



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

WRIT PETITION NO. 5093/2021

Annu S/o Prabhu Sarvan
Vs.
Chief Officer, Nagar Parishad, Shegaon and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Gupta, Advocate for Petitioner
Mr. M.S. Sharma, Advocate for Respondent No.1
Mr. N.Y. Moharir, Advocate for Respondent Nos.2 and 3

CORAM: AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATED : 2nd MAY, 2024

Heard Ms. Gupta, learned counsel for the petitioner, Mr. Sharma, learned counsel for the respondent No.1 and Mr. Moharir, learned counsel for the respondent Nos.2 and 3.

2. The petition questions the order of appointment dated 10.10.2012, granted to the respondent No.2 on compassionate basis, at the behest of the respondent No.3, who was working with the respondent no.1 as a Sweeper, in terms of the policy framed on account of the Lad Page Committee Report.

3. It is the contention of the petitioner, that though the petitioner is the son of the

respondent No.3, his claim has been ignored on the basis of a false statement made by the respondent No.3, that he had no legal heir who was entitled, to be appointed on his recommendation. Reliance is also placed upon the policy dated 21.10.2011 (page 72) to contend, that even as per the terms of the policy, the respondent No.2 was not entitled, since she was not the legal heir of the respondent no.3.

3. Mr. Sharma, learned counsel for the respondent No.1, contend, that the import of the policy dated 21.10.2011 was to ensure, that the person who had taken retirement on account of medical ailment, was provided with someone to look after him, post retirement. It is contended, that the respondent No.3 had himself given an affidavit, wherein it was stated, that he was estranged from the petitioner and his mother since last more than 20 years and they were living separately and it was only the respondent No.2, who was taking care of him, as the respondent No.3 was residing with the family of his real brother, of whom the respondent No.2, was the daughter-in-law. It is based upon this position, that the respondent No.2 has been granted employment. He also invites our attention to clause 1(g) of the aforesaid GR to

contend, that the application for compassionate appointment on account of employee taking retirement on medical grounds was to be made within a period of one year from such date and since the petitioner was minor at that point of time, the question of consideration of the petitioner did not arise at all. He, therefore, submits, that the employment granted to the respondent No.2 cannot be faulted with.

4. Mr. Moharir, learned counsel for the respondent Nos.2 and 3, supports the abovesaid contentions and submits, that on account of the estrangement of the petitioner and his mother from the respondent no.3 since last more than 20 years prior to the date of appointment, the respondent No.3, throughout has been looked after by the respondent No.2, which is the basis on which the claim of the respondent No.3 has rightly been considered.

5. The entire matter, for grant of compassionate appointment to a person who has taken voluntary retirement on account of medical ailment has to be looked into, in terms of the policy dated 21.10.2011. The very intent of the policy as is indicated from a perusal thereof is to ensure that somebody is there to look after the person who takes voluntary retirement on

account of medical ailment. Though clause 1(a) indicates that the preference has to be given to the categories as mentioned in items 1 to 5, it is material to note, that clause 6 indicates that in case, none of the above are available then a person undertaking to take care of the person related to the employee, or a nominee will have to be considered for the purpose of compassionate appointment. Clause 1(d) of the aforesaid GR also assumes significance inasmuch as it mandates, that such person / legal heir, to whom employment is to be granted on compassionate basis is necessarily a person residing with the retired employee, the intention again being, to ensure, that such retired employee has someone to look after him since he is unable to perform his normal functions on account of his ailment. Clause 1(g), of the aforesaid GR further mandates, that such an application has to be made within a period of one year.

6. In the instant case, the respondent No.3, applied for voluntary retirement on account of medical ailment on 08.5.2011 and accordingly retired on 30.9.2012. Admittedly, the petitioner was minor at that point of time and, therefore, was not eligible to be employed.

It is necessary to note, that the mother of the petitioner has never claimed employment on compassionate basis at any point of time, on account of the respondent No.3 taking voluntary retirement due to his ailment. It is in this circumstances, that on the nomination of the respondent No.2, by the respondent No.3, the employment was granted to the respondent No.2 on compassionate basis. The fact that the petitioner as well as his mother were not staying with the respondent no.3 is indicated from the affidavit filed by the respondent no.3 in this regard dated 08.10.2012 (page 41). It is also apparent from the statement of the respondent No.3 as recorded by the authorities of the respondent No.1 on the same day (page 40). It is also material to note, that the petitioner, is the son of the respondent no.3 from his second marriage. Para 2 of the petition, indicates, a marital discord between the respondent no.3 and mother of the petitioner. The addresses given in the clause title also indicate that the petitioner is resident of Akola, whereas the respondent No.3 is the resident of Shegaon. Nothing has been placed on record to indicate, that the petitioner as well as his mother have been continuously residing with the respondent No.3 from 2011, till

date. The material on the record on the contrary indicates a position which is otherwise. The respondent No.3, is the apt person to have responded to the allegations made in the petition. Perusal of the reply by the respondent No.3 dated 13.2.2024, indicates from para 5 thereof, that the petitioner had never resided with the respondent No.3 nor has ever shown any interest or affection towards the respondent No.3 nor has tried to establish any contact with the respondent No.3. On the other hand, it is also averred, that it is the respondent No.2, who has been taking care of the respondent No.3 throughout from 2012 till date. This in our considered opinion would satisfy the requirements of the policy, which is formulated for the purpose to ensure that an employee who takes voluntary retirement on account of medical grounds, is entitled, to ensure that there is someone to take care of him, consequent to the aforesaid retirement, for which purpose, the right to nominate has also been given in the said policy. There is yet another reason why we are not inclined to interfere inasmuch as though the petitioner has attained majority on 20.6.2013, the petition has only been filed in the year 2021, which would indicate, that the respondent No.2,

has continued with the employment for nerely a period of 9 years and the delay and latches on the part of the petitioner has permitted rights to be created in favour of the respondent No.2. We, therefore, do not see any reason to interfere in the the impugned order in view of what has been stated above. The petition is dismissed. No costs.

(SMT. M.S.JAWALKAR,J.)

(AVINASH G. GHAROTE,J.)