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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 665 OF 2021

Durga Ramesh Berdia .. Petitioner
Vs.
State of Maharashtra and ors. .. Respondents

Mr. Satishkumar R. Soni, for Petitioner.
Mrs. R.A. Salunkhe, AGP for Respondent No.1.
Mr. S.N. Pillai a/w Mr. Santosh Parad for Respondents No. 2
to 5 – MCGM.

**CORAM : DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

**HEARD ON : AUGUST 30, 2022
JUDGMENT ON : SEPTEMBER 23, 2022**

JUDGMENT (PER M.S.KARNIK, J.) :

1. The petitioner, Durga Ramesh Berdia (hereafter “Durga”, for short) has prayed for an appropriate writ or order or direction against the respondent no. 2, Municipal Corporation of Greater Bombay, Mumbai (hereafter “MCGM”, for short) to confirm Durga’s appointment on compassionate ground at the earliest and for grant of backwages.

The facts in brief are stated thus:

2. Durga is the daughter of late Ramesh Berdia (hereafter “Ramesh”, for short). Ramesh during his lifetime was working as a Motor Loader in Solid Waste Management

Department of MCGM. On December 29, 2001, Ramesh expired on duty leaving behind him his ex-wife Smt. Champa Ramesh Berdia and daughters namely Durga and Ramila. Durga's parents sought divorce by mutual consent on December 20, 1991. Durga along with her sister were to stay with her mother as per the terms of divorce. Durga avers that though the arrangement was that she and her sister were to reside with their mother, however, Durga was attached to her father and she was staying with him too. Durga applied for job on compassionate ground on or about March 15, 2002 and submitted the requisite documents for scrutiny. Durga was appointed vide appointment order dated April 21, 2015. Durga was allotted to the E-Central Department, which locality, according to Durga, was not good as far as girls are concerned and therefore, on or about April 30, 2015, she requested for transfer at East Byculla and therefore her appointment was kept on hold since then. Durga then visited the concerned department on various occasions when she was informed that some enquiry is going on and therefore her case was kept on hold. Durga further avers that in the month of December 2015, one article was published in the local newspaper that some persons are obtaining job in Solid Waste Management Department by submitting false and forged documents. Durga's appointment was kept on hold and her file was forwarded to the concerned clerk, Mr. Nirvane for further processing. Durga then made a representation to the

Hon'ble Chief Minister's office by her letter dated October 30, 2018. Durga avers that nothing further was done in her case. On or about March 1, 2019, the Enquiry Officer namely, Shri Mahendra Haate issued a letter in the name of Durga's mother calling for her explanation. Durga received a letter on November 22, 2019 from respondent no.3 informing her that her appointment application is again sent to the Enquiry Officer i.e. respondent no. 5 for enquiry. In the said letter, the respondent no.3 has also mentioned that the mother of the petitioner has objected to her appointment. Durga's younger sister, who was previously unemployed, had raised objection to Durga's appointment, which she later withdrew as by then she was appointed on compassionate ground in place of her mother - Champa. According to Durga, the objection of the Enquiry Officer was that pursuant to the divorce, the custody of Durga and her sister was given to the mother and therefore it cannot be said that Durga was residing with her father. It is asserted by Durga that as she had a strong bonding with her father, that she was attached to him. Her father did not perform a second marriage.

3. During the pendency of the petition, there have been subsequent developments which are brought on record. By a communication dated June 9, 2020 (Exhibit 'M'), the Administrative Officer informed Durga that as per order of the Chief Engineer, Solid & Waste Management Department dated February 5, 2020, Durga is not entitled for

compassionate appointment in place of her father. The enquiry report dated December 31, 2019, pursuant to an enquiry conducted, which resulted in Durga's appointment being put on hold, was obtained by making an application under the Right to Information Act, 2005. The gist of the enquiry report is that Durga did not disclose true and correct facts while applying for appointment on compassionate basis. The report indicates that Durga was not residing with her father, but only with a view to get the benefit of compassionate appointment, Durga added her name in the relevant records. Durga tried to project that she was close to her father and years later got her name entered in some documents to show that she was in fact residing with her father. The enquiry report further reveals that Durga's mother Champa was working in Estate Department, E-Ward as a Safai Karmachari in the name Champa Rajaram Dange and was also receiving and collecting pension of her divorced husband from the department and this information, which Durga was aware of, was never informed to the department.

4. An affidavit-in-reply has been filed by respondent no. 2 to 5 contending that almost 12 years after the death of Ramesh, Durga applied for appointment on compassionate ground on attaining majority. In the interest of justice, the said application was considered and the appointment letter was issued to Durga on April 21, 2015. Durga was allotted a job at E-Central department. As Durga requested for

transfer to some other department, her appointment was kept on hold. Later, in view of a press report, Durga's case was kept on hold and the entire file was sent to the concerned establishment for verification and scrutiny. Durga's mother, though not entitled to claim pensionary benefits, had in fact availed of the pensionary benefits. Durga's mother got a job in the year 1992 in place of her father (Champa's father) in MCGM. Durga's mother took voluntary retirement on November 13, 2017. Durga's sister was appointed in her mother's place. According to the respondents, Durga has not approached the Court with clean hands and has suppressed a vital fact that her mother was also in service of the respondents-MCGM in Estate Department and she was also receiving pension of her deceased husband. Durga's mother and sister initially objected to Durga being appointed on compassionate basis. Durga applied for appointment on compassionate basis after lapse/delay of almost 12 years. As per the preferential treatment, P.T. Rules, only those names of the family members which are recorded in "Family Register Book" at the time of the fag end of service of the concerned employee, are required to be considered. Durga's name was not there in the Family Register Book of her deceased father. It was subsequently added in the Family Register Book almost 13 years after the death of the father. This fact was noticed by the concerned department. Durga's case was sent for scrutiny and enquiry. Durga's mother was

already employed in the employment of MCGM when Durga filed the application for appointment on compassionate ground which fact was suppressed by Durga.

5. An additional affidavit dated August 30, 2022 was filed on behalf of the MCGM wherein the following stand is taken in paragraphs 1 to 4 which read thus:

"1. I am fully conversant with the facts of the above matter and on the basis of the record maintained by the department, I am able to depose as under. I say that affidavit of Mr. Dinkar Santu Bharmal, Admn. Officer (I/c) dt. 27.01.2021 and Additional Affidavit filed by me dt. 05.07.2021 are filed in the above matter. The present affidavit is filed to clarify the position of the petitioner pursuant to the instructions received by these respondent on 29.08.2022. I, therefore, I seek leave of this Hon'ble Court to permit the respondent MCGM to file the present affidavit.

2. I say and submit that the letter u/No.Ch.O/02350/SWM/Admn.-II dt. 21.04.2015 which is at page no. 27 & 28 of the Petition is only an approval for appointment of the petitioner and it clearly mentions that if any information given by the petitioner is found to be false/concealed in that event these respondent are free to take action including disciplinary action/termination of the service. The said letter dt. 21.04.2015 in the name of petitioner is not an appointment letter as mentioned in para No.7, page No. 75 in the affidavits dt. 27.01.2021 and para No. 8 & 9, page No. 103 & 104 of affidavit dt. 05.07.2021 which were by the Respondent filed by these respondent hereinabove and the same is mentioned inadvertently. I also tender my unconditional apology for the same. Hereto annexed and marked as 'Exhibit-1' is a copy of the said approval letter dt.

21.04.2015.

3. I say and submit that a sample copy of an Appointment Letter/Orders which is issued by these respondent is hereto annexed and marked as 'Exhibit-2' for the reference of this Hon'ble Court.

4. I say and submit that from the comparison of the Exhibit No. 1 i.e. the Approval Letter dt. 21.04.2015 issued to the petitioner and the sample copy of the Appointment Letter as Exhibit-2, it is clear that the letter dt. 21.04.2015 issued to the petitioner is not the Appointment Order issued to the petitioner."

6. We have heard learned counsel for the petitioner and learned counsel for the respondents-MCGM. We have perused the memo of petition, relevant annexures, affidavit-in-replies and the documents annexed thereto.

7. Let us first consider whether Durga was appointed on compassionate basis. This we find it necessary in view of the stand taken by the respondents-MCGM in the additional affidavit stating that the letter dated April 21, 2015 in the name of the petitioner is not an appointment letter as indicated in the earlier affidavit-in-reply filed by the respondents and that the same was mentioned inadvertently. The respondents-MCGM have relied upon the sample copy of the appointment letter/orders to demonstrate that the communication dated April 21, 2015 is not a letter of appointment. We are somewhat perplexed with this change in stance of the respondents. In the affidavit-in-reply filed on behalf of the respondents no. 2 to 5 dated January 27, 2021 and the additional affidavit-in-

reply dated July 5, 2021 to the amended petition, it has clearly been stated that after taking sanction from the higher authority, the appointment letter was issued to the petitioner on April 21, 2015. Not only this, it is further stated that as per the appointment letter, the petitioner was allotted a job at E-Central department. In paragraph 9 of the affidavit-in-reply, it is further stated that the petitioner requested the respondents to transfer her to some other department and therefore her appointment was kept on hold. It is then stated that on the ground of some allegation that the petitioner submitted false and fabricated documents, the case of the petitioner was kept on hold. A perusal of the order dated April 8, 2015 at Exhibit 'D' reveals that approval was granted by the Administrative Officer to the appointment of Durga pursuant to the office order dated April 8, 2015. The document dated April 21, 2015 styled as an "appointment order" is in the name of Durga appointing her on compassionate basis in place of her father. Not only this, the said appointment order records that the rent free residential unit no. 61 in chawl no. 2, in the name of her deceased father would be allotted in her name after following requisite procedure. A specific stand, as indicated earlier, is taken by the MCGM that Durga was allotted a job at E-Central department and after receiving the appointment letter, Durga requested the respondents to transfer her to some other department and therefore her appointment was kept on hold. We are

therefore not impressed with the stand taken by the MCGM in the additional affidavit-in-reply dated August 30, 2022 wherein it is stated that the respondents have inadvertently taken a stand in the earlier affidavits that the letter dated April 21, 2015 is an appointment letter. We find that not only does the letter dated April 21, 2015 mention that it is an appointment letter, but even the contents therein reveal that the petitioner was appointed on compassionate basis whereupon she was allotted a job at E-Central Department. Even her request for transfer was under consideration. We fail to appreciate the reason why the MCGM has at this distance of time, after the matter was substantially heard, and after we had expressed our mind, resiled from its earlier stand. We say no more, except for holding that the letter dated April 21, 2015 is nothing short of an appointment order appointing Durga on compassionate basis in place of her deceased father.

8. It is further pertinent to note that the MCGM was well aware that Durga was minor when her father Ramesh died. The MCGM was well aware that the application for compassionate appointment was made after Durga attained majority. The affidavit-in-reply reveals that the concerned respondents after noticing this fact, in the interest of justice, considered Durga's application in accordance with law after taking sanction from the higher authority. Durga's posting, on her request that she should be transferred to another department, was kept on hold, and later on account

of a proposed enquiry. During the course of enquiry, it transpired that Durga's mother had availed of pensionary benefits of her divorced husband to which she was not entitled. Moreover, Durga's mother was working in the MCGM in place of Durga's mother's deceased father on compassionate basis. According to the MCGM, Durga was well aware of this fact and therefore she should have revealed this fact before seeking appointment on compassionate ground. This, according to the MCGM, amounts to suppression of material facts disentitling Durga for appointment on compassionate basis. It is also the stand of the MCGM that Durga's mother and sister objected to Durga's appointment. According to the MCGM, the enquiry report reveals that Durga got her name entered in the Family Register Book almost 13 years after her father's death only to get the benefit of appointment on compassionate basis. Now that we find that the letter dated April 21, 2015 is an appointment order appointing Durga on compassionate basis, the only option for the MCGM was to have proceeded against her by following the due process of law if at all the MCGM was of the opinion that the appointment order is in breach of the legal provisions. The affidavit-in-reply indicates that after the petitioner was allotted a job at E-Central department, the petitioner's appointment was kept on hold in view of her request to transfer her to some other department. There is nothing on record to show that Durga's appointment was

cancelled. On the contrary, now by filing the additional affidavit dated August 30, 2022, the MCGM is taking a stand that the letter dated April 21, 2015 is not an appointment letter and that the same is only approval for the appointment of the petitioner wherein it is clearly mentioned that if any information given by the petitioner is found to be false/concealed in that event the MCGM is free to take action including disciplinary action/termination of service. The question of disciplinary action/termination of service will arise only upon the petitioner entering the service. This is another reason why we hold that the letter dated April 21, 2015 is nothing but an order of appointment. Having issued the appointment letter, it was incumbent on the respondents-MCGM to assign her work and pay wages in accordance with the terms of her appointment. The MCGM simply kept the appointment on hold. Even the enquiry conducted was an internal enquiry and not a disciplinary enquiry in terms of the relevant service rules applicable to MCGM. The enquiry report may have been relevant if Durga was yet to be appointed. Having once appointed Durga on compassionate basis, it was incumbent on the part of the MCGM to proceed against her in terms of the appointment order or the relevant service rules. It is probably for this reason that the additional affidavit-in-reply dated August 30, 2022 is filed, contending that Durga was never appointed, thereby resiling from the earlier stand taken. A perusal of the

internal enquiry report reveals that the same is stigmatic as there are allegations of material suppressions made against Durga apart from alleging that she submitted false and fabricated documents while applying for compassionate appointment.

9. The entire action of the MCGM is in breach of the principles of natural justice. We find that the procedure adopted by the MCGM in keeping the petitioner's appointment on hold is completely arbitrary and unreasonable. The MCGM is not at all justified in contending that Durga is not entitled to be appointed on compassionate ground. Having appointed the petitioner on compassionate basis, depriving the petitioner of the benefits of such an order of appointment without following the due process of law will have to be regarded as illegal and arbitrary.

10. The petition therefore must succeed and is accordingly allowed. The respondents-MCGM to act on the appointment order dated April 21, 2015 and post Durga suitably with effect from October 1, 2022 but without continuity of service and backwages.

11. Needless to mention that it is open for the respondents-MCGM to take appropriate action in accordance with law.

12. In the facts of the case, the parties are left to bear their own costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)