

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

WRIT PETITION NO.6806 OF 2017
WITH
WRIT PETITION NO.3465 OF 2017

AHMEDNAGAR MAHANAGAR PALIKA AHMEDNAGAR THROUGH ITS
COMMISSIONER
VERSUS
AHMEDNAGAR MAHANAGAR PALIKA KAMGAR UNION AHMEDNAGAR

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Advocate for the Petitioner : Shri Bedre Vinayak Sudhakar
Advocate for the Respondent 1/ Union : Shri A.S. Shelke
Advocate for Respondents 2, 4 to 18, 20 to 25 in WP/3465/2017 : Shri
M.M. Patil Beedkar

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2022

Per Court:

1. These two Writ Petitions have been filed by the Ahmednagar Municipal Corporation challenging the judgments dated 16.09.2016 delivered in Complaint (ULP) No.55/2005 and dated 21.09.2016 delivered in Complaint (ULP) No.83/2005.
2. The respondent is the Ahmednagar Palika Kamgar Union. They are espousing the cause on behalf of the workers mentioned in Annexures A and B. These annexures were part of the ULP Complaints

that were filed before the Industrial Court.

3. I have considered the strenuous submissions of the learned advocates for the respective sides. This is the second round of litigation between the parties upto this Court in relation to the two ULP complaints.

4. Before the Industrial Court at Ahmednagar, both the parties had led evidence and it has been concluded by the Industrial Court that the award in Reference (IT) No.51/1979 dated 30.03.1981 is applicable to these employees and especially demand No.3 (clause 6) which was with reference to the compassionate appointments of the heirs of the employees working in Class-3 and Class-4 categories.

5. By the impugned judgments, the Industrial Court has directed the petitioner Corporation to provide compassionate appointment to the eligible heirs in accordance with the conclusions drawn by the Tribunal in the award dated 30.03.1981 in Reference (IT) No.51/1979 as they are eligible after the Class-4 employee retires or dies or becomes disabled. In case of death or disablement of the employee belonging to the class other than class-4, his heir would also be covered by the scheme.

6. There is no dispute that the candidates mentioned in Annexures A and B to both the complaints are eligible for compassionate appointment and have been enlisted in the list of eligible candidates to be appointed depending upon the availability of the vacant posts. In the light of the above, there is hardly any controversy between the litigating parties

as regards the eligibility of these candidates set out in Annexures A and B and the fact that they have been enlisted as eligible candidates.

7. The Municipal Corporation, under the specific order of this Court dated 08.03.2022, has filed an affidavit dated 21.03.2022 through the Head of the Establishment Department of the Municipal Corporation and provided the list of vacant posts and the pay scales. It is, therefore, apparent that there are several vacancies available in Class-3 and Class-4 categories as on 01.01.2022. The directions of the Industrial Court to grant compassionate appointment to the persons falling in the two schedules/ annexures, can now be considered as there are 570 vacant posts available in class-3 category and 611 vacant posts in the class-4 category.

8. In the light of the above, I could have proceeded to pass an order of granting compassionate appointment to these candidates mentioned in Annexures A and B. However, considering the passage of time and the litigation between the parties since 2005 till today, most of the candidates have crossed the age of 40 years. Several of them are beyond 50 years. About four are of the age of 55 to 57 years. Granting compassionate appointment to such candidates would result in a mockery of the compassionate appointment scheme, which was aimed to extend succour to the bereaved family, which has suddenly lost a sole bread earner.

9. Compassionate appointment, in the light of the award dated 30.03.1981, is available to the legal heirs of those persons, who have even retired while in service. Clause 6 of the award permits an heir of the person, who is incapacitated or has died or is held to be medically unfit to continue in employment or has retired, to seek compassionate appointment. There is no dispute that the litigation between the parties from 2005, last 17 years, is the root cause for delay in considering compassionate appointment to the candidates mentioned in Annexures A and B in the two ULP complaints.

10. The question before this Court is as to whether, the purpose of compassionate appointment would be achieved by granting such appointment to the candidates who are between 45 years to 56 years of age with few years of service remaining for retirement at the age of 58 years (class-3) and at the age of 60 years (class-4).

11. The learned advocate representing the Union and the members whose names are in the two annexures, strenuously submits that they are not at fault and it is only because of the prolonged litigation that they have been dragged upto this Court and in the course of such litigation, their age has advanced.

12. When I find that almost all of these candidates have got married, have children and some of them being even of the age of grandparents, how far would it be appropriate to grant compassionate

appointment to such candidates. It is obvious from the record that these enlisted candidates are eligible for compassionate appointment and as the Municipal Corporation did not grant them such appointments, they approached the Industrial Court and have been litigating with the Municipal Corporation ever since. They had staked their claims strictly in accordance with the award dated 30.03.1981. The Municipal Corporation cited its problems in the light of the Municipal Council getting converted into a Municipal Corporation. Nevertheless, I do not find a single ineligible candidate in these two annexures who can be said to be ineligible for compassionate appointment.

13. There are certain candidates, who are around 37 or 38 years. Some are 40 years of age. Almost half of the number of eligible candidates are less than 45 and rest are above 45 till 56 years of age. The settled position of law by the Honourable Supreme Court would permit the appointment on compassionate basis if the candidates are within the age limit by taking into account the peculiar facts and circumstances of these two cases. However, I do not find that any purpose would be served in appointing such candidates, who have about two years to 10 years for retirement. The qualifying service for being eligible for pensionary and retiral benefits is 10 years as per the learned counsel for the Municipal Corporation.

14. The lengthy litigation journey between the parties as the

Municipal Corporation resisted the appointment on compassionate basis for all these 17 years, is the cause for prolonging the adjudication of the claims of the heirs, who have been listed for grant of compassionate appointment. In these peculiar facts of the case, I am of the view that those who have not completed 45 years of age, which is the cut-off age for appointment on compassionate basis as per clause 11 of the Government Resolution dated 21.09.2017 issued by the General Administration Department, Maharashtra State, can be appointed. Rest of the candidates would be entitled for quantified compensation of Rs.5 lacs per person.

15. In view of the above, both these Writ Petitions are disposed off by modifying the direction of the Industrial Court to grant compassionate appointment to all eligible heirs, as under:-

- (a) The candidates in Annexures 'A' and 'B', who have not completed 45 years of age as on date i.e. 01.03.2022 shall be granted compassionate appointment on or before 30.04.2022 in the light of the vacancies available in view of the affidavit in reply dated 21.03.2022.
- (b) Those candidates who have completed 45 years of age as on 01.03.2022, would be entitled for a lump sum compensation of Rs.5 lacs in lieu of compassionate appointment. Such compensation amount shall be paid, on or before 31.05.2022.
- (c) The Municipal Corporation shall issue the orders of

appointments to eligible candidates in view of the above directions, on or before 30.04.2022.

kps

(RAVINDRA V. GHUGE, J.)