

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 53 OF 2020
(Subject – Compassionate Appointment (Lad-Page Committee))**

DISTRICT : AURANGABAD

Kailas S/o Kisanrao Sasane,)
Age : 47 years, Occu. : Nil,)
R/o Gaikwad Society, Jatwad Road, Harsool,)
Tq. and Dist. Aurangabad.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Department of Social Justice and)
Special Assistant, Mantralaya, Mumbai.)

2. The Dean,)
The Government Medical College and)
Hospital, Jubilee Park, Aurangabad,)
Tq. and Dist. Aurangabad.)

... **RESPONDENTS**

APPEARANCE : Shri Harish S. Bali, Advocate for the Applicant.

: Shri S.K. Shirse, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **12.04.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order dated 09.12.2019 (Annexure A-7) issued by the respondent No. 2 i.e. the Dean, the Government Medical College and Hospital, Jubilee Park, Aurangabad, thereby denying the claim of the applicant on the post of Sweeper in Class-IV category on compassionate ground based on the Lad-Page Committee recommendations and the relevant G.Rs.

2. The facts in brief giving rise to this application are as follows :-

(a) The applicant has completed Secondary Certificate examination in the year March, 1998 as reflected in his mark list (Annexure A-1 collectively). The maternal grandmother of the applicant viz. Rahibai Bhivaji Nikalje was working with the respondent No. 2 as सफाई कर्मचारी / Sweeper and retired on 30.09.2005 on superannuation as being revealed from the order dated 30.09.2005 (part of Annexure A-1 collectively at page No. 15 of the paper book) issued by the respondent No. 2. The applicant and his

maternal grandmother belong to Scheduled Caste reserve category as being revealed in Caste Certificate dated 06.12.1998 (part of Annexure A-1 collectively at page No. 13 of the paper book).

(b) It is further stated that in the year 1972 and 1973, the Government of Maharashtra established committee under the Chairmanship of Hon'ble Justice Lad and Shri V.S. Page respectively for consideration of giving opportunity to the legal heirs of the Class-IV employees i.e. Safai Kamgar / Sweeper under the State Government. Consequent to the said Lad-Page Committee recommendations, various G.Rs. were issued by the State Government from 1979 to 2017. Amongst those G.Rs., latest G.Rs. are dated 10.11.2015 (Annexure A-2) and 11.03.2016 and 07.12.2017 (Annexure A-3 collectively). It is further stated that after considering the abovesaid G.Rs., the respondent No. 2 issued appointment on compassionate ground under the said Scheme of Lad-Page Committee recommendations to Amol S/o Ramesh Ahire, Akash S/o Satish Narwade and Vrunda d/o Govind Sarpate (Annexure A-4 collectively).

(c) In the circumstances as above, it is the case of the applicant that after his maternal grandmother retirement on superannuation from the employment with the respondent No. 2 as सफाई कर्मचारी/Sweeper on 30.09.2005, the applicant made application dated 02.12.2015 (part of Annexure A-5 collectively). In order to pursue the said claim, the applicant and his maternal grandmother made representation in writing (Annexure A-5 collectively) seeking said compassionate appointment by completing all formalities.

(d) It is further stated that though the applicant was entitled for said appointment, he was not given the same. The applicant, therefore, filed W.P. No. 12252/2019 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad seeking direction to the respondent No. 2 to consider his applications/ representations. The Hon'ble High Court by the order dated 07.10.2019 (Annexure A-6) allowed the said W.P. thereby directing the respondent No. 2 to consider and decide the applications / representations of the applicant on its own merit and in accordance with law. After that, the respondent No. 2 by the impugned order dated 09.12.2019 (Annexure A-7) rejected the claim of the

applicant for compassionate appointment. In the circumstances, the present Original Application came to be filed contending that the impugned order is not sustainable in the eyes of law, as the same is rejected by not taking into considerations the relevant G.Rs. issued by the State Government in proper perspective.

3. The application is resisted by the respondent Nos. 1 and 2 by filing affidavit in reply of one Shri Prasad S/o Padmakar Deshpande, working as Professor (Department of Psychiatry), in the office of the Dean, Government Medical College and Hospital, Aurangabad, Dist. Aurangabad. It is admitted that the maternal grandmother of the applicant was working with the respondent No. 2 on the post of Sweeper in Class-IV category and he retired on superannuation on 30.09.2005. However, the Government Resolution dated 11.03.2016, on the basis of which the applicant is seeking compassionate appointment is not having retrospective effect as of the date of retirement of the applicant's maternal grandmother on 30.09.2005 and therefore, the claim was denied. Moreover, by the said G.R. for the first time benefit was extended to the Scheduled Caste community. It is further stated that as on the date of retirement of the applicant's maternal grandmother as per the earlier G.Rs. the

compassionate appointment was applicable to the persons belonging to only Walmiki, Mehtar and Bhangi community in terms of G.R. dated 01.10.2003 (Annexure R-1) Scheduled Caste community is given benefits of Lad-Page committee recommendations only by G.R. dated 11.03.2016, which was issued by cancelling the earlier G.R. dated 10.11.2015. In view of the same, there is no merit in the contentions raised by the applicant in the present Original Application. The impugned order is legal and proper. Hence, the Original Application is liable to be dismissed.

4. The applicant filed his affidavit in rejoinder thereby denying all the adverse contentions raised in the affidavit in reply and reiterated the contentions raised in the Original Application.

5. I have heard the arguments at length advanced by Shri Harish S. Bali, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

6. Undisputedly, the applicant is the grandson of Rahibai B. Nikalje, who was working with the respondent No. 2 as सफाई कर्मचारी / Sweeper and retired on 30.09.2005. The applicant made application for compassionate appointment on 02.12.2015 (part of Annexure A-5 collectively). The applicant's maternal

grandmother made representation / application dated 21.04.2016, which is at Annexure A-5 collectively. In view of that the maternal grandmother of the applicant nominated the applicant for compassionate appointment. Along with the said applications / representations, the applicant also submitted documents supporting his educational qualification of 10th Std. passed and requisite consent letter of the maternal grandmother of the applicant. Further undisputedly, the applicant and his maternal grandmother belong to Scheduled Caste community in view of the Caste Certificate of the applicant produced at part of Annexure A-1 collectively.

7. The claim of the applicant of compassionate appointment however is denied by the respondent No. 2 by issuing order dated 09.12.2019 (Annexure A-7) stating that the G.R. dated 11.03.2016 on the basis of which the compassionate appointment can be giving is not having retrospective effect as of the date of retirement of the applicant's maternal grandmother of 30.09.2005. I have to decide as to whether the said order is legal and proper. In order to decide the same, the relevant documents would be the G.R. dated 21.10.2010, Government Circular dated 26.02.2014, G.R. dated 10.11.2015 (Annexure A-2) and G.R. dated 11.03.2016 (Annexure A-3).

8. Lad-Page Committee recommendations are implemented by the Government by issuing initial G.R. dated 21.06.1979. Considering the facts of the present case, the relevant documents would be Government Circular dated 26.02.2014, G.R. dated 10.11.2015 (Annexure 'A-2') and G.R. dated 11.03.2016 (Annexure 'A-3' collectively). The abovesaid Government Circular and both these G.Rs are issued by the Social Justice and Special Assistance Department, Government of Maharashtra. Reading these documents together would show that certain instructions are incorporated in Government Circular and G.Rs to give effect to Lad-Page Committee recommendations for giving compassionate appointment. As per these instructions period of limitation will not be applicable to the process started for compassionate appointment before 21.10.2011, the date on which earlier Government Circular was issued. However, by this Circular dated 26.02.2014 period of one year from the date of death or retirement or disability of Government servant is prescribed for making application for compassionate appointment as per Lad-Page Committee recommendations. The said limitation is maintained in subsequent G.R. dated 10.11.2015 and G.R. dated 11.03.2016 as in both the G.Rs

instructions incorporated in G.R. dated 26.02.2014 are adopted and continued.

9. Perusal of G.R. dated 10.11.2015 (Annexure 'A-2') and 11.03.2016 (Annexure 'A-3'), would show that as the Government was facing certain difficulties in giving appointment on compassionate ground as per G.R. dated 10.11.2015 (Annexure 'A-2'), the said G.R. was replaced by G.R. dated 11.03.2016 (Annexure 'A-3' collectively). Hence, the G.R. dated 11.03.2016 (Annexure 'A-3' collectively) can be said to be modification of earlier G.R. dated 10.11.2015 (Annexure A-2). Both these G.Rs maintained continuation of Lad-Page Committee recommendations, though the said recommendations were of 40 years old. However by these two G.Rs, only the recommendations were made applicable to the Sweeper belonging to Scheduled Caste category.

10. Undisputedly the applicant and the maternal grandmother of the applicant both belong to Scheduled Caste category. The claim of the applicant, however, is refused by the respondent No. 2 by passing impugned order dated 09.12.2019 (Annexure 'A-7') on the ground that the G.R. dated 11.03.2016 providing benefit of Lad-Page Committee recommendations to Scheduled Caste

category was first time introduced only by G.R. dated 10.11.2015 (Annexure 'A-2') and again reiterated in G.R. dated 11.03.2016 (Annexure 'A-3' collectively).

11. According to the respondents while issuing G.R. dated 11.03.2016 (Annexure 'A-3' collectively) earlier G.R. dated 10.11.2015 (Annexure 'A-2') is repealed and therefore, the said G.R. dated 10.11.2015 is not of any help to the applicant. Moreover, according to the respondents G.R. dated 11.03.2016 is having prospective effect as there is no mention of applicability retrospectively. In the case in hand the maternal grandmother of the applicant retired from the post of Sweeper on 30.09.2005. As on that date, the Lad-Page Committee recommendations were not made applicable to the persons belonging to Scheduled Caste and those were made applicable only by G.R. dated 11.03.2016 (Annexure 'A-3'). Hence the applicant's claim is denied.

12. The respondents have also denied the claim of the applicant on compassionate ground being barred by limitation as the applicant made application beyond the period of one year on 02.12.2015 when maternal grandmother of the applicant was retired from service on 30.09.2005.

13. So far as limitation is concerned, one has to refer to clause No. 4 of Government Circular dated 26.02.2014 and clause No.1 of G.R. dated 10.11.2015. As per the provisions therein, the department is to apprise the concerned family members about the scheme of compassionate appointments as per Lad-Page Committee recommendations. In the case is hand, there is nothing on record to show that after retirement of maternal grandmother of the applicant on 30.09.2005, the respondent No. 2 apprised the family members about the benefit of Lad-Page Committee recommendations providing compassionate appointment.

14. Moreover, in this regard, learned Advocate for the applicant placed reliance on the decision of the Hon'ble Bombay High Court in **W.P. No. 13308 of 2017** in the matter of **Mrs. Malan Milind Kamble Vs. Sangli, Miraj and Kupwad City Municipal Corporation and Anr.** dated 06.06.2019. In para No.4 of the said judgment it is observed as follows:-

“We have considered the petition and the submissions of the learned counsel for the Corporation and we are of the clear opinion that since the entitlement of the petitioner is not in dispute, mere delay in preferring an application would not justify denial of the claim of the petitioner and

her eligibility in terms of the policy decision. In the peculiar circumstances which are sought to be justified in the petition, we deem it appropriate that the Corporation ought to have condoned the delay and considered the claim made by the petitioner in place of Smt. Lata Raghunath Mane who has superannuated on 30th April, 2011.”

15. In the background of abovesaid ratio, if the facts of the present case are considered, it is seen that though there is delay in making an application, the respondents ought to condoned the said delay when the initial burden was not discharged of apprising the family members of the applicant about the scheme of compassionate appointment as per Lad-Page Committee recommendations. Otherwise also the point of limitation is raised on the litigation level and there is no mention of limitation in impugned order dated 09.12.2019.

16. The next limb of the matter is that the G.R. dated 11.03.2016 (Annexure A-3) in not having retrospective effect as of 30.09.2005 when the maternal grandmother of the applicant retired. In this regard learned Advocate for the applicant placed reliance on various citations which are as follows:-

- (i) Decision dated 18.04.2019 in **W.P. No. 9666 of 2018** of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in the matter of **Suresh Bajrang Sonawane Vs. The State of Maharashtra & Ors.** In para no.4 of the said citation it is held as follows:-

“(4) The Government Resolutions dated 11.03.2016 and 10.11.2015 is a beneficial policy introduced by the Government. The preface to the Government Resolution itself states that, though Lad/Page Committee recommendations are of 40 years back, it is necessary to continue the same and the people from SC community were also entitled for the benefit of Lad/Page Committee recommendations.”

- (i) Decision dated 12.03.2018 in **O.A.No.986 of 2017** in the matter **of Sandeep Babu Pol Vs. The Director, Health Services, Maharashtra State & Ors.** delivered by Hon'ble Division Bench of Maharashtra Administrative Tribunal, Mumbai.

In the said citation case the applicant's mother who was serving as female Sweeper died on 25.07.2008. The applicant and his mother belong to Scheduled Caste/Mahar category. The

claim of the applicant was rejected on the ground that the claim was raised belatedly. The claim was based on then G.R. dated 10.11.2015. In para Nos. 9 and 10 it is observed as follows :-

“9. We, therefore, find that the rejection impugned is not in conformity with the true spirit of the scheme. The scheme nowhere lays down or prescribes the prohibition and exclusion of the benefit to dependants of deceased employee who died prior to the declaration of Government decision dated 10.11.2015.

10. Denial of a concession and right which has been created in favour of an under privileged class, is per se unfair and unjust. Exclusion of a beneficial scheme cannot and ought not be read as an implied provision of exclusion. The very object and purpose of the scheme shall get defeated if denial impugned is held. Heir of a predeceased employee cannot be expected to apply before commencement of the scheme. The limitation or period fixed for application has to be second from the date of commencement of the scheme i.e. from 10.11.2015.”

17. In the background of the abovesaid ratio if the facts of the present case are considered, it is evident that giving benefit of Lad-Page Committee recommendations to the persons belonging to Scheduled Caste is recognized as per G.R. dated 10.11.2015 and 11.03.2016. The question is whether the said benefit can be denied on the ground that it is not specifically made applicable retrospectively. Otherwise also as per the ratio laid down in the citations relied upon by the applicant, it is crystal clear that the benefits granted by way of beneficial scheme to underprivileged

claim cannot be denied on the technical ground that it is not specifically made applicable retrospectively. It can be at the most said that giving benefits to Scheduled Caste category persons is mentioned for the first time in G.R. dated 10.11.2015 and in consequent G.R. dated 11.03.2016.

18. In view of same, in my considered opinion impugned order dated 09.12.2019 (Annexure 'A-7') issued by the respondent No.2 is unsustainable in the eyes of law and therefore liable to be quashed as set aside. I therefore proceed to pass the following order.

ORDER

The Original Application is allowed in following terms :-

- (A) The impugned communication dated 09.12.2019 (Annexure 'A-7') issued by the respondent No. 2 refusing appointment to the applicant on compassionate ground on the post of Sweeper in Class-IV category is quashed and set aside.
- (B) The respondent No. 2 is directed to appoint the applicant on Class-IV post of Sweeper by implementation of scheme for appointing the candidates in furtherance of Government Circular

26.02.2014 and G.R. dated 11.03.2016 issued by the Government within a period of three months from the date of this order.

(C) No order as to costs.

PLACE : AURANGABAD.

DATE : 12.04.2022.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 53 of 2020 VDD Compassionate Appointment (Lad-Page Committee)