

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5860 OF 2012

- 1. The Commissioner,**
Municipal Corporation of Greater
Mumbai, Mumbai – 400 001
- 2. The Commissioner of Health,**
K/West Ward, Municipal Corporation
of Greater Mumbai, Andheri (West),
Behind BMC Hospital, S.V. Road,
Mumbai – 400 058

... **Petitioners**

Vs.

Mohammed Salim Bhagwan Khan,
Madh Jathy Hindu Cementery Staff
Quarters, Room No.2, via Versova
Mumbai – 400 061

... **Respondent**

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**WITH
INTERIM APPLICATION NO.7470 OF 2025
IN
WRIT PETITION NO.5860 OF 2012**

Suryakant Bhagwan Tawade Nee
Mohammed Salim Bhagwan Khan ... **Applicant**

In the matter between

The Commissioner, M.C.G.M. & Anr. ... **Petitioners**

V/s.

Suryakant B. Tawde ... **Respondent**

Mr. Suresh Pakale, Senior Advocate with Mr. Santosh
Parad for the petitioners-MCGM.

Mr. Shan Clifford Cardoz for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 17, 2026.

PRONOUNCED ON : APRIL 30, 2026

JUDGMENT:

1. By these writ petitions instituted under Articles 226 and 227 of the Constitution of India, the petitioners, namely Municipal Corporation of Greater Mumbai, have called in question the legality, propriety, and correctness of the judgment and order dated 26 April 2012 passed by the Industrial Court, Mumbai in Revision Application (ULP) No.49 of 2008

2. The facts and circumstances, as set out by the petitioners, leading to filing of the present writ petitions are that the respondent was initially appointed in the service of the petitioners as a Cemetery Attendant with effect from 1 August 1973 and was posted at Reay Road Cemetery, E Ward. The respondent continued there till the year 1983. Thereafter, he came to be transferred to Worli Cemetery, G Ward, where he worked till the year 1990. Subsequently, the respondent was transferred to Madh Cemetery, P North Ward, and continued to discharge duties as Cemetery Attendant till 13 June 2000. During his posting at Madh Cemetery, residential quarters situated within the cemetery premises were allotted to him. According to the respondent, each cemetery had three permanent sanctioned posts of Death Registration Karkoon and one permanent sanctioned post of Reliever Death Registration Karkoon. It is his case that for a considerable period the post of Death Registration Karkoon at Versova Cemetery had remained

vacant. By communication dated 16 June 2000 issued by petitioner No.2, the respondent was asked to work as Death Registration Karkoon from 16 June 2000 onwards. It is further the case of the respondent that he thereafter continuously performed duties attached to the said post.

3. The duties allegedly discharged by the respondent as Death Registration Karkoon were stated to include maintaining death registers of the cemetery, supervising and obtaining work from Cemetery Attendants, preparing receipts in respect of charges collected for disposal of dead bodies, depositing the cash amount so received with the concerned ward office after preparing statements thereof, coordinating with the Medical Officer of Health in relation to light and water supply, informing the Medical Officer of Health regarding stock of wood available in the cemetery, maintaining attendance registers of labourers, and preparing overtime forms of labourers working at the cemetery.

4. It is the contention of the respondent that by virtue of having worked on the post of Death Registration Karkoon with effect from 16 June 2000 and by performing full-time duties attached thereto, he acquired all rights and privileges of the said post in view of Regulation 15 of the Brihanmumbai Municipal Corporation (Service) Regulations, 1989. It is further his case that though he was made to perform duties of Death Registration Karkoon, he continued to receive salary and allowances payable only to the post of Cemetery Attendant. The respondent therefore approached the petitioners from time to time and requested that monetary benefits and service conditions attached to the post of Death

Registration Karkoon be extended to him.

5. According to the respondent, the petitioners did not consider his lawful request and instead denied him wages, privileges, and service benefits available to other employees working as Death Registration Karkoon. The respondent has further contended that the petitioners issued a letter dated 3 June 2006 instructing the concerned officers not to obtain work of Death Registration Karkoon from the respondent at Versova Cemetery. Though the respondent requested withdrawal of the said communication, no relief was granted. On the contrary, according to him, instead of extending benefits of the higher post, the petitioners arbitrarily compelled him to work as Cemetery Attendant and thereby effectively reduced him from duties of Death Registration Karkoon to his original post. It is further the case of the respondent that the petitioners appointed one Mr. Lad and one Mr. Surve as Death Registration Karkoons without considering the claim of the respondent and thereby practiced discrimination between similarly placed workers. The respondent asserts that though he had already been made to discharge duties of Death Registration Karkoon and had sought regularisation on that post, he was neither made permanent thereon nor granted monetary benefits attached to such post. According to him, the petitioners thereby violated service conditions prescribed under the Brihanmumbai Municipal Corporation (Service) Regulations, 1989 and committed unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act.

6. On the aforesaid basis, the respondent prayed for a declaration that the petitioners had engaged in and were continuing to engage in unfair labour practices under Items 5 and 9 of Schedule IV of the Act. He further sought a direction against the petitioners to grant him wages and all consequential service benefits of the post of Death Registration Karkoon with effect from 16 July 2000 together with interest at the rate of 18 percent per annum.

7. The petitioners filed their written statement and denied all allegations regarding commission of unfair labour practices. The petitioners traversed each and every averment made in the complaint and disputed the entitlement claimed by the respondent. In substance, the stand of the petitioners was that the respondent had never been appointed to the post of Death Registration Karkoon. Therefore, according to them, the question of reverting him from such post or reappointing him as Cemetery Attendant did not arise at all. It was their specific defence that the respondent had throughout remained in service as Cemetery Attendant and had been paid salary and monetary benefits attached only to that post. The petitioners contended that the claim made by the respondent was imaginary, speculative and unsupported by record, and therefore the complaint deserved dismissal.

8. The Industrial Court thereafter allowed the complaint. It was held and declared that the petitioners had engaged in and were engaging in unfair labour practices under Items 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971, and they were

directed to cease and desist therefrom. The petitioners were further directed to regularise the services of the respondent as Death Registration Karkoon with effect from 16 June 2000 and to extend monetary as well as service benefits attached to the said post with retrospective effect. The petitioners were also directed to implement the order within one month from the date thereof.

9. The grievance of the petitioners is that the Industrial Court failed to address the preliminary objection relating to delay and laches. According to the petitioners, it is a settled principle that unless the issue of delay is first examined and the delay, if any, is condoned in accordance with law, the complaint ought not to be entertained or taken up for adjudication. It is, therefore, contended that the Industrial Court committed a jurisdictional error in proceeding to decide the complaint without first determining the said objection.

10. Mr. Suresh Pakale, learned Senior Advocate appearing on behalf of the petitioners, Municipal Corporation of Greater Mumbai, submitted that the Industrial Court principally founded its conclusion upon three documents, namely Exhibit U-4 being the list of documents, Exhibit U-9 being the relieving memorandum, and Exhibit U-10 containing direction to report at Versova Cemetery. According to the learned Senior Counsel, solely on the basis of the said documents, the Industrial Court proceeded to hold that the respondent had worked as Death Registration Karkoon for the period from 16 June 2000 to 1 June 2006 and was, therefore, entitled to the reliefs claimed in the complaint. It is contended that while recording such findings, the Industrial Court completely

overlooked the material circumstance that the respondent was never promoted to the post of Death Registration Karkoon, nor did he possess the requisite eligibility for such promotion. It is further submitted that the Court ought to have held that the respondent could not derive advantage from a bona fide clerical error occurring in the relieving memorandum, particularly when the Court itself noticed that no formal order of promotion had ever been issued in his favour. Learned Senior Counsel urged that the service conditions of the Corporation are regulated by statutory service rules, and under such rules promotion to a higher post can be effected only by following due process, whether by seniority or by selection-cum-seniority. It is further submitted that it was never the case of the respondent that his candidature for promotion to the post of Death Registration Karkoon had been considered by the competent authority and that he was thereafter lawfully promoted. According to the petitioners, unless such exercise is undertaken and a valid order of promotion is issued, no claim of the present nature can be sustained in law. On this ground alone, it is contended, the complaint ought to have been dismissed. Learned Senior Counsel further submitted that the finding of the Industrial Court that the respondent had been specifically directed in writing to discharge duties of Death Registration Karkoon and that he accordingly performed such duties is wholly perverse and unsupported by evidence. Save and except the relieving order dated 10 May 2000, wherein the designation of DRK was inadvertently mentioned after the respondent's name, no documentary material was produced by the respondent to establish

such assignment. It is, therefore, submitted that the inference drawn by the Industrial Court on the basis of the said documents is legally unsustainable and liable to be set aside.

11. Learned Senior Counsel further submitted that no presumption could be drawn that the respondent had acquired any lien over the post of DRK. It is urged that lien, in service jurisprudence, denotes the right of a Government servant or permanent employee to hold substantively a permanent post to which he has been duly appointed in accordance with law. The reliance placed by the respondent upon Clause 15 of the service regulations is, according to the petitioners, wholly misconceived and misplaced. On these premises, prayer is made that both the writ petitions be allowed, and the complaints instituted by the respondent be dismissed with compensatory costs.

12. Per contra, Mr. Cardoz, learned Advocate appearing for the respondent submitted that it is undisputed that the respondent was initially appointed as Cemetery Attendant with effect from 1 August 1973. It is further submitted that upon the respondent possessing the requisite qualification for a higher grade post, the petitioners issued communication dated 16 June 2000 informing him of his posting at Versova Cemetery, K Ward, as Death Registration Karkoon.

13. Learned Counsel further submitted that by letter dated 3 June 2006, the petitioners instructed the concerned officer not to permit the respondent to continue discharging duties as Death Registration Karkoon at Versova Cemetery. Simultaneously, it is

alleged that the petitioners acted arbitrarily and illegally by extending favourable treatment to one Mr. Lad and one Mr. Surve, who were co-workers of the respondent at the cemetery, by conferring upon them the status of DRK, while reverting the respondent from the said post to that of Cemetery Attendant.

14. It is submitted that in view of the aforesaid factual position, the subsequent act of the petitioners in compelling the respondent, after a period of six years, to resume duties as Cemetery Attendant with effect from 3 June 2006 amounted to an unlawful alteration in service conditions and constituted violation of Section 9-A of the Industrial Disputes Act, 1947.

15. Learned Counsel further submitted that in paragraph 8 of the written statement, the petitioners themselves admitted that the respondent's designation in the relieving memorandum was shown as DRK. In the same paragraph, it was also admitted that in the respondent's payslips for the months of August, September and October 2000, his designation was reflected as DRK. It is further pointed out that the respondent had produced material documentary evidence along with exhibits. Particular reliance is placed on Exhibit U-9, being Memo MOH/K-West, namely the relieving memorandum issued by the Office of the Ward Officer, P/North Ward, Malad (West), wherein the respondent's designation is recorded as DRK. Reliance is also placed upon Exhibit U-10, a memorandum issued by the Office Superintendent, K-West Ward, making reference to the Medical Officer of Health's order and describing the respondent as DRK.

16. Learned Counsel lastly submitted that during the course of cross-examination of the petitioners' witness, the attendance register and receipt books of the cemetery were shown to him. The witness admitted the attendance register marked as Exhibit C-21 and receipts marked as Exhibit C-23. It is submitted that the contents thereof were accepted as correct in the deposition. Further, the signatures of the respondent appearing on receipts signed as DRK were also admitted by the witness for the petitioners. On the strength of the said oral and documentary evidence, learned Counsel prayed that the writ petition be dismissed.

REASONS AND ANALYSIS:

17. The submission of learned Senior Advocate Mr. Suresh Pakale appearing for the petitioners goes to the root of service jurisprudence and manner in which public posts are to be filled. He is correct to the extent of saying that promotion to a higher post in a statutory Corporation cannot come into existence by use of a designation in office correspondence. Public employment is not governed by convenience. It is governed by rules, regulations and settled procedure. When service under the Corporation is regulated by statutory framework, every promotion to a superior post must flow from that framework alone. A higher post is required to be filled by following the prescribed method, whether on basis of seniority, merit-cum-seniority, selection, departmental process, or any other lawful mode recognized under the applicable service regulations. Such procedure exists to secure equality amongst all employees who may have claims.

18. Therefore, no Court can record a finding that an employee became permanent holder of a superior post merely because his name was described in one office memo by such designation, or because for some time certain duties of that post were taken from him by superior officers. If such easy rule is accepted, then entire service procedure would become uncertain. Every temporary arrangement, every clerical error in correspondence may then be used to claim substantive promotion. That is not permissible in law. For this reason, the argument of the petitioners that the respondent was never promoted in the eye of law carries substance. It is also a matter of significance that the respondent has not produced before the Court any promotion order issued by the competent authority in regular course. There is no sanctioned order stating promotion on permanent basis. In service law, legal source of appointment carry weight. Rights in public service arise from lawful orders.

19. The Court also cannot shut its eyes to the method by which a public post is acquired. A substantive post is not gained merely because an employee is asked to perform some functions attached to that post. Many a times administration may entrust additional duties due to absence of regular incumbent or shortage of staff. Such arrangements do not become vested right.

20. At the same time, the matter cannot conclude there, because the petitioners also cannot escape the effect of the documentary record relied upon by the respondent. Exhibit U-9, namely the relieving memo, and Exhibit U-10, namely the office memo directing reporting at Versova Cemetery, cannot be excluded. The

respondent has further relied upon payslips, attendance registers, receipts issued in the course of cemetery administration, and admissions in cross-examination of the witness examined on behalf of the petitioners. When several pieces of evidence move in one direction, the Court is required to examine their cumulative effect.

21. It has been specifically pointed out that in the written statement itself the petitioners admitted that in the relieving memo the respondent's designation was shown as DRK. It has also been noticed that payslips for the months of August, September and October 2000 reflected the respondent's designation as DRK. A pleading filed before Court is a conscious statement. If the Corporation itself accepts that its own records described the respondent in such manner, then later contention that everything was only accidental mistake must be examined with caution. One isolated typing error may happen. Repeated description across different documents invites deeper scrutiny.

22. When an employer repeatedly describes an employee by a particular designation, directs him to work at a specified station connected with that designation, accepts receipts signed by him in such capacity, and permits him to continue functioning in that role over a considerable number of years, then the Court cannot brush it aside as clerical slip. Though it may be true that no promotion order was issued, yet the conduct of the petitioners shows that the respondent was not merely retained as Cemetery Attendant doing lower grade work. He appears to have been utilised for duties associated with Death Registration Karkoon.

23. That fact gains support from the documentary record as well as testimony brought in cross-examination. The attendance register and receipts become relevant indicators of who was in fact performing the duties at the site. The Court is concerned with realities of service functioning. If the respondent was maintaining records or performing supervisory and clerical duties usually attached to DRK, then the position cannot be denied merely by subsequent argument. In this part of the case, the version of the respondent cannot be thrown away. It deserves acceptance at least to the extent that he was made to function on that post.

24. The Tribunal, therefore, was not unjustified in holding that the conduct of the petitioners required scrutiny under the MRTU and PULP Act. If an employee is made to discharge duties of higher nature continuously for long duration and is thereafter denied all corresponding benefit, such action may assume character of unfair labour practice.

25. The respondent has complained of favouritism shown towards Mr. Lad and Mr. Surve. It is true that the entire comparative service record of those persons is not before this Court. Therefore, every allegation of discrimination cannot be accepted completely. Yet the plea cannot be said to be baseless. Some documents indicate that others were treated as DRK and the respondent was also functioning in that line of work. Where differential treatment appears on surface, burden lies heavily on public employer to explain reasons. No convincing explanation has been shown from the material on record.

26. The later communication dated 3 June 2006, by which concerned officers were instructed not to obtain work from the respondent as DRK, is itself a revealing circumstance. Such direction indicates that prior thereto he was in fact being asked to function as DRK. Otherwise, there would be no occasion to issue a direction discontinuing such work. Thus, the petitioners' own later conduct supports the respondent's earlier case. If the administration desired to withdraw the arrangement, it was expected to act consistently. Instead, a sudden reversal after taking work for years cannot be ignored by the Court.

27. The respondent may have been made to perform duties of Death Registration Karkoon, but that circumstance does not mean that he stood promoted to the post. In service law, duties and status are not always identical.

28. The law does not permit a Court to create promotion where none was granted by competent authority and where prescribed procedure has not been shown to be followed. Therefore, the respondent cannot claim declaration of promotion solely because he performed functions of the higher post. The claim for regularisation, if understood deemed promotion with seniority, travels beyond what the record can sustain.

29. To that extent, the Industrial Court appears to have gone too far if it directed regularisation as though the respondent had acquired right to the higher post. No such vested right emerges merely from performance of duties. The evidence proves assignment of work. It does not prove lawful appointment.

30. The petitioners cannot contend that because there was no promotion, they were free to use the respondent for higher responsibilities and still pay him only as Cemetery Attendant for nearly six years or thereabout.

31. The Corporation is a public employer. It is expected to act with fairness. If it makes an employee discharge higher duties for long period, then it cannot deny consequence of that work by later taking shelter behind plea of clerical mistake.

32. The respondent's actual work, his designation shown in office papers, the payslips, the receipts signed in that capacity, and the admissions in cross-examination all point in the same direction. Thus, the respondent has succeeded at least in establishing that for the relevant period he was treated as DRK and was made to work accordingly. That circumstance cannot be ignored while considering justice of the matter. The conclusion therefore lies between the two extremes: no automatic promotion, but no denial of consequences for higher duties actually taken.

33. Consequently, the writ petition deserves only partial success. The finding of the Industrial Court that the petitioners indulged in unfair labour practice, to the extent it rests on the respondent being made to discharge the duties of DRK and thereafter being denied the corresponding benefit, is maintained. The direction for regularisation as a substantive DRK stands modified and shall not be construed as creating permanent appointment dehors the service rules. The petitioners shall extend to the respondent the monetary benefits and consequential service advantages which are

legally payable for the period during which he was made to discharge the duties of Death Registration Karkoon, in accordance with law and on the basis of the service record.

34. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The writ petition is partly allowed;
- (ii) The judgment and order dated 26 April 2012 passed by the Industrial Court, Mumbai in Complaint (ULP) No.49 of 2008 is modified to the extent indicated herein below;
- (iii) The finding recorded by the Industrial Court that the petitioners engaged in unfair labour practice, insofar as the respondent was continuously made to discharge duties of the post of Death Registration Karkoon and was thereafter denied corresponding service benefits, is maintained;
- (iv) The direction issued by the Industrial Court regularising the respondent on the post of Death Registration Karkoon with effect from 16 June 2000 is quashed and set aside;
- (v) It is declared that the respondent shall not be treated as substantively promoted or regularly appointed to the post of Death Registration Karkoon in absence of appointment made in accordance with the applicable service rules and prescribed procedure;
- (vi) However, the respondent shall be entitled to monetary benefits, including difference of wages and such consequential

service benefits as are legally admissible, for the period during which he was in fact made to discharge duties of Death Registration Karkoon, upon verification of the official service record;

(vii) The petitioners shall compute the aforesaid monetary and consequential benefits within a period of twelve weeks from the date of receipt of this order and shall release the payable amount to the respondent within a further period of eight weeks thereafter;

(viii) In case any dispute arises regarding the exact period during which the respondent discharged duties of Death Registration Karkoon, the petitioners shall determine the same on the basis of muster rolls, pay records, office memoranda, attendance registers and other contemporaneous record, after giving opportunity of hearing to the respondent;

(ix) If the amount so determined is not paid within the time stipulated above, the same shall carry interest at the rate of 6 percent per annum from the date it became payable till realization;

(x) Rule is made partly absolute in the above terms;

(xi) There shall be no order as to costs.

35. At this stage, learned Advocate for the Corporation sought stay of this judgment. However, for the reasons recorded in this judgment, request for stay stands rejected.

(AMIT BORKAR, J.)