

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.962 OF 2019

(Compassionate Appointment as per Lad-Page Committee Recommendations)

DISTRICT: - BEED.

Devidas Masaji Chandane)
Age : 28 years, Occu: Education,)
R/o: Guruwar Peth, Ambajogai,)
Tq. Ambajogai, Dist. Beed.)..**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through it's Principal Secretary,)
Medical Education & Drugs Dept.,)
G.T. Hospital, Mumbai, 9th Floor,)
Mantralaya, Lokmanya Tilak Path,)
Mumbai-32.)
- 2. The Dean,**)
Swami Ramanand Tirth Rural)
Government Medical College,)
Ambajogai, Tq. Ambajogai,)
Dist. Beed.)..**RESPONDENTS**

APPEARANCE : Shri I.D. Maniyar, learned Advocate
holding for Shri V.S. Panpatte, learned
Advocate for the applicant.

: Shri I.S. Thorat, learned Presenting
Officer for the respondents.

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

DATE : **12.04.2022**

ORDER

By invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, the applicant has filed this O.A. challenging the order dated 20.09.2019 issued by the respondent No.2 i.e. the Dean Swami Ramanand Tirth Rural Government Medical College, Ambajogai denying compassionate appointment to the applicant as per Lad-Page Committee Scheme and seeking appointment on compassionate ground.

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

- (i) The applicant belongs to the Scheduled Caste. He is son of one Masaji Laxman Chandane. The father of the applicant was in the employment of the respondent No.2 on the post of Sweeper. He retired on 30.06.2012 on superannuation. Thereafter the applicant filed application dated 08.02.2016 (part of Annex. 'A-5' collectively) along with the requisite undertaking on stamp paper, consent affidavit of parents of the applicant (Annex. 'A-5' collectively). Thereby the applicant sought appointment on compassionate ground on Class-IV post of Sweeper. The respondent No.2 did not consider his said application for long.

The applicant, therefore, filed Original Application No.579/2019 along with the delay condonation application bearing M.A.No.101/2019 before this Tribunal. Notices were issued in the said matter. Thereafter, by order dated 04.07.2019, the delay came to be condoned.

- (ii) Thereafter, by order dated 04.07.2019 (Annex. 'A-8') the said Original Application No.579/2019 was disposed of by giving direction to the respondents to take decision on the application/representation filed by the applicant on merit as per Rules within a period of three months from the date of the order.
- (iii) After passing of the abovesaid order, the applicant approached the respondent No.2 by making applications dated 25.07.2019, 20.08.2019 and 11.09.2019 (Annex. 'A-9' collectively) seeking appointment on compassionate ground as per Lad-Page Committee Scheme. Thereafter allegedly without giving any opportunity of hearing and without considering the Rules and record of the case, the respondent No.2 passed the impugned order dated 20.09.2019 (Annex. 'A-10' collectively). Thereby the claim of the applicant was rejected on the ground that

the G.R. dated 11.03.2016 dealing with appointments as per Lad-Page Committee scheme was not having retrospective effect of dated 30.06.2012 on which the applicant's father stood retired on superannuation.

- (iv) It is contended that in impugned order dated 20.09.2019 (Annex. 'A-10') there is reference to the communication dated 14.10.2016 issued by the respondent No.1 to the respondent No.2 giving guidelines. As per the Government Rule any Government Resolution is passed should be having prospective effect but the respondent No.2 is at liberty to take decision at his level. In view of same, reference of the said communication dated 14.10.2016 is totally misplaced and misconceived. The said communication does not state that the G.R. dated 11.03.2016 is not applicable to the applicant. It is further stated that the respondent No.2 again sought guidelines in that regard. Accordingly, the respondent No.1 by communication dated 15.09.2017 (Annex. 'A-12') communicated to the respondent No.2 that as per Government Circular dated 26.02.2014, the benefit to the legal heirs of the Sweepers is continued and therefore as per Government Resolution dated

11.03.2016 the procedure is given and entire powers are given to the respondent No.2 and directed to take appropriate decision.

(v) It is further submitted that the very respondent No.2 has given appointments to various similarly situated persons as reflected in minutes of meeting dated 22.12.2015 (Annex. 'A-13') of the Committee appointed for recommending the appointments under Lad-Page Committee Scheme. For giving such appointments, G.R. dated 11.03.2016 has not come in the way. However, by misinterpreting the same G.R. dated 11.03.2016, the respondent No.2 has denied compassionate appointment to the applicant. The copies of minutes of meeting and appointment orders of such similar situated persons are at Annex. 'A-13' collectively at page Nos.60 to 78 of Paper Book.

(vi) It is further submitted that one Mr. Sham Thorat, who is one of the persons falling in the similar situation filed complaint on 23.05.2017 before the authority of Hon'ble Lokayukta, Maharashtra State and after considering the case, the Hon'ble Lokayukta by order dated 18.01.2018 recommended the case of the said Mr. Sham Thorat for appointment on compassionate

ground under Lad-Page Committee Scheme. Proceedings before the Hon'ble Lokayukta are placed at Annexure 'A-14' collectively.

- (vii) In the circumstances as above, it is stated that it is evident that the respondent No.2 has illegally denied the appointment on compassionate ground under Lad-Page Committee Scheme to the applicant. The applicant is very much entitled for such appointment and impugned order dated 20.09.2019 issued by the respondent No.2 is liable to be quashed and set aside. Hence this application.

3. The application is resisted by the respondent Nos.1 and 2 by filing the affidavit-in-reply of Dr. Rajesh Sahebrao Ovhal working as Associate Professor (Biochemistry) in the office of respondent No.2 i.e. the Dean, Swami Ramanand Thirth Rural Government Medical College, Ambajogai.

- (i) Thereby he denied the adverse contentions raised in the Original Application. It is denied that the impugned order is passed denying claim of the applicant on compassionate ground by misinterpreting the G.R. dated 11.03.2016.
- (ii) It is, however not disputed that the father of the applicant was appointed as Sweeper being Class-IV

employee on 23.07.1976 and he retired on superannuation on 30.06.2012. It is also not disputed that the father of the applicant belonging to Scheduled Caste category. It is also not disputed that the applicant made applications seeking appointment on compassionate ground on 08.02.2016, 14.03.2017, 06.04.2017, 05.08.2017, 12.07.2017, 11.09.2017 and 03.01.2018.

- (iii) It is further contended that the application for compassionate appointment ought to have been filed within one year from the date of retirement of the father of the applicant. The applications are filed beyond the prescribed period of limitation of one year.
- (iv) It is further contended that the compassionate appointment under Lad-Page Committee Scheme are governed by G.R. dated 11.03.2016 (Annex. 'R-1' page no.103 of Paper Book) by the Social Justice and Special Assistance Department, Government of Maharashtra. The said G.R. does not specifically mention that it is applicable retrospectively. The father of the applicant retired on 30.06.2012. As per Clause No.3 of the G.R. dated 11.03.2016 earlier G.R. dated 10.11.2015 is cancelled. So it is immaterial as

to what is mentioned in that G.R. dated 10.11.2015. However, in G.R. dated 11.03.2016 it is not mentioned that it is retrospectively applicable. The same cannot be applicable to the case of the applicant in whose case the father of the applicant retired on 30.06.2012 and who belongs to Scheduled Caste category.

- (v) It is further specifically contended that benefit of this scheme can be granted prospectively as per G.R. dated 11.03.2016 to the persons belonging to Scheduled Caste category. Hence the applicant is devoid of merit and is liable to be dismissed.
- (vi) So far as the appointments on compassionate ground to other allegedly similarly situated persons are concerned, it is contended that in all those cases the candidates were given appointment as Sweeper as their relatives, who were in service retired after publishing the G.R. dated 11.03.2016.
- (vi) It is further stated that the candidates whose relatives in service retired prior to issuance of G.R. dated 11.03.2016 were given appointments. Their appointments are cancelled by respondent No.2 vide order dated 28.11.2016 (Annex. 'R-6' page no.114 of Paper Book). However, they are being reinstated as

per order of the Maharashtra Administrative Tribunal Bench at Aurangabad being order dated 31.01.2017 (Annex. 'R-7'). But is it mentioned in the said letter that the same will not be precedent for other such candidates.

- (viii) Lastly it is submitted that the authority of Hon'ble Lokayukat, Maharashtra State recommended Mr. Sham Thorat for appointment on compassionate ground. In view of that in this background for this case and four other similar cases guidance was sought from the Government and the Government by letter dated 16.12.2019 addressed to the Director, Medical Education and Drugs Department, Mumbai communicated that the process of taking guidance of the department of Social Justice and Special Assistance and Law and Judiciary is going on and it will be communicated accordingly. In the circumstances, it is stated that the Original Application is devoid of merit and is liable to be dismissed.

4. The applicant filed affidavit-in-rejoinder denying the adverse contentions raised in the affidavit-in-reply and reiterating the contentions of his Original Application in letter and spirit. It is

contended that the contention raised by the respondents that the G.R. dated 10.11.2015 was cancelled and that it was replaced by G.R. dated 11.03.2016 has no relevance. The respondents in fact have admitted various appointments given to the similarly situated candidates. In view of the same, denying compassionate appointment to the applicant amounts to discrimination and harassment.

5. I have heard at length the arguments advanced by Shri I. D. Maniyar, learned Advocate holding for Shri V.S. Panpatte, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondent on other hand.

6. Undisputedly the applicant is son of Masaji Laxman Chandane and that the said Masaji Laxman Chandane, who was in the employment of the respondents on Class-IV post of Sweeper retired on superannuation on 30.06.2012. Thereafter, the applicant made application dated 08.02.2016 (part of Annex. 'A-5' collectively, page no.29 of P.B.) for compassionate appointment as per Lad-Page Committee recommendation. As per copies of mark-list (Annex. 'A-1', page nos.15 & 16 of P.B.) produced by the applicant, he has passed 12th standard. As per educational qualification, he was eligible for the post of Sweeper in Class-IV category.

7. 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(Annex. 'A-3) and G.R. dated 11.03.2016 (Annex. 'A-4'). 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 recommendation 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 recommendation. 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.

8. However, perusal of G.R. dated 10.11.2015 (Annex. 'A-3') and 11.03.2016 (Annex. 'A-4') would show that as the Government was facing certain difficulties in giving appointment on compassionate ground as per G.R. dated 10.11.2015 (Annex. 'A-3'), the said G.R. was replaced by G.R. dated 11.03.2016 (Annex. 'A-4'). Hence, the G.R. dated 11.03.2016 (Annex. 'A-4') can be said to be modification of earlier G.R. dated 10.11.2015. Both these G.Rs maintained continuation of Lad-Page Committee recommendation, though the said recommendation were of 40 years old. However by these two G.Rs only the recommendation were made applicable to the Sweeper belonging to Scheduled Caste category.

9. Undisputedly the applicant and the father 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 20.09.2019 (Annex. 'A-10') on the ground that the G.R. dated 11.03.2016 providing benefit of Lad-Page Committee recommendation to Scheduled Caste category was first time introduced only by G.R. dated 10.11.2015 (Annex. 'A-3') and again reiterated in G.R. dated 11.03.2016 (Annex. 'A-4').

10. According to the respondents while issuing G.R. dated 11.03.2016 (Annex. 'A-4') earlier G.R. dated 10.11.2015 (Annex. 'A-3') 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 that regard, the respondents have referred to the guidance issued by the Joint Director (Medical), Directorate of Medical Education and Research, Mumbai to the respondent No.2 mentioning the prospective effect of the circular, notification or G.R. issued by the Government. In the case in hand the father of the applicant retired from the post of Sweeper on 30.06.2012. 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 (Annex. 'A-4'). Hence the applicant's claim is denied.

11. Moreover, according to the respondents further the instances of similarly situated persons referred by the applicant are irrelevant as those cases cannot be said to be precedents as those appointments were given only due to judicial intervention.

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 08.02.2016 when father of the applicant was retired from service on 30.06.2012.

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 recommendation. In the case is hand, there is nothing on record to show that after retirement of father of the applicant on 30.06.2012, the respondent No.2 apprised the family members about the benefit of Lad-Page Committee recommendation 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 recommendation. Otherwise also the point of limitation is raised on the litigation level and there is no mention of limitation in impugned order dated 20.09.2019.

16. The next limb of the matter is that the G.R. dated 11.03.2016 (Annex. 'A-4') in not having retrospective effect as of 30.06.2012 when the father 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 recommendation.”

- (ii) 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 recommendation 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. In this regard reference can be made even to the communication dated 16.12.2019 (Annex. 'R-9' Page No.103 of P.B. O.A.960/2019) placed on record by the respondents. It is addressed by the Government of Maharashtra to the Director, Medical Education and Research, Mumbai in which it is made clear that the decision about retrospective effect of G.R. dated 11.03.2016 is under consideration. 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 20.09.2019 (Annex. 'A-10') 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 20.09.2019 (Annex. 'A-10') 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.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad

Date :-12.04.2022

SAS O.A.962/2019