



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

WRIT PETITION No.1617 OF 2025

Ankit s/o. Sunil Usarbarse,
Aged about 29 years,
Occ : Daily Wager,
R/o. Plot No.279, Bhagat Colony,
Ganesh Nagar, Nagpur. : PETITIONER

...**VERSUS**...

Nagpur Municipal Council,
Through its Additional Commissioner,
Nagpur, Maharashtra. : RESPONDENT

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Mr. R.V. Gahilot, Advocate for Petitioner.
Mr. Abhay Sambre, Advocate for Respondent.

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

RESERVED ON : **15th APRIL, 2026.**

PRONOUNCED ON : **08th MAY, 2026.**

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

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. The present petition challenges order dated 5th March, 2024 and further order dated 23.1.2025 passed by the respondent thereby rejecting the application for grant of compassionate employment to the petitioner in place of his deceased father.

3. Facts as can be seen from the petition are as under :

The father of the petitioner, namely, Sunil Usarbarse was working with the Nagpur Municipal Corporation as a Lorry Driver and he expired on 7.1.2023 during the course of his employment. He left behind his wife Smt. Anita Sunil Usarbarse and two daughters Ku. Snehal and Sau. Kajal, as daughters and the petitioner as a son. It is stated in the petition that the relations between the father and mother of the petitioner were not cordial and in view of the same, both were started residing separately since the year 2015. It was mutually decided between them that the father of the petitioner i.e. late Sunil would take care of all the three children and mother will not bear any financial responsibility of any of the children. Furthermore, it is stated that in the year 2020 just to put the arrangement of living separately into writing, father of petitioner and his mother noted the terms of mutual separation on a stamp paper. As per the terms of the said agreement it was specifically mentioned that the father would continue to take care of the children and the mother will not bear any financial responsibility.

4. In the backdrop of these facts, the father of the petitioner expired on 7.1.2023 and an application was made by the petitioner on 2nd February, 2023 for granting him employment on

compassionate basis in place of his father. Along with the said application, he submitted various documents such as school leaving certificate, caste certificate, affidavit of mother and sisters of the petitioner having no objection for the proposed employment of the petitioner.

5. Thereafter, a Committee was constituted by the respondent for considering the application of petitioner on 6.2.2024 and vide letter dated 5th March, 2024 it was communicated that as his mother is already serving with the respondent Corporation on the post of Safai Kamgar and she is drawing salary of Rs.29,730/-, and further due to the fact that the financial condition of the petitioner is not poor therefore employment on compassionate basis cannot be granted to him.

6. Thereafter, another application was made by the petitioner on 7.10.2024 clarifying that mother of the petitioner and his father were living separately since the year 2015 and a mutual separation agreement was executed between the parties. It was further clarified in the said application that the petitioner and his mother are not joint in mess and therefore the fact that the said mother is earning salary is not relevant. It was therefore prayed for reconsideration of the application made by the petitioner.

7. In the backdrop of these facts on 23.1.2025 application

of the petitioner for grant of compassionate appointment came to be rejected on a ground that the mutual separation agreement is not notarized and the affidavit is false. It is this order which is challenged in the present petition on the various grounds as raised in the petition.

8. We have heard Mr. R.V. Gahilot, learned counsel for the petitioner and Mr. Abhay Samre, learned counsel for the respondent.

9. Mr. R.V. Gahilot, learned counsel for the petitioner by taking us through the record of the matter submits that the impugned orders are passed without appreciation of the fact that the father and mother of the petitioner were living separately since 2015 and therefore there is no question of the petitioner having some financial support from the said mother. He further submits that a mutual separation agreement was executed on 27.3.2020 wherein it is clearly stated that the said parents are living separately since 2015. He, therefore, submits that the orders are not sustainable in law. He further submits that admittedly the mother and sisters of the petitioner had given no objection for granting compassionate appointment to the petitioner and therefore there was no impediment for granting the same. He, therefore prays for allowing the petition.

10. Per contra Mr. Abhay Samre, learned counsel appearing for the respondent Corporation submits that a deeper perusal of the affidavit would clearly demonstrate that the address of the petitioner and his mother and sister are shown to be same i.e. Plot No.269, Ganesh Nagar, Bhagat Colony, Post Hanuman Nagar, Nagpur 440 009. He further submits that as can be seen from the alleged mutual separation deed the stamp paper is shown to be purchased in the month of March 2020 when there was a national lockdown due to the onset of COVID-19. He also submits that the statement of the witnesses came to be recorded by the Corporation Officers wherein it was found that they are residing in the same area. He also submits that the story of mutual separation was not stated in the first application and it was only in the subsequent application that the said story has been put forth. He therefore submits that the theory is doubtful and therefore the Corporation Authorities were right in rejecting the application for compassionate appointment.

11. We have perused the impugned order and have gone through the original record produced by the counsel for the respondent. The learned counsel for the petitioner places reliance on a Government Resolution dated 21st September, 2017 more particularly clause 5(३) thereof. The said clause contemplates that

if a relative of the deceased employee is already in employment but is not giving financial support to the applicants, then extra care and caution has to be taken by the concerned officers looking to the financial condition of the applicant so that the facility of compassionate appointment should not be misused. In doing so, the concerned officers should take into consideration the salary or the pension, the number of persons in the family and the physical capacity of the said persons. The learned counsel by taking recourse to the said clause states that nothing of such sort has been done and the authorities have completely ignored this provision.

12. It is an admitted fact on record that the mother of the petitioner is serving with the respondent Corporation and is earning salary as applicable to her. On a deeper perusal of the agreement in question it is revealed that the stamp paper on which the said agreement is executed is purchased in the month of March 2020 when admittedly the country was in a complete lockdown due to the onset of COVID-19. Furthermore, the said document is neither notarized nor registered. We, therefore, cannot persuade ourselves as to whether the said document by itself can be a pointer to the fact that the parties to the said document were residing separately. In our view, the said document cannot be relied upon due to the deficiencies as stated by us supra. Furthermore, the affidavits filed

by the parties would also reveal that the same address of Plot No.269, Ganesh Nagar, Bhagat Colony, Nagpur is given by the mother and the sisters of the petitioner.

13. In that view of the matter, there are certain disputed questions of facts which we cannot investigate under Article 226 of the Constitution of India. However, as can be seen from the record a fact finding inquiry has been undertaken by the respondent Corporation and a subjective to satisfaction is reached by them that the petitioner is not eligible for grant of employment on compassionate ground. The said fact finding has been done on the basis of material on record and conclusions reached in pursuance thereto cannot be said to be perverse in view of the supporting documents. We, therefore, find that the petition is without any merit and deserves rejection.

14. The petition is accordingly rejected.

15. Rule is discharged.

(NANDESH S. DESHPANDE, J.)

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