

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 244 OF 2018

DIST. : JALNA

Ravi s/o Harichandra Rathod,)
Age. 26 years, Occu. Nil,)
R/o Kakada (Vasaram Tanda),)
Tq. & Dist. Jalna.).. **APPLICANT**

VERSUS

1. The State of Maharashtra,)
Copy to be served upon)
C.P.O., M.A.T.,)
Bench at Aurangabad.)

2. Secretary,)
General Administration)
Department, Mantralaya,)
Mumbai)

3. District Malaria Officer)
Old Kacheri Road, Jalna,)
Dist. Jalna.)

4. Secretary,)
Public Health Department,)
Government of Maharashtra)
Mantralaya, Mumbai – 32.).. **RESPONDENTS**

APPEARANCE :- Shri D.R. Irale Patil, learned Advocate for
the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

**CORAM : JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**

DATE : 10th January, 2019

ORAL - ORDER

(Per : Justice M.T. Joshi, Vice Chairman)

1. Heard Shri D.R. Irale Patil, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. By filing the present Original Application the present applicant is seeking following reliefs :-

“b) The Hon’ble Tribunal may be pleased to pass appropriate order and quash and set aside the G.R. dated 22.08.2005 to the extent of para no. 2 (clause No. 1) or declare as ultra virus and the communication under challenge dated 15.05.2015 issued by respondent no. 2 and restore the original position of scheme before 22.08.2015.

B-1) The Hon’ble Tribunal may be pleased to quash and set aside the G.R. dated 22.8.2015 issued by Respondent No. 2 to the extent of para No. 2 (Clause 1) & declare as ultra virus & similarly quash & set aside the orders under challenge dated 18/4/2012, & dated 15/5/2015 issued by Respondent No. 3, & restore application dated 15/3/12 filed by applicant for the purpose & appointment on compassionate grounds.”

3. The facts on record would show that the father of the present applicant viz. Shri Harichandra Ramchandra Rathod was

working as a Multipurpose Health Worker with the res. no. 3. In the year 2007 father of the present applicant suffered with an accident and, therefore, he was referred to the Medical Board, Aurangabad by the res. no. 3 for medical examination. The Medical Board came to the conclusion that the father of the present applicant has become incapacitated for further service and accordingly he was relieved vide order dtd. 13.8.2009 (Exh. A. 4 page 34). The present applicant seeks appointment on compassionate ground in place of his father.

4. The res. no. 3, however, did not accept the said request of the applicant vide communication dtd. 15.5.2015 (page 57). The res. no. 3 had communicated the present applicant that in view of the provisions of G.R. dtd. 22.8.2005, no compassionate appointment can be granted in such cases, as provision of earlier Government Resolution for grant of appointment on compassionate ground to the dependents of the employees, who were retired on the ground of suffering from cancer, paralysis or accident is taken away by this fresh G.R.. Hence, the applicant is before this Tribunal challenging the said provision of the G.R. dtd. 22.8.2005.

5. Copy of the G.R. dtd. 22.8.2005 is placed on record at page 23. Para 2 of the said G.R. (page 25) would show that earlier

provision regarding considering the cases for compassionate appointment of the dependents of the employees or retired because of disabilities as mentioned in the earlier provision was discontinued and the scheme of appointment on compassionate ground would be applicable only upon death of the employee in harness from Group C and Group – D categories.

6. Learned Advocate for the applicant vehemently submits that provision made by the res. no. 2 in the G.R. dtd. 22.8.2005 is discriminatory. Incapacity of the employee to work further is akin to his death and as he is not able to work in service, the res. no. 1 could not have taken away the concession granted earlier.

7. Learned Advocate for the applicant has placed on record the copy of judgment delivered by Hon'ble Bombay High Court, Aurangabad Bench in **W.P. no. 15196/2017 [The State of Maharashtra Vs. Dattatraya s/o Deoram Parte]** dtd, 1.3.2018, which is taken on record and marked as document 'X' for the purpose of identification. He relies on the ratio laid down by Hon'ble High Court in the said judgment.

On the other hand the learned P.O. submits that appointment on compassionate ground is merely one concession granted by the respondent for the employees or dependents. He

submits that the concession that was granted earlier is merely taken away and as the said concession is withdrawn in all cases it cannot be called as discriminatory. He, therefore, submits that the present O.A. be dismissed.

8. Upon hearing both the sides, in our considered view, the present O.A. cannot be allowed for the following reasons :-

REASONS

It is to be noted that the scheme for compassionate appointment works as concession granted to the dependents of the employees of the State. It is prerogative of the respondent State as to what type of concession shall be given in such matters. Reliance placed by the learned Advocate for the applicant on the judgment of Hon'ble High Court in the case of **The State of Maharashtra Vs. Dattatraya s/o Deoram Parte** (supra) is of no help to the present applicant as that case was based on the provisions of the G.R. dtd. 23.4.1976 and not challenging the G.R. issued later on, which is under challenge in the present matter. Therefore, the said decision is not applicable in the present case.

9. In the circumstances, the present O.A. is dismissed without any order as to costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(M.T. JOSHI)
VICE CHAIRMAN

Place : Aurangabad

Date : 10.1.2019

ARJ-O.A.NO. 244-2018 D.B. (CHALLENGING G.R.)