN SHARAD RASKAR AND ANOTHER
VERSUS
AHMEDNAGAR MUNICIPAL CORPORATION, AHMEDNAGAR

Mr.P.V.Barde, Advocate for the petitioners.

Mr.K.N.Lokhande, Advocate for the sole respondent.

(CORAM : RAVINDRA V. GHUGE , J.)

DATE : MARCH 23, 2022

PER COURT :

1. By this petition, the petitioners seek to challenge the judgment and order dated 18.11.2014 delivered by the Industrial Court, Ahmednagar, vide which Complaint (ULP) No.56/2012, seeking compassionate appointment in favour of the son of the deceased (petitioner No.2 herein) has been dismissed.

2. On 21/10/2015, this Court had passed the following order :-

"1. The petitioners are aggrieved by the impugned judgment and order dated 18.11.2014, by which, Complaint (ULP) No.56/2012, filed by the petitioners has been dismissed.

2. Claim for compassionate appointment was made before the

Industrial Court in the light of an award dated 21.5.2005 delivered in Reference (IT) Nos. 2, 3 and 4 of 1993.

3. I find that the Industrial Court has dismissed the complaint on the ground that the Government Resolution dated 27.04.2002 does not permit compassionate appointment in favour of the petitioners.

4. Since the above said Government Resolution and the award are not placed on record, Shri Barde prays for time.

5. S.O. to 20.11.2015.

6. Leave to place on record the Government Resolution and relevant portion of the award is granted, to be complied with on/or before 17.11.2015."

3. On 07/03/2022, I had passed the following order :-

"1. I have heard the learned Advocates for the respective sides for some time.

2. Petitioner No.1 widow is now 60 years of age and petitioner No.2, son of the deceased employee is around 36 years of age. The learned Advocate for the petitioners would collect instructions as to the social status of petitioner No.2 i.e. whether he is married and how many children does he have and what is his present source of income.

3. It appears from the notification published in February, 1970 in the Maharashtra State Gazette under the signature of Industrial Tribunal that there is an award of the Tribunal in Reference (IT) No.439/1969 in between Ahmednagar Municipal Council and its workmen. According to Shri Barde, this award takes care of the compassionate appointment of the eligible legal heir of the deceased permanent employee working

in Class III or class IV category in the Ahmednagar Municipal Corporation.

4. The learned Advocate for the respondent Corporation seeks time to research as to whether a right to compassionate appointment still exists in the face of the post occupied by the deceased being a supernumerary post which was created in view of the order of the Industrial Court granting permanency to the deceased.

5. Stand over to 15.03.2022 as part heard."

4. Petitioner No.2 has accordingly filed an additional affidavit in which no statement is made as to whether he is married, whether he has children and what is his present source of income. It is undisputed that his father passed away on 15/09/2011, 10 years ago.

5. I have considered the extensive submissions of the learned Advocates for the petitioner and the respondent / Municipal Corporation. It is undisputed that the deceased father of petitioner No.2 was granted regularization vide GR dated 05/03/2001 in view of the directions of the Industrial Court in its judgment dated 31/03/1995 delivered in Complaint (ULP) No.25/1988 filed by the Shahar Palika Kamgar Union. The Government issued a corrigendum within one month on 09/04/2001 declaring that all the beneficiaries of the

judgment of the Industrial Court dated 31.03.1995, are being regularized in employment in the absence of permanent posts, by creating supernumerary posts. It is specifically stated that, with the retirement or demise of any such employee, the posts created as a one time arrangement to accommodate these employees in the backdrop of the judgment of the Industrial Court, would stand abolished the moment the post is vacated on account of demise in service or retirement. There is a further clause set out in the corrigendum that the Municipal Council (presently Municipal Corporation) may consider as to whether these posts can be filled in and this enquiry can be conducted by the Auditors while conducting an annual inspection.

6. The learned Advocate for the Corporation submits that this would mean that the Corporation can request the Government for filling in such posts. He relies upon two orders delivered by this Court on 14.03.2013 in WP No.4643/2012 filed by Sharad Ashok Angare Vs. the State of Maharashtra and others and dated 30/04/2013 delivered in WP No.2341/2012 filed by Ahmednagar Mahanagar Palika Kamgar Vs. The Ahmednagar Municipal Corporation. In these two orders, this Court has referred the case of the applicant seeking compassionate

appointment, to the Government for a decision as to whether such a candidate can be appointed on compassionate basis.

7. It requires no debate that a supernumerary post is a solitary instance of creation of a post and the moment such post is vacated, it would lapse and would not be available for being filled in. A creation of a supernumerary post is within the jurisdiction of and is the prerogative of the State Government. This Court cannot compel the State Government to convert a supernumerary post into a permanent post. Such decision is to be left to the wisdom of the State and its policies.

8. By Government Resolution dated 10.07.2009, the General Administration Department of the State of Maharashtra specifically provided that the legal heirs of those employees who have been confirmed in service on supernumerary post, would be entitled for compassionate appointment. The resolution in Marathi reads thus :-

“या संदर्भात सर्वकष विचार करून आता सेवानियमित केलेल्या परंतु अधिसंख्य पदावर कार्यरत असलेल्या कर्मचा—यांच्या पात्र नातेवाईकांनाही अनुकंपा नियुक्तीसाठी पात्र ठरविण्याचा शासनाने निर्णय घेतला आहे.

वरील सुधारणेव्यतिरिक्त अनुकंपा नियुक्तीच्या प्रचलित योजनेतील इतर तरतुदी यापुढेही कायम राहतील. सदर शासन निर्णय महाराष्ट्र शासनाच्या वेबसाईटवर उपलब्ध करून देण्यात

आला असून त्याचा संगणक संकेतांक २००९०७०६१२१९२५००१ असा आहे.”

The above Government Resolution has been referred to in the Government Resolution dated 21.09.2017 and in Annexure A thereto, in clause 3(1)(aa), the said Government Resolution has been reiterated.

9. In the above backdrop, the learned Advocate for the petitioner, in the alternative, makes a prayer that the case of the petitioner may be referred to the State Government for considering his request on compassionate appointment.

10. In view of the above, this petition is disposed off.

11. The application dated 03.12.2011 filed by petitioner No.2 Pradip Sharad Raskar shall be forwarded by the Corporation to the Secretary, Urban Development Department, State of Maharashtra for considering the same in the light of the Government Resolution dated 10/07/2009 and 21/07/2017. The Corporation shall also forward similar proposals of candidates, since it is stated that there are about 470 eligible legal heirs whose parents were regularized on supernumerary posts, on or before 31.05.2022 and the competent authority would take a decision,

on or before 31.08.2022.

12. Needless to state that the concerned Department will consider the claims of the petitioners as well as similarly situated candidates on the basis of the seniority of their applications and would take a policy decision in the light of the above stated two Government Resolutions.

13. Such proposals shall be forwarded by the Corporation before 31.05.2022 and the competent authority would take a decision before 31.08.2022.

(RAVINDRA V. GHUGE, J.)