

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4387 OF 2021

1. Kishor S/o Papa Dhamti,
2. Sandhya W/o Dilip Hadoti,
Both R/o Kolsa Tal. Kamptee,
Dist. Nagpur

... Petitioners.

Vs.

1. State of Maharashtra,
Through Urban and Rural Dept.
Mantralaya, Mumbai
2. Chief Officer,
Nagar Parishad, Kamtee
3. President,
Nagar Parishad, Kamptee
4. Divya Satish Dhamti
5. Bharti Bharat Hate

... Respondents.

Shri Yogesh B. Madpe, Advocate for petitioners.

Shri A. Madiwale, Assistant Government Pleader for respondent No.1/State.

Shri M. I. Dhattrak, Advocate for respondent No.2.

Shri P. P. Thakare, Advocate for respondent Nos.4 and 5.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : February 17, 2022

P.C.

The petitioner No.2 seeks cancellation of appointment of respondent No.5 on the post of Safai Kamgar as according to the petitioners said appointment is not in consonance with the recommendations of the Lad-Page Committee on the basis of which Government Resolution dated 11/08/2006 as modified on 25/01/2022 came to be issued.

2. The petitioner No.1 was engaged as a Safai Kamgar with the

Municipal Council Kamtee. On attaining the age of superannuation his son Satish was provided employment in view of Government Resolution dated 11/08/2006. Said Satish however expired on 07/09/2019. In terms of Government Resolution dated 21/10/2011 the widow of Satish-Divya who is the respondent No.4 nominated the respondent No.5 for being appointed. The respondent No.5 has been accordingly issued order of appointment dated 17/08/2021. The petitioner No.2 who is the daughter of petitioner No.1 and sister of Satish claims that as the respondent No.5 is not a member of the family of petitioner No.1, she was not entitled to be so appointed. In this backdrop, the appointment of respondent No.5 is under challenge.

3. The learned counsel for the petitioners in the light of aforesaid facts and the purport of Government Resolutions dated 11/08/2006 and 25/01/2022 submits that the object behind providing such employment was to ensure that the retired employee/age old parents would be taken care of by such appointee. Since the respondent No.5 was not a member of the family of petitioner No.1, the Municipal Council was not justified in passing the resolution on 16/12/2020 and granting appointment to the respondent No.5. The object behind the Government Resolution was not satisfied as the respondent No.5 was not willing to take care of petitioner No.1.

4. The learned counsel for the respondent Nos.2 and 3 submits that with the employment of the son of petitioner No.1-Satish after the superannuation of petitioner No.1, the right of petitioner No.1 to nominate a legal representative under the aforesaid Government Resolution stood exhausted. The son of petitioner No.1-Satish was duly appointed in his place in view of such nomination. After the death of Satish, his widow nominated the respondent No.5. She was accordingly appointed vide resolution dated 02/06/2021. The respondent No.5 had undertaken to take care of the family of respondent No.4, the widow of Satish. In view of this, no right accrued in favour of petitioner No.2 who was the married daughter of petitioner No.1. Moreover, the petitioner No.1 having exhausted his right after nominating his son, he could not again seek to reinforce that right. Hence the Municipal Council was justified in providing appointment to the respondent No.5.

5. On hearing the learned counsel for the parties we find that the petitioner No.1 on superannuation had nominated his son for employment which was accordingly granted to Satish. This was in terms of the Government Resolution dated 11/08/2006. Once that choice was exercised, the right of petitioner No.1 to make any further nomination came to an end with the employment of his son. On the death of Satish, such right accrued in favour of the widow of Satish. The respondent No.5 having been

nominated by the widow of Satish, it was clear that there was no scope for the petitioner No.1 to again nominate the petitioner No.2. Moreover, as per Government Resolution dated 25/01/2022 it is only the unmarried daughter who could claim such appointment. Admittedly the petitioner No.2 is the married daughter of petitioner No.1 and thus beyond the purview of the aforesaid Government Resolution. Though it was urged that the object was to take care of age old parents, the same is subject to giving an undertaking by such nominated person after such choice is exercised. As noted above the choice was exercised by the petitioner No.1 while appointing his son Satish. In that view of the matter we do not find that there is any case made out to interfere in writ jurisdiction. The petition is therefore dismissed. No costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

Asmita

Digitally signed by ASMITA
ADWAIT BHANDAKKAR
Signing Date: 22.02.2022
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