

(2019) 12 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 9334 Of 2017

Mahek

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Maharashtra Municipal Councils Nagarpanchayats And Industrial Township Act, 1965 —
Section 76(1)(2), 76(1), 76(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 BOM CK 0067

Hon'ble Judges : Sunil P. Deshmukh, J; Vibha Kankanwadi, J

Bench : Division Bench

Advocate : VG Salgare, SN Kendre, SB Ghatol Patil

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

1. Petitioner is son of deceased Laxman Narsayya Pusollu, who died in harness in service with Respondent No.5 - Municipal Council, Hadgaon on 20.2.2016. Deceased Laxman was initially a daily wage earner on the post of Kamathi in Sanitary Division of Respondent No.5 from 17.2.1992 to 30.10.2001. Thereafter, he was appointed on the sanctioned regular post of Class-IV employee in regular pay-scale of 5th Pay Commission by Respondent No.5. The said post was converted/recreated under the provisions of Section 76(1)(2) of Maharashtra Municipal Councils, Nagarpanchayats and Industrial Township Act, 1965 (herein after referred as MM Act). The appointment of Laxman on the regular post was from 1.11.2001 by order dated 23.10.2001 issued by Respondent No.3 - Divisional Commissioner, Aurangabad Division, Aurangabad. Thereafter Laxman was confirmed as Class-IV employee and he was awarded time-bound pay-scale in the promotional grade after completion of 12 years of service on 1.11.2013. The order of fixation of pay after grant of time-bound pay-scale has been passed by Respondent No.5. Due to sudden death of Laxman the only bread-earner of

the family has gone and the family, consisting of the petitioner, his mother and sister, are in financial difficulties. He is the elder son. The petitioner and his family members have got legal heirship certificate issued by the competent court, i.e. Civil Judge, Junior Division, Hadgaon on 4.5.2016. After obtaining the said certificate, the petitioner made an application on 19.7.2016 to Respondent No.5 for getting an appointment on compassionate ground. Similar application was again made on 20.2.2017 with Respondent No.5 and both the applications were within the period of limitation of one year from the death of Laxman. The petitioner contends that he is possessing qualifications of HSC, Certificate in Marathi typewriting, English typewriting, Certificate in Advance course in Software and Hardware Engineering and MS-CIT. He belongs to caste of Zinga Bhoi, which is classified as Nomadic Tribe (NT). By stating all these facts when he had made applications to Respondent No.5 for an appointment on compassionate ground, to overcome the financial emergency of the family, it is not being considered. The petitioner is also relying on various Government Resolutions in order to support his claim. By virtue of communication, Respondent No.5 issued a letter dated 19.4.2017 informing the mother of the petitioner that since the petitioner was appointed as Daily Wage employee on 17.2.1992 and later on appointed on the post of Class-IV, the post on which he was appointed was abolished on the death of the employee. It was stated that it would fall vacant due to retirement or for any other reason of the concerned employee and since the post was created under the MM Act, there is prohibition for filling such post in future. The petitioner says that the said letter is not sustainable in the eye of law as Laxman was regularized and confirmed in the created post. He has, therefore, invoked the constitutional powers of this court under Article 226 of the Constitution of India, praying for issuance of appropriate writ or direction to Respondent Nos. 1 & 2 to direct respondent No.5 to appoint him on compassionate ground on any post of Class-III or Class-IV post with Respondent No.5.

2. Affidavit in reply has been filed by one Parag Ramchandra Wankhede, the District Administrative Officer, Nanded, on behalf of Respondent Nos. 4 and 5. It has been stated that Class-III and Class-IV Daily Wage labour worker, prior to 10.3.1993 were absorbed in regular service under One-time Special case, subject to condition laid under Section 76(1) and (2) of the MM Act by the office of Divisional Commissioner. Deceased Laxman was working and later on absorbed subject to certain terms and conditions as imposed by order dated 23.10.2009. It is stated that as per the appointment order, when post become vacant, then such post cannot be filled by compassionate appointment. In clear terms, it is stated that the petitioner is not entitled to get appointment on compassionate ground.

3. Further affidavit in reply has been filed by Gangadhar Shankarrao Pente, Chief Officer, Municipal Council, Hadgaon, Tq. Hadgaon District Nanded on behalf of Respondent No.5, reiterating almost the same contentions as raised on behalf of Respondent Nos. 3 & 4.

4. Rejoinder has been filed by the petitioner to the reply filed by Respondent No.5 and by taking help of Government Resolutions from 26.11.1994 to 3.5.2017, he has reiterated the same grounds, which he has raised in the petition.

5. Heard learned counsel and learned AGP for the respective parties.

6. Learned Advocate for the petitioner reiterated the facts of the case and has drawn our attention to the order passed by the Divisional Commissioner, Aurangabad on 23.10.2001; by Chief Officer, Municipal Council, Hadgaon dated 31.10.2001 and 6.1.2014 whereby the services of the deceased Laxman were regularized as he was a Daily Wage earner since prior to 10th March, 1993. It was submitted that at the time of death of Laxman was class-IV employee of Respondent No.5. he has relied on Government Resolution dated 26.10.1994, which was in respect of the scheme for compassionate appointments to the dependents of deceased Government servants. Further, Government Resolution dated 20.5.2015 issuing further clarifications regarding procedure to be adopted by the dependents as well as by the Departments in which deceased would have been serving. He also pointed out the latest Government Resolution dated 11.7.2019, by which the scheme for compassionate appointments made applicable to the legal representatives/dependents of the employees, who are working in Municipal Corporations, Municipal Councils etc. It has been specifically mentioned that whoever was the employee working on Daily Wage with Municipal Councils prior to 27.3.2000 and who has been absorbed in the service then such scheme for appointment of the dependents on compassionate ground is made applicable. On the basis of these Government Resolutions and the undisputed facts that Laxman expired in 2016 and prior to the said appointed date in the Government Resolution dated 11.7.2019, he was working as Daily Wage earner, the petitioner is entitled to get appointment on compassionate ground.

7. Learned Advocate for the petitioner relied on the decision in the case of Shankar Vs. State of Maharashtra and Anr. - 2009 (6) ALL MR 284, wherein it has been held by the Division bench of this court, Bench at Nagpur, that there should be proximity between death and appointment to be made on compassionate ground. Such appointment predominantly to be made for enabling the families of deceased to tide over financial constraints occurred due to death of bread-winner of the family and based on these observations, it was submitted that the purpose behind the scheme for appointment on compassionate ground is required to be considered. Further reliance has been placed on Pankaj Shridhar Damle Vs. Bank of Maharashtra and Anr. - 2002 (4) Mh.LJ. 801, wherein it has been held that the request of the dependent of the deceased for compassionate appointment, cannot be rejected arbitrarily.

8. Learned Advocate appearing for Respondent No.5 vehemently submitted in support of the affidavit in reply and pointed out that when the absorption was as a special case, that too with a condition that in case of the post fallen vacant after retirement of such person or on any other ground, then such post would get

abolished. When this specific condition was imposed and that with the death of Laxman, his post as 'Kamathi' has been abolished, such post cannot be created under compassionate appointment. He, therefore, prayed for rejection of the petition.

9. The facts of the case before us are not much disputed. Respondent No.5 is not denying the fact that since prior to 10th March, 1993 deceased Laxman was serving as Daily Wage earner with Respondent No.5. His name was included in the list, which was prepared by the Divisional Commissioner, Aurangabad dated 23.10.2001 and then his post has been converted and new post as Kamathi were created in which he was absorbed. Thereafter by order dated 31.10.2001, Respondent No.5 passed orders at the end of Municipal Council in pursuance to the order passed by the Divisional Commissioner regarding absorption and sanction. Thereafter by order dated 6.1.2014, Laxman has been granted the higher pay-scale after the completion of 12 years of service. It is further not in dispute that when Laxman expired, he was class-IV employee of Respondent No.4. Now, question arises as to whether after his death, which appears to be untimely, whether his dependents can seek appointment on compassionate ground ?. The Government Resolution regarding compassionate appointment was passed on 23rd April, 1976. Thereafter, it appears that it has been modified from time to time. Revised scheme was promulgated on 26.10.1994. It appears that thereafter again, said revised scheme also underwent many changes and procedure was prescribed as to how the Departments should entertain the applications as well as the dependents to make applications in prescribed form. It provided for the procedure regarding documents to be attached along with the applications. At this stage, the observations made by the Apex Court in para 8 of its judgment in the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar - (2019) 3 SCC 653, are considered. The said observations, read thus, -

"8. Paragraph 4 of the policy stipulates that an appointment on compassionate grounds can be made only to the lowest rung of Class-III and Class-IV posts carrying a prescribed pay scale. Paragraph 8 of the Policy stipulates that requests for the grant of employment assistance should be received within three years of the death of the government servant. However, where none of the children of the deceased government servant had attained majority at the time of death, the time limit for receipt of a request for appointment will be postponed to the attainment of the age of twenty one years by the eldest son or unmarried daughter. Paragraph 8 is in the following terms:

"8) Belated requests for compassionate appointments: Requests for grant of employment assistance should be received in the Deptt. concerned within three years of the death of the Government servant. In case where none of the sons/daughters of the deceased Government servant attain majority (age of 18 years) at the time of the death of the Government servant, the time limit for receipt of request for employment assistance in department concerned will be attainment of age of 21 years by the eldest son/un-married daughter. No relaxation will be

allowed in entertaining requests beyond the above age except in the case of sons/ un-married daughter/widow of deceased Govt. servants belonging to the difficult areas as laid down in the Transfer Policy."

10. In view of the aforesaid legal position, definitely the petitioner cannot seek appointment on compassionate ground as of right. But, since there is a policy, then he can claim benefit of the said policy. The recent Government Resolution dated 11th July, 2019 was brought into force with specific observations. It was stated that when Government Resolution dated 21.9.2017 was issued after consolidating or earlier Government Resolutions in respect of compassionate appointments, it was limited to the Government Servants only. It was stated that those provisions will not be applicable to District Councils/Municipal Councils Municipal Corporations/Corporations/Commercial establishments etc. In that respect, separate decision from the concerned department was made necessary and accordingly, City Development Department has issued the said Government Resolution dated 11.7.2019. The said scheme was made applicable to the employees of Nagar Parishad or Nagar panchayat, who were serving on daily wage basis since prior to 27.3.2000. The relevant portion of the said Government Resolution is reproduced here for the sake of convenience, -

"(अ) अनुकंपा नियुक्ती योजनेचा लाभ नगरपरिषद/ नगरपंचायतींमधील खालील प्रकारच्या कर्मचा-यांच्या पात्र कुटुंबियांना लागू राहील :-

1. नगरपरिषद/नगरपंचायतीतील आस्थापनेवर काम करणारे स्थायी/अस्थायी कर्मचारी.
2. ज्या कर्मचा-यांची नगरपरिषद/ नगरपंचायत सेवेत गट-क किंवा गट-ड मध्ये विहीतरित्या नियुक्ती करण्यात आलेली आहे व ते नगरपरिषद/नगरपंचायतीच्या आस्थापना सूचीवर आहेत.
- 3 जे कर्मचारी नगरपरिषद/नगरपंचायत सेवेत रोजंदारीने दि 27.03.2000 पूर्वी कार्यरत होते व त्यांना शासन नगरपरिषद प्रशासन संचालनालय/ विभागीय आयुक्त यांच्याकडील आदेशाने सेवेत सामावून घेवून नियुक्ती देण्यांत आली आहे, असे कर्मचारी -"

11. Thus, it is very much clear that now the specific scheme of getting an appointment on compassionate ground is made available to the dependents of those employees, who were working on Daily Wage basis with Municipal Council prior to 27.3.2000 and who have been absorbed in the service of such Municipal Council by order of Divisional Commissioner. Respondent No.5 now again say that the said scheme will not be applicable to the present petitioner on the ground that Government Resolution is subsequent to the death of Laxman. The wording of the Government Resolution above said, makes it clear that it is retroactive and retrospective in operation.

12. The petitioner is fulfilling all the criterion as he had approached Respondent No.5 within a period of one year from the date of death of Laxman. He is the only male member of the family now who is in need of employment. In Jagdishprasad Vs. State of Bihar & Anr.- (1996) 1 SCC 301, it is observed that, "the very object of appointment of a dependent of the deceased employees, who

die in harness is to relieve unexpected immediate hardship and distress caused to family by sudden demise of the earning member of the family." This principle has been accepted in other catena of judgments by the Apex Court as well as of this court and other High Courts, including two decisions relied upon by the learned Advocate for the petitioner.

13. The only objection, it appears, Respondent Nos.3 to 5 are having is in the order passed on 23.10.2001 passed by Divisional Commissioner, Aurangabad, following term was imposed, which reads thus, -

"1- त्या आदेशान्वये रोजंदारीवरील कर्मचा-यांना विशिष्ट परिस्थितीत एकावेळेची विशेष बाब म्हणून सामावून घेण्यास मान्यता दिलेली आहे. त्या पदावरील कर्मचा-यांच्या सेवानिवृत्ती मुळे अथवा अन्य कोणत्याही कारणास्तव ही पदे रिक्त झाल्यास ती पदे आपोआप व्यपगत होतील व भविष्यात ही पदे नगर परिषदेला भरता येणार नाहीत. परंतु जर या आदेशाची अवहेलना करून अशी पदे भरली गेल्यास अशा नियुक्तीवर होणारा खर्च नियुक्ती प्राधिकारी यांच्या कडून (मलकापूर नगरपरिषद जिल्हा बुलढाणा प्रकरणी मा. उच्च न्यायालय नागपूर खंडपीठ याचिका क्र. 640/97 मधील न्यायालयीन निर्णयानुसार वसूल केला जाईल याची नोंद घेण्यात यावी ही पदे भरली जातात अगर कसे या बाबतचा आढावा नगर परिषदेची वार्षिक तपासणी करण्यास पथक व लेखा परिक्षक यांनी आपल्या तपासणीच्या वेळी घ्यावयाचा आहे. "

14. On the basis of the above term, it was then said that after death of Laxman, his post as Kamathi has lapsed and it cannot be created for the purpose of compassionate appointment. It appears that, Respondent No.3 to 5 are under some mistaken advice, the purpose for which the compassionate appointment is required to be made, as stated above, has not been considered by them. Getting compassionate appointment cannot be restricted to the appointment to the same post. It will have to be inferred that it is in the same category. In the instant case, deceased Laxman was class-IV employee and, therefore, taking into consideration the educational qualifications of the petitioner, he can definitely to be considered for a suitable post in class-IV category. Therefore, there is absolutely no substance in the resistance offered by Respondent Nos. 3 to 5.

15. Taking into consideration the fact that the family needs financial assistance and in view of the scheme, there is a right created in favour of the dependent of deceased Laxman to be considered for the job in the category, then, this court is of the opinion that the powers under Article 226 of Constitution of India need to be exercised in favour of the petitioner. It will have to be clarified that rest of the procedure, that is contemplated as per the scheme or schemes, those are applicable, will have to be followed by Respondent No.5. We, therefore, allow the writ petition in terms of prayer clause (C) of the petition to the extent of post of class-IV after complying the necessary Government Resolutions.