



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5228 OF 2024

1. Harish s/o Ramesh Shendre,
Aged about 39 years, occupation: Sweeper,
resident of Ram Mandir Chowk,
near Talathi office, tahsil Nagbhid,
district: Chandrapur.
2. Mrs. Rakhi w/o Harish Shendre, nee
Rakhi d/o Bharat Ragade, Aged about 28
years, Occupation : Sweeper, a resident
of Ram Mandir Chowk, near Talathi
office Nagbhid, tahasil Nagbhid,
district: Chandrapur.

... PETITIONERS

...VERSUS...

1. State of Maharashtra through
Principal Secretary Social Justice And
Special Assistance Department,
Mantralaya, Mumbai-32
2. The Divisional Commissioner, Nagpur
Division, Nagpur and Regional Director
of Municipal Administration, Nagpur
division, Nagpur
3. Collector, Chandrapur
4. Municipal Council, Bramhapuri through
its Administrator/Chief Officer,
Bramhapuri 44/206, Dist Chandrapur
5. Chief Officer, Municipal Council,
Bramhapuri 44/206, Dist Chandrapur

...RESPONDENTS

Mr. S. Y. Deopujari, Advocate for petitioners
Ms. H. N. Jaipurkar, AGP for respondent nos. 1 to 3/State
Mr. R. J. Kankale, Advocate for respondent nos. 5 and 5.

**CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

RESERVED ON : 25th FEBRUARY, 2026.
PRONOUNCED ON : 07th MARCH, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. **Rule.** Rule is made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.
2. The petition takes exception to the order / communication dated 27.02.2024, addressed by the respondent no. 5 to the respondent no. 3, and prays for quashing and setting aside the same. The petition further seeks a declaration that the petitioner no. 2 has validly made a recommendation of the petitioner no. 1 as per the communication dated 13.11.2023, for his absorption/appointment on the establishment of respondent no. 4 in view of provisions of Government Resolution dated 24.02.2023.

3. Facts emerging from the petition are as under:-

4. The Petitioners are husband and wife. Petitioner no. 2 is the real sister of one Shani Bharat Ragade, who was in service of the respondent no. 4 Municipal Council as a Sweeper (Safai Kamgar) as a permanent employee. On 11.02.2019, the said brother of the petitioner no. 2 expired at Bramhapuri. The said brother was unmarried at the time of his death. Thereafter, as the petitioner no. 2 was the only surviving legal heir of the said deceased brother, she applied to the Civil Judge, Junior Division for Legal Heirship Certificate, which was accordingly granted to her on 29.07.2021.

5. On 24.02.2023, the State Government pursuant to the recommendations of the Lad Committee regarding (a Committee the appointment of sweepers by way of succession by appointing their legal heirs from the establishments enumerated therein), issued Government Resolution. As per Clause 3 of the said Government Resolution, certain categories of persons are held to be eligible for the employment by way of inheritance. As per Clause 5.7 of the said Resolution, provision for nomination is made when

such sweeper does not have any eligible legal heir to be appointed in his place.

6. On 13.11.2023, the petitioner no. 2, being the only legal heir of a deceased brother (who was unmarried), requested respondents nos. 3, 4 and 5 to appoint the petitioner no. 1, i.e. her husband, in place of her deceased brother, being her nominee. However, since there was no response to the above mentioned application, the petitioner no. 2 requested for information under the provisions of the Right to Information Act, 2005. In pursuance to the said request, the Public Information Officer by communication dated 27.02.2024 furnished a letter sent by respondent no. 5 to the respondent no. 3 on 22.02.2024 by which the respondent no. 5 has sought clarification from the office of respondent no. 3 regarding appointment of the petitioner no. 1 as a nominee of Shani Bharat Ragade. However, since no steps are taken, the present petition is filed.

7. We have heard Mr. S. Y. Deopujari, learned counsel for the petitioners, and Mr. R.J. Kankale, learned counsel for the

respondents nos. 4 and 5, as also Ms. H.N. Jaipurkar, learned AGP for the respondent nos. 1 to 3.

8. The learned counsel for the petitioner, by taking us through the Government Resolution and the communication submits that the opinion expressed by the respondent no. 5 by communication dated 22.02.2024, is absolutely contrary to the provisions of the Government Resolution dated 24.02.2023. He further submits that that a meaningful reading of Clause 3, with Clause 5.7 would reveal that the right to nominate a person was bestowed upon the legal representative. In the present case, the petitioner no. 2 has validly nominated her husband, i.e., the petitioner no. 1, in terms of Clause 5.7, and therefore, the action of the respondents in not considering the said aspect, vitiates the case.

9. He further submits that the Government Resolution in question, i.e., 24.02.2023, is clear enough to entitle the petitioner no. 2 to nominate the petitioner no. 1 in place of her husband, since she is already serving in another establishment and therefore, as per the said Government Resolution, has a right to nominate a person. It is worthwhile to mention here that the petitioner no. 2 was

appointed on 23.08.2019 and she married on 03.05.2023. It is therefore the submission of the learned counsel for the petitioners that the communication dated 22.02.2024 by the respondent no. 4 – Municipal Council, Bramhapuri does not take into consideration this vital aspect, rendering it erroneous.

10. Per contra, Mr. R. J. Kankale, learned counsel appearing for the respondent nos. 4 and 5 vehemently opposes the submissions canvassed by the learned counsel for the petitioners. By taking us through the reply filed by him opposing the petition, he submits that Clause 3 of the Government Resolution dated 24.02.2023 spells out the list of persons who are eligible for appointment in case of deceased employee. In the instant case, the real sister is claiming appointment on the post of Sweeper for her husband, i.e., the petitioner no. 2. He submits that the said sister, i.e., the petitioner no. 2 is already working as Sweeper in Primary Health Center, Mandva, Tq. Korpana, Dist. Chandrapur and therefore, the case does not fall under Clause 3 and more particularly Clause 3.5 of the said GR. It is his further submission that once sister gets married, she loses the membership with the family of her father and inherit the family of her husband.

11. It is therefore his submission that the action of the respondent nos. 3 and 4 is perfectly valid as the object of compassionate appointment, as also the Government Resolution dated 24.02.2023, is to provide immediate succor to the family of the deceased employee. In the present case, admittedly the petitioner no. 2 is employed as stated above and therefore her husband cannot be provided any employment taking resort to the clause of nomination. He therefore pays for dismissal of the petition.

12. We have appreciated the contentions canvassed by the learned counsels for the respective parties and also gone through the Government Resolution in question.

13. The date of death, i.e., 11.02.2019, of the brother of the petitioner no. 2, her subsequent application on 29.07.2021 and her marriage on 03.05.2023 are not disputed. Thus, the petitioner no. 2 on the date of death of the deceased employee on 11.02.2019 was not in any employment since her date of appointment is 23.08.2019. Thus, at the time of death she was eligible in terms of the Government Resolution dated 24.02.2023. In light of these

facts, if clause 3 of the said Government Resolution is perused minutely, admittedly the petitioner no. 2 falls in clause 3.5 being real sister of the deceased employee. However, an exception to clause 3.5 is carved out in clause 3.7. In case of unavailability of any legal heir, a person who is nominated can be given an appointment. In the present case, admittedly the deceased employee has not nominated anybody. Thereafter, a further contingency in the nature of an exception is carved out in clause 5.7 which states that if the Sweeper expires before his legal heir gets an appointment, there would not be any obstruction in his succession. Furthermore, it also states that the consent letter given by the deceased employee before his death would be valid and a person who has been nominated or his legal representative as mentioned in the said consent letter would be given appointment. It further contemplates that if there is no nomination by the deceased employee, then in those special cases, the nomination can be done by his husband or wife. It further states that if husband or wife is not alive, the right of nomination would be to his family. A conjunctive reading of these clauses in the Government Resolution in the backdrop of the object of the same would reveal that certain exceptions have been carved out in the

said clauses which do away with the normal concept of compassionate appointment.

14. It is true that the object of compassionate appointment is to provide immediate financial relief to the family of the deceased employee as has been stated by the learned counsel for the respondent nos. 3 and 4 but in the present case, certain special circumstances have been carved out. Admittedly, as per clause 3.5, the petitioner no. 2 was entitled for getting employment but as per clause 5.7, she has a right to nominate a person of her choice in view of the fact that the deceased employee has not nominated anybody. Furthermore, there is no embargo in the said government resolution which prohibits a person from the family of the deceased employee who is otherwise eligible as per Clause 3 to nominate any person of his choice. Thus, in our view, the conclusion reached by the respondents nos. 4 and 5 regarding the petitioner no. 1 being not eligible is incorrect. As far as the argument of the learned counsel for the respondents nos. 4 and 5 regarding the sister losing all rights in the family of her father the same is misconceived since even according to the Hindu Succession Act, 1956, daughter is class-I heir and is now also a coparcener in view of the amendment

to the said Act. Thus, the said argument apart from being fallacious is misplaced.

15. We are therefore of the considered opinion that the petitioner no. 1 should have been considered as a nominated candidate by the petitioner No. 2 in place of the deceased Shani Bharat Ragade. Thus, the action of the respondents nos. 4 and 5 in our view is erroneous and contrary to the object and purport of the Government Resolution mentioned above. We therefore pass, the following order:-

ORDER

- i) Writ Petition is partly allowed.
- ii) It is declared that the impugned communication dated 22.02.2024 addressed by the respondent no. 5 to the respondent no. 3 is illegal and it is therefore quashed and set aside.
- iii) It is also declared that the petitioner no. 2 has validly made a recommendation of the petitioner no. 1 as per communication dated 13.11.2023 for his absorption/appointment on the establishment of respondent no. 4.

iv) We hereby direct the respondent nos. 4 and 5 to consider the said nomination in terms of provisions of the Government Resolution dated 24.02.2023 and the observations in this judgment within four weeks from the date of this order.

v) Rule is made absolute, Writ Petition is disposed of in above terms.

(NANDESH S. DESHPANDE, J.)

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

Shubham