

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

WRIT PETITION NO. 4335 OF 2022

Chhaya Baldev Kapase,
Aged about 43 years,
Occupation – Household,
R/o Ward No.4, Gandhepura, Tiosa,
Tq. Tiosa, District Amravati.

.... **PETITIONER**

VERSUS

1) State of Maharashtra,
through Urban Development Department,
Mantralaya, Mumbai.

2) Chief Officer,
Nagar Panchayat, Tiosa, Tq. Tiosa,
District Amravati.

3) Assistant Director,
Directorate of Municipal Council,
Mumbai, Office at Government Transport
Services Building, 3rd Floor, Sir
Pochkhanwala Marg, Worli, Mumbai -
400 030.

4) The Collector,
Amravati, Tq. & District Amravati.

.... **RESPONDENTS**

Ms. A.R. Sharma, Counsel for the petitioner,
Mr. N.S. Rao, AGP for respondents 1 and 4,
Mr. N.S. Bhelkar, Counsel for respondent 2.

CORAM : ROHIT B. DEO & Y.G. KHOBRAGADE, JJ.
DATED : 20th FEBRUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Heard. **Rule.** Rule made returnable forthwith by consent of the parties.

2. The initial relief claimed in the petition was that respondents 1, 3 and 4 be directed to consider the proposal forwarded by respondent 2- Municipal Council, Tiosa on 16-2-2017 and appoint the petitioner on a suitable post on compassionate ground.

3. The petition is amended and a direction is sought that the application dated 27-5-2016 seeking appointment on compassionate ground be considered as the relevant date for inclusion in the waiting list of the candidates seeking appointment on compassionate ground.

4. We have perused the affidavit-in-response dated 06-2-2023 filed on behalf of respondent 2-Chief Officer, Municipal Council, Tiosa. We may extract the relevant portion of the said affidavit.

“2. It is submitted that the husband of the petitioner was the employee of Gram Panchayat, Tiosa earlier. It is submitted that on 10-4-2015 Nagar Panchayat came to be established and after establishment of Nagar Panchayat immediately the petitioner’s husband was died on 18-5-2016. At the time of death of the petitioner’s husband the procedure of absorption of Gram Panchayat employees to Nagar Panchayat employees has not completed and therefore at the

relevant time there was no absorption of petitioner's husband as an employee of Nagar Panchayat, Tiosa. It is submitted that the present petitioner has submitted application dated 26-5-2016 towards respondent no.2 to get appointment on contract basis. The copy of the same is annexed herewith as Annexure-A.

3. It is submitted that the respondent no.2 has passed the resolution in the general meeting dated 8-6-2016 thereby decided to appoint the petitioner on contract basis for fixed pay of Rs.5000/- per month and also decided to sent the proposal for further approval towards respondent no.4 along with the letter issued by respondent no.2 dated 22-6-2016. The copy of the same is annexed herewith as Annexure-B.

4. It is submitted that the Director Municipal Administration, Mumbai has issued the letter dated 08-12-2020 in the name of respondent no.2 thereby informed that they have sought guidance from State Government as soon as the guidance would be received by them, the same would be informed to respondent no.2.

9. In view of this latest decision taken by the State Government the present answering respondent no.4 has called the proposal from Nagar Panchayat, Tiosa to which the Nagar Panchayat Tiosa responded immediately and sent the proposal dated 27-1-2023 towards the present answering respondent Collector, Amravati.

10. It is submitted that after the death of employee the eligible legal heirs of the deceased employee are entitled to consider for appointment on compassionate ground subject to the guidelines issued by the State Government from time to time.

11. It is submitted that pursuant to resolution dated 08-6-2016 Chief Officer, N.P Tiosa has forwarded the proposal for appointment on compassionate grounds towards present respondent no.4 dated 22-6-2016."

5. An affidavit-in-response dated 03-2-2023 is filed on behalf of

respondent 4-Collector, Amravati and the relevant portion of the said affidavit reads thus :

“6. It is further submitted that the Urban Development Department, State of Maharashtra has issued Government Resolution dated 25-4-2022 thereby inserted one extra clause as clause no.6 thereby resolved that the claim of employee who died prior to incomplete procedure of absorption of employees and also some delay on administrative ground be considered for appointment on compassionate ground. In view of this latest decision taken by the State Government the present answering respondent no.4 has called the compassionate list (waiting) of eligible persons from all the Municipal Councils/Nagar Panchayats in Amravati District to which the Nagar Panchayat, Tiosa responded and sent the proposal dated 27-1-2023 towards the present answering respondent Collector, Amravati. A copy of Government Resolution dated 25-4-2022 is annexed herewith and marked as Annexure R-1 and copy of letter dated 27-1-2023 is annexed herewith and marked as Annexure R-2.

7. It is submitted that after the death of employee the eligible legal heirs of the deceased employee are entitled for consideration for appointment on compassionate ground subject to the guidelines issued by the State Government from time to time. Accordingly the name of petitioner has been taken on the list of employees to be appointed on compassionate grounds. It is submitted that the case of the petitioner would be considered in accordance with Rules regulating appointment on compassionate grounds as and when vacancy arises.”

6. As the situation stands, the respondents are not disputing the entitlement of the petitioner to compassionate appointment, as such. The surviving grievance is that the petitioner has not been accorded seniority from the date of preferring the application. On this aspect,

the affidavit-in-response is not clear. We have no reason, for the present, to assume that respondent 4-Collector, Amravati shall not give the seniority to the proposal submitted by the Municipal Council, Tiosa on the basis of the relevant date, which is the date of application preferred by the petitioner.

7. We dispose of the petition by permitting the petitioner to prefer an application to respondent 4-Collector, Amravati seeking seniority to the proposal for appointment on compassionate ground from the date of the application. If such application is preferred within the next two weeks, the same shall be decided within the next two weeks.

8. We further note the submission that the petitioner is aged 44 years 3 months. In this view of the matter, if the petitioner is accorded seniority from the date of application and she is entitled to appointment on that basis, we expect the respondent to consider her claim for compassionate appointment within the next three months.

9. The petition is disposed of in the afore-stated terms.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

adgokar

Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 20.02.2023 18:40