

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 1124 OF 2021

(Shri Rajesh Ramraoji Zolekar Vs. The State of Maharashtra & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.S. Patil, Advocate for the petitioner.
Ms S.S. Jachak, Assistant Government Pleader for respondent Nos. 1 to 3/ State.
Shri M.A. Sable, Advocate for respondent Nos. 4 and 5.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : APRIL 17, 2023

Heard.

2] The petitioner whose brother was serving with the Zilla Parishad, Amravati seeks appointment on compassionate basis consequent upon the death of his brother – Yuvraj on 22/5/2018. The petitioner claims that since his brother was unmarried and he is the only eligible legal heir, he sought appointment on compassionate basis by moving an application dated 13/12/2018. When this application was made, the petitioner was aged about 43 years. On noticing that appointment was given to respondent No.6 after he had crossed the age of 45 years and the fact that the claim of the petitioner was not considered on the ground that he had completed the age of 45 years, the Writ Petition has been amended and in this backdrop, the petitioner seeks his appointment on compassionate basis.

3] We have heard the learned Counsel for the parties and we have perused the documents on record including the minutes of the General Administration Department of the Zilla Parishad that were recorded while considering the appointments to be made on compassionate basis. It is seen that pursuant to a communication dated 5/2/2020 issued by the State Government, the Zilla Parishad initiated process of making appointments on compassionate basis. There were 113 vacancies in that category to be filled-in. The candidates named in the waiting list were called on 17/3/2020 with all relevant documents. The process could not be completed on account of lockdown and the same was thereafter completed on 29/8/2020. Four candidates in accordance with their

placement in the waiting list were found to have crossed the age of 45 years in the meanwhile and names of three candidates were therefore deleted. Insofar as the fourth candidate is concerned, he is respondent No.6 in the present Writ Petition. According to the Zilla Parishad, since the process of recruitment commenced on 5/2/2020 and respondent No.6 attained the age of 45 years on 30/4/2020, the fact that the recruitment process could not be completed on account of pandemic could not be a reason to deprive respondent No.6 from appointment since he was below 45 years on 5/2/2020 when the process commenced. We do not find any illegality being committed by the Zilla Parishad by taking such view. The process of recruitment having commenced on 5/2/2020 and the same was required to be discontinued due to the pandemic, this aspect cannot be permitted to work to the prejudice of respondent No.6.

4] Another relevant aspect considered was that respondent No.6 was placed in the waiting list on 9/7/2012 much prior to the inclusion of the name of the petitioner in that list which was done on 13/12/2018. The petitioner attained the age of 45 years on 12/6/2020. Even assuming that the claim of respondent No.6 was to be disregarded, the petitioner is not placed immediately after respondent No.6 in the waiting list. He has been placed at Sr. No. 125 in the said list. As stated above, there were 113 vacancies and therefore in view of the petitioner's placement in the said waiting list, he could not be accommodated. Having attained the age of 45 years, he was held not entitled to such appointment in view of Clause 3.11 of the Government Resolution dated 21/9/2017. We therefore do not find any illegality in the action of the Zilla Parishad.

5] Though the learned Counsel for the petitioner relied upon the decision in *Malaya Nanda Sethy Vs. State of Orissa And Others* [2022 SCC Online SC 684], we find that the ratio of the said decision cannot be made applicable to the case in hand. The petitioner has not been deprived of the appointment on account of any delay on part of the Zilla Parishad in considering his claim. The petitioner sought such appointment on 13/12/2018 and by August-2020, the claim was decided.

6] For the aforesaid reasons, we do not find any case made out to interfere in writ jurisdiction. The Writ Petition is thus dismissed with no order as to costs. Pending Civil Applications are also disposed of.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

SUMIT