

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2411 OF 2023

Subodh Nayan Lakeshri

...Petitioner

Versus

General Manager
BrihanMumbai Electricity Supply and
Transport Undertaking & Anr.

...Respondents

Ms. Madhavi Tavanandi a/w Mr. Vivek Thakare, Ms. Jagruti Nimbalkar and Mr. Suraj Chakor for the Petitioner.

Mr. Vishal Talsania a/w Mr. Akshay Naik i/by Mr. Sagar Shetty for Respondent No. 1 (BEST Undertaking).

Ms. Pushpa Yadav a/w Mr. Pratik Garde i/by Ms. Komal Punjabi for Respondent No. 2 (BMC).

CORAM : R.I. CHAGLA J.
ADVAIT M. SETHNA, J

Reserved on : 13th March 2026

Pronounced on : 25th March 2026

JUDGMENT : (Per R.I. Chagla, J.)

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1. By this Writ Petition, the Petitioner is seeking quashing and setting aside of the impugned decision communicated vide letter dated 23rd November 2021 (Exh.H to the Petition) passed by the

Respondent No. 1. Further direction is sought against the Respondents directing them to forthwith give employment to the Petitioner on compassionate grounds by considering his case under Administrative Order No. 407 of 2020 dated 8th May 2020 issued by Personnel & Welfare Establishment of Respondent No. 1. Further direction is sought against the Respondents to forthwith give *ex-gratia* compensation by considering the Petitioner's case under the Departmental Notification dated 10th June 2020 issued by the Personnel & Welfare Establishment of Respondent No. 1.

2. The Petitioner's father Late Mr. Nayan Vasant Lakeshri was working as a Bus Conductor with Respondent No. 1 – Brihan Mumbai Electricity Supply and Transport Undertaking ("**BEST**").

3. The Government declared Covid 19 as pandemic under the Epidemic Diseases Act, 1897 and Disaster Management Act, 2005 on 23rd March 2020 and imposed lockdown and restrictions with effect from 23rd March 2020.

4. During Covid 19, the Petitioner's father was regularly reporting to work and rendering his services.

5. The Petitioner's father was on duty on 4th June 2020 and during the working hours, he had informed his wife that he experienced weakness and body ache. He visited the doctor on the same day and the doctor examined him from a distance due to Covid 19 symptoms and he was prescribed medicines.

6. Due to suspected covid case, the Petitioner's father was admitted to Seven Hills Hospital by afternoon of 4th June 2020. On 6th June 2020, the Petitioner's father suddenly had a Myocardial Infarction / Heart Attack and was declared dead. As per the Medical Certificate of Cause of Death Report No. 009139 dated 6th June 2020, the provisional cause of death was mentioned as (a) Myocardial Infarction and (b) Suspected Case of Covid 19.

7. In the Post cause of Death Report issued by Seven Hills Post-Mortem Center, a handwritten statement mentioned *"Post Mortem not done. Cause of death given on the basis of inquest, history, external examination as per Circular No. DMER/Death Certificate/No. PM/Covid 19/35/2020 dated 6th June 2020."*

8. As per prevailing Standard Operating Procedure (SOP)

due to Covid 19 pandemic, Respondent No. 2 – Brihanmumbai Municipal Corporation (“**BMC**”) cremated the body of the Petitioner’s father without handing over the body to the relatives of the deceased.

9. The Petitioner addressed a letter dated 19th June 2020 to the Assistant Work Manager, BEST requesting them to give him employment on compassionate ground after the death of his father, who was the sole earner of the family.

10. The Petitioner submitted an application in the prescribed format for employment as Clerk on compassionate ground to Respondent No. 1 on 19th July 2020.

11. The Petitioner’s mother addressed a letter dated 22nd July 2020 to the Assistant Work Manager of Respondent No. 1 - BEST to employ the Petitioner on compassionate ground, as the Petitioner’s father was the sole earner of the family.

12. On 23rd November 2021, after more than a year, the Petitioner received a letter from the Senior Manager (M.S.) Employment Department of Respondent No. 1 – BEST rejecting his

application for employment on compassionate grounds. The letter stated that his application was rejected, as RTPCR Test was not conducted on the Petitioner's father and no documents of his medical treatment were available and hence, it was not clear that his death was caused due to Covid 19.

13. The Petitioner being aggrieved by the impugned letter communication dated 23rd November 2021 has filed the present Writ Petition.

14. Ms. Madhavi Tavanandi, the learned Counsel for the Petitioner has submitted that the Petitioner's father had contracted Covid 19 virus during the course of his employment and which is apparent from the Cause of Death Report No.009139 dated 6th June, 2020 of the Medical Team of the Seven Hills Hospital, which had admitted him on 4th June 2020 and which shows the antecedent cause of death as due to Covid. She has also referred to the Admission Form of the Seven Hills Hospital, where under Chief Complaint, the symptom which the Petitioner's father suffered from is mentioned as Dry Cough for 2 days; Breathing Difficulty for 2 days; High Grade Fever for 2 days; Body Ache for 2 days; Loose Motion

for 2 days. The Petitioner's father also had Comorbidities i.e. Diabetes since 8 – 9 years and Hypertension since 8 – 9 years. Further, the SpO2 recorded was 73%. She has submitted that all these are evidence of a classic case of Covid 19, which the Petitioner's father suffered from.

15. Ms. Tavanandi has submitted that the Petitioner's father had put in more than 27 years of service as Bus Conductor and was sole earner in the family of three members comprising of his wife i.e. the Petitioner's mother, who is a housewife and his son i.e. the Petitioner, who is currently pursuing education and a part-time job. She has submitted that considering the cause of his death, the Respondent No.1 ought to have also taken these factors into account in considering the Petitioner's application for compassionate appointment. Further, the Petitioner's father having expired due to Covid, would make the Petitioner eligible for *ex gratia* compensation as per the Notification dated 10th June 2020 issued by the Personnel & Welfare Establishment of Respondent No. 1 – BMC and *ex gratia* compensation ought to have been granted to the Petitioner in the sum of Rs. 50,00,000/- under the said Notification.

16. Ms. Tavanandi has referred to the Respondent No.1 – BMC’s Dean Committee’s communication dated 17th May 2022 which upon referring to the Petitioner’s father having been admitted at Seven Hills Hospital and having expired on 6th June 2020 opines that the X-Ray Reports of the deceased were completely normal and that no RTPCR Test came to be carried out due to which it has been observed that the said death of the Petitioner’s father was not caused due to Covid, as this was not evidenced in any manner whatsoever. She has submitted that this opinion of the Dean’s Committee of Respondent No. 2 – BMC is perverse, considering the fact that this is contrary to the Admission Form and Cause of Death Report of the Seven Hills Hospital adverted to above, wherein the probable cause of the Petitioner’s father’s death is Covid.

17. Ms. Tavanandi has submitted that the standard of proof applicable in a case of this nature, viz. death due to Covid cannot be “*proof beyond reasonable doubt*” but the “*preponderance of probability*” as held by this Court in **Mayuri Krishna Jabare Vs. General Manager, BEST & Anr.**¹. This Court in a similar factual scenario held that the scales would obviously tilt in favour of the

¹ Writ Petition No. 2019 of 2022 order dated November 11, 2022

Petitioner to conclude that the Petitioner's father, in all probability, died of Covid 19. The standard of proof applicable "*is preponderance of probability*" tending to draw an inference that the fact of death of the Petitioner's father due to Covid 19 must be more probable. Further, this Court held that merely because there was no RTPCR Report or adequate medical documentation could not have afforded ground to refuse the benefits flowing from the Government Resolution dated 9th May 2020. It would indeed be inhuman on the part of the Court to refrain from interfering in this case and fold its hands to decline relief to the heirs of the Petitioner's father, who died while answering the call of duty.

18. This Court had accordingly, set aside the impugned order and directed the BEST to sanction and release Rs. 50,00,000/- on account of *ex gratia* compensation to the surviving heirs of the Petitioner's father in equal shares.

19. Ms. Tavanandi has submitted that this decision is squarely applicable in the facts of the present case, and a similar order is required to be passed by this Court.

20. Mr. Vishal Talsania, the learned Counsel for the Respondent No. 1 – BEST has supported the impugned Order. He has submitted that in the said communication dated 17th May, 2022, the Respondent No. 2 – BMC’s Dean’s Committee had opined that the X-Ray Reports of the deceased were completely normal and had observed that there was no RTPCR Test conducted on the Petitioner’s father and hence the death of the deceased was not caused due to Covid 19, as this was not evidenced in any manner whatsoever.

21. Mr. Talsania has referred to the Cause of Death Report of Seven Hills Hospital relied upon by the Petitioner and has submitted that the cause of death is shown as suspected Covid 19, but there is no definite finding that the Petitioner’s father had died due to Covid 19. He has submitted that the decision taken by the Dean’s Committee of the Respondent No. 2 – BMC cannot be faulted in any way, as there was no evidence of the Petitioner’s father having expired due to Covid 19.

22. Mr. Talsania has submitted that the Petitioner was not eligible to qualify for employment on compassionate grounds under the Respondents’ scheme when he failed to establish that the

Petitioner's father had expired due to Covid 19. The Certification of Cause of Death issued by Seven Hills Hospital mentioned his cause of death as "*Myocardial Infarction*" and "*Covid Suspect*".

23. Mr. Talsania has submitted that the Government Resolution dated 29th May 2020 issued by the Finance Department of the Government of Maharashtra had notified that the Ministry of Health & Family Welfare, Government of India has declared insurance shield of Rs. 50,00,000/- to health workers from 28th March 2020 and operative upto 30th September 2020 only. The Circular dated 10th June 2020 contained the requisites therein as to which families of the Officers, who have passed away due to Covid 19 will be given the declared insurance amount. He has submitted that the Respondent No. 2 – BMC Dean's Committee had scrutinized all the medical documents and had found that in the death summary dated 6th June 2020, the swab was not taken and that the cause of death as aforementioned was Myocardial Infarction in a Covid suspect. Thus, the proposal of the Petitioner was not in accordance with Circular dated 10th June 2020 and in particular, Clause 3(v) and (vi) of the said Circular. He has accordingly, submitted that there is no merit in the present Petition and the Petition may be dismissed.

24. Having considered these submissions, it is necessary to refer to the decision of the Division Bench of this Court (Coram : Dipankar Datta CJ and Madhav Jamdar, J) in **Mayuri Krishna Jabare** (supra), which has been relied upon by the Petitioner. In that case as in this case, an objection had been raised by the BEST on the ground that the Committee of Doctors, i.e. Dean's Committee constituted by Respondent No. 2 – BMC did not certify that the Petitioner's father's death was caused by Covid 19. In that case as in the present case, there was a reference of RTPCR Test not having been conducted on the Petitioner's father, when he was alive. The Petitioner in that case too was a Bus Conductor, who had served in the employment of BEST. There was a "*cause of death certificate*" issued by Dr. Metkari of BMC, which clearly suggested that the Petitioner's father had an acute respiratory distress syndrome together with influenza like illness which led to his death. It was on these grounds that the Petitioner's father's case was certified as suspected case of Covid 19 death and certificate was issued as per Circular dated 9th April 2020 of the Government of Maharashtra detailing "*Medical Guidelines for death declaration and procedural methods in diagnosed suspected Covid 19 cases, brought dead cases, unknown and unclaimed bodies, and inquest procedures*".

25. This Court had in the said decision held that the standard of proof applicable in a case of this nature, cannot be “*proof beyond reasonable doubt*” but the “*preponderance of probability*” tending to draw an inference that the fact of death of the Petitioner’s father due to Covid 19 must be more probable. It was held that merely because there was no RTPCR Report or adequate medical documentation could not have afforded a ground to refuse the benefits flowing from the Government Resolution dated 9th May 2020. It would indeed be inhuman on the part of the Court to refrain from interfering in the stated case and fold their hands to decline reliefs to the heirs of the Petitioner’s father, who died while answering the call of duty.

26. We consider it appropriate in the circumstances of the present case to follow the view taken by the Division Bench of this Court in the aforementioned decision. In the present case, the cause of death certificate from Seven Hills Hospital clearly shows the Petitioner’s cause of death as that of Covid as well as Myocardial Infarction. The examination of the Petitioner’s father on 4th June 2020 as borne out from the Admission Form of Seven Hills Hospital shows classic symptoms of Covid 19, viz. Dry Cough; Breathing

Difficulty; High Grade Fever; Body Ache; Loose Motion, this coupled with the Petitioner's father having Comorbidities of Diabetes and Hypertension. It thus can be concluded on "*preponderance of probability*" that the cause of death of the Petitioner's father being that of Covid 19. This is the standard of proof applicable in a case of this nature. Further in the present case, there was no RTPCR Report and/or RTPCR Test having been conducted on the Petitioner's father and as held in the aforementioned decision **Mayuri Krishna Jabare** (supra), the mere fact of there being no RTPCR Report or adequate medical documentation could not have afforded a ground to refuse the benefits flowing from the Government Resolution dated 29th May 2020.

27. Further, the communication of the Dean's Committee of Respondent No. 2 – BMC rejecting the Petitioner's case of his father having expired on account of Covid 19, is a communication which has been addressed over two years after the Petitioner's father had expired. Although it may be contended that it is a follow up response to the Petitioner's application for compassionate appointment, on the face of it only relies upon a X-Ray Report, which is stated to be clear, without making any reference to the examination of the Petitioner's

father on 4th June 2020 by the Doctor of the Seven Hills Hospital which shows the Petitioner's father suffering from classic symptoms of Covid 19 as borne out from the Admission Form. There is also no reference made to the cause of death certificate issued by the Seven Hills Hospital, which suggests that the Petitioner's father's cause of death being that of Covid 19 apart from Myocardial Infarction.

28. We, accordingly, are of the view that the Petitioner has been able to make out a strong case for grant of relief sought for in the Petition. The Petitioner's father has been in service with the Respondent No. 1 – BEST for over a period of 27 years as Bus Conductor and was sole earning member in the family. Respondent No. 1 – BEST was required to grant the application of the Petitioner on compassionate grounds under Administrative Order No. 407 of 2020 dated 8th May 2020 as well as grant *ex-gratia* compensation as per Notification dated 10th June 2020 in view of the fact of the death of the Petitioner's father being due to Covid-19.

29. In that view of the matter, this Writ Petition is allowed. Hence, the following order :-

- (i) The impugned communication dated 23rd November 2021 (Exh.H to the Petition) passed by Respondent No. 1 – BEST is quashed and set aside.
- (ii) The Respondent No. 1 – BEST is directed to give accelerated compassionate employment to the Petitioner by considering his case under Administrative Order No. 407 of 2020 dated 8th May 2020 issued by the Personnel & Welfare Establishment of Respondent No. 1 – BEST.
- (iii) We direct the Respondent No. 1 – BEST to sanction and release Rs. 50,00,000/- (Rupees Fifty Lakh only) on account of *ex gratia* compensation to the surviving heirs of the Petitioner's father by considering his case under the Departmental Notification dated 10th June 2020 issued by the Personnel & Welfare Establishment of Respondent No. 1 – BEST.
- (iv) The release of *ex gratia* compensation and accelerated compassionate appointment by the Respondent No. 1

– BEST shall be made as expeditiously as possible, but not later than 60 days on receipt of authenticated copy of this order.

- (v) The Writ Petition stands allowed in above terms with no order as to costs.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA J.]