

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9652 OF 2021**

Hirishikash Aairatnava Saware ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Shivshankar D. Patil for the Petitioner.
Mr. Prashant P. Chavan, Sr. Advocate i/b Mr. Ravindra Chile for
Respondent No.2.
Mr. A.I. Patel, Addl. GP. a/w. AGP V.G. Badgujar for the
Respondent/State.
Mr. Suhas M. Kharat a/w. Ms Pooja M. Kharat for Respondent
Nos.3 and 4.

**CORAM : M.S. KARNIK &
N.R. BORKAR, J.J.
DATE : 17th JUNE, 2025.**

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

1. By this petition under Article 226 of the Constitution of India, the petitioner who claims to be the adopted son of respondent No.4, seeks directions to respondent No.2 - Nagar Parishad, Gadhinglaj, to appoint him on compassionate basis.

2. The facts of the case in brief are as under:

Respondent No.4 was working with respondent No.2 - Nagar Parishad, Gadhinglaj since 21st February 1997 as Safai Kamgar (Grade-IV). Respondent No.1 issued Circular dated

21st October 2011 in respect of implementation of Lad-Page Committee recommendations for appointment of legal heirs of Safai Kamgar after his/her retirement, demise, voluntary retirement, or being ineligible on account of medical reason.

3. On 26th February 2014, respondent No.1 - State of Maharashtra issued Circular/Government Resolution for removing difficulties in respect of appointment of legal heirs of the Safai Kamgar as per Lad-Page Committee recommendation. Clause (1) of said G.R. clarifies that if there are no legal heirs or if the legal heir is not ready to work as Safai Kamgar, then in such cases any person nominated by the employee, who undertakes in writing to take care of the employee, can be appointed.

4. The respondent No.4 adopted the petitioner by executing adoption deed dated 4th September 2014. The said deed was registered. It is the submission of the learned counsel that the petitioner being an adopted son, it is he who should have been appointed as Safai Kamgar in place of respondent No.4. The submission is that when a legal heir is

available, it is only the legal heir who can be considered and there is then no question of exercising the option of nomination. It is submitted that instead of appointing the petitioner, the respondent No.4 nominated respondent No.3 who is not a legal heir. On the basis of nomination made by respondent No.4 which was considered by the General Body, it is the respondent No.3 who came to be appointed as Safai Kamgar. It is submitted that respondent No.3 is not related to respondent No.4 and therefore, respondent No.2 - Nagar Parishad has committed breach of the circular. Learned counsel submits that it is only the petitioner's claim which can be considered being a legal heir on the basis of adoption deed, hence action of respondent No.2 - Nagar Parishad appointing respondent No.3 is illegal.

5. On the other hand, learned counsel for respondents supported the appointment of respondent No.3.

6. We have heard learned counsel for the parties.

7. On 2nd November 2015, the petitioner made an

application for appointment on account of vacancy created by voluntary retirement of respondent No.4 claiming to be the adopted son of respondent No.4. Respondent No.4, by her affidavit dated 15th February 2019, submitted that she does not have any legal heirs and therefore nominated respondent No.3 for appointment on compassionate basis in view of her voluntary retirement. Respondent No.3 filed consent affidavit /undertaking dated 15th February 2019 assuring that he will take care of respondent No.4. After working with respondent No.2 for 21 years, respondent No.4 made an application for voluntary retirement from the service, on account of her ill- health nominating respondent No.3 for appointment on 10th May 2019. Respondent No.4 again made an application on 13th January 2020 for voluntary retirement from service due to her ill-health and requested for appointment of respondent No.3 on the vacancy created due to her voluntary retirement.

8. Respondent No.2 at it's general body meeting held on 25th February 2020 considered the application submitted by respondent No.4 for voluntary retirement. The general body

also considered the nomination made in favour of respondent No.3. Respondent No.2 at it's general body meeting held on 4th August 2020 approved the application of respondent No.4 appointing respondent No.3 on the vacancy created by voluntary retirement of respondent No.4. Respondent No.2 by the appointment order dated 3rd November 2020 temporarily appointed respondent No.3 as Safai Kamgar Calss-IV for a period of two years on probation on various terms and conditions enumerated in the said appointment order.

9. The petitioner vide communication dated 21 January 2021 raised a grievance and requested respondent No.2 to appoint him on the vacancy created by respondent No.4. The Chief Officer of respondent No.2 vide letter dated 10th February 2021 called the petitioner as well as respondent No.4 for hearing on 16th February 2021. The petitioner remained absent for hearing. Respondent No.4 attended the hearing and reiterated her stand in favour of respondent No.3.

10. Respondent No.4 submitted to respondent No.2 an affidavit stating that she has no legal heirs. According to her,

the petitioner, his mother Smt. Aakkatai C. Saware and his brother Shri. Chetan C. Saware without informing respondent No.4 fraudulently got executed the adoption deed dated 4th September 2014. It was further stated by respondent No.4 in her affidavit that the adoption deed was executed with a clear intention to grab the immovable property and for the petitioner to claim the employment benefit after her retirement.

11. Having given our anxious consideration to the rival submissions, we are not impressed by the claim made on behalf of the petitioner. No doubt, the registered adoption deed has been placed on record. The execution of the adoption deed is seriously disputed by respondent No.4. Not only respondent No.4 has taken a categorical stand before respondent No.2 - Nagar Parishad that the said deed was fraudulently executed, but even in her affidavit-in-reply filed in this court, respondent no.4 has taken the same stand that the said adoption deed was executed only with the intention to grab the immovable property and for the petitioner to claim employment benefit after her retirement. Respondent

No.3 has filed an affidavit that he will take good care of respondent No.4. In our opinion, the petitioner cannot claim compassionate appointment as a matter of right. It is therefore, the intent of the Circular that the compassionate appointment must be made in favour of some one who will take care of the employee seeking voluntary retirement. The compassionate appointment has to enure to the benefit of the employee retiring. This furthers the object of the Circular and the purpose for which the compassionate appointment is made. The Circular cannot be read in a narrow sense. The objection of the retired employee to the legal heirs appointment, by itself disentitles the claim of the legal heir to be considered for the compassionate appointment. That there is a valid deed of adoption is hardly of any consequence. The respondent No.4 has gone to the extent of disowning the adopted son. The challenge to the appointment of respondent No.3 at the instance of the petitioner is not tenable.

12. In the present case, the respondent No.4 has clearly said in so many terms that respondent No.3 will take care of her and even respondent No.3 has filed affidavit to that effect

before the respondent No.2. Having regard to object of the Circular, in the facts and circumstances of the case, no relief can be granted to the petitioner at least for the purpose of appointment on compassionate basis. If the respondent No.4 has nominated the respondent No.3 who has assured to take care of her and if this is the basis for the compassionate appointment of the respondent No.3, we do not find any justification to interfere with the decision of the Nagar Parishad. The approach of Nagar Parishad applying the Circular in this manner cannot be said to be arbitrary or unreasonable in the facts and circumstances of the present case. We therefore, do not find any merit in this petition. Hence, the petition is dismissed.

(N.R. BORKAR, J.)

(M.S. KARNIK, J.)