

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 129 OF 2017

DIST. : PARBHANI

Shafi Pasha s/o Aziz Pasha,
Age. 33 years, Occu. : Educated – Unemployed,
R/o House No. 814, Inayat Nagar,
Basera Housing Society,
Near Maulana Azad School,
Parbhani – 431 401.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Agricultural, Animal Husbandry,
Dairy, Fishery Department,
Government of Maharashtra,
Mantralaya, Mumbai - 32.
(copy to be served on
Chief Presenting Officer,
M.A.T., Aurangabad Bench)
2. Deputy Director of Agricultural Division,
Division Latur
3. District Superintendent,
Agricultural Officer,
District Agricultural Office,
Parbhani, Tq. & Dist. Parbhani.
4. Sub Divisional Agricultural Officer,
District Agricultural Office,
Old Pedgaon Road,
Parbhani, Tq. & Dist. Parbhani. --

RESPONDENTS

APPEARANCE :- Shri Quadri Taher Ali, learned Advocate for
the applicant.

: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**

DATE : **3rd August, 2018**

J U D G E M E N T

1. By filing the present Original Application the applicant has challenged the order dtd. 7.1.2016 issued by the res. no. 4 the Sub Divisional Agricultural Officer, Parbhani and prayed to direct the respondents to consider his application for appointment on compassionate ground by cancelling earlier application of his brother viz. Sami Pasha s/o Aziz Pasha.

2. Shri Aziz Pasha Sher Mohammed was the father of the applicant. Aziz Pasha Sher Mohammed was serving as a Sr. Clerk in Group – III category in the office of res. no. 4 the Sub Divisional Agricultural Officer, Parbhani. Father of the applicant died on 20.7.2007 due to ill health living behind his wife Smt. Bashirunnisa Begum Aziz Pasha, sons viz. Sami Pasha Aziz Pasha, Shafi Pasha Aziz Pasha, Rafi Pasha Aziz Pasha and daughter Humera Jabin Aziz Pasha as his legal heirs. After death of father of the applicant Aziz Pasha Sher Mohammed, applicant's brother viz. Shri Sami Pasha Aziz Pasha filed application with res. no. 3 for getting appointment on compassionate ground, on 12.10.2007. Mother of the applicant had given consent to it. In

spite of application filed by Shri Sami Pasha Aziz Pasha on 12.10.2007, the res. nos. 3 & 4 had not appointed him on compassionate ground and they were informing him that as and when vacancy creates, they will inform him. But till the end of year 2015 no appointment on compassionate ground was given to him and his name was maintained in the waiting list of the eligible candidates for appointment on compassionate ground.

3. On 30.9.2015 widow of deceased Aziz Pasha Sher Mohammed i.e. Smt. Bashirunnisa Begum Aziz Pasha had filed representation / application to res. no. 4 stating therein that, application of her elder son viz. Shri Sami Pasha Aziz Pasha is pending with them and it had not been considered. She has contended that due to family problems, name of Shri Sami Pasha may be cancelled and in his place name of applicant Shafi Pasha Aziz Pasha should be considered for appointment on compassionate ground. On receiving said application, the res. no. 4 sought guidance from res. no. 3 as to whether second application for compassionate appointment can be entertained. In response to the said communication the res. no. 3 has informed the res. no. 4 by the letter dtd. 4.1.2016 that, as per G.R. dated 22.5.2005 an application for compassionate appointment can be made within one year and therefore application of the applicant

cannot be considered. On the basis of the letter of res. no. 3, the res. no. 4 informed the applicant that his application has been rejected.

4. It is contention of the applicant that, meanwhile his mother expired on 5.10.2016. It is his contention that at present he is unemployed. It is his further contention that the respondents have wrongly rejected his application for appointment on compassionate ground though he is eligible for the same. Therefore the applicant has prayed to quash the impugned order dtd. 7.1.2016 issued by the res. no. 4 by allowing the O.A. He has also prayed to direct the respondents to consider his application for compassionate appointment by cancelling earlier application of his elder brother Shri Sami Pasha.

5. The res. nos. 1 to 4 have filed affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the father of the applicant was serving with res. no. 4 and working as a Sr. Clerk in Group-III category from 1.10.1994. They have not disputed the fact that the father of the applicant expired on 20.7.2007 due to ill health while in service. They have not disputed the fact that the applicant, his mother and his brothers & one sister are legal heirs of deceased Shri Aziz Pasha Sher Mohammed. They have admitted the fact that after death of Shri

Aziz Pasha, his elder son namely Shri Sami Pasha Aziz Pasha applied for compassionate appointment by filing the application dtd. 12.10.2007. It is their contention that on consideration of application of Shri Sami Pasha, his name was included in the waiting list of the candidates eligible for appointment on compassionate ground and it is at sr. no. 98. It is their contention that they have maintained the waiting list of the candidates eligible for appointment on compassionate ground as per Rules. It is their contention that, on 30.9.2015 applicant Shri Shari Pasha Aziz Pasha has applied for getting appointment on compassionate ground in place of his elder brother Shri Sami Pasha Aziz Pasha. It is their contention that, there is no provision in the G.Rs. to substitute the name of legal heir of deceased employee for appointment on compassionate ground, if one heir applied therefor and if the name of said candidate is included in the waiting list of candidates eligible for appointment on compassionate ground. As the name of Shri Shami Pasha is included in the waiting list of candidates eligible for appointment on compassionate ground, no question of substituting name of applicant in place of his elder brother, arises.

6. It is their contention that in view of the provisions of G.R. dtd. 22.8.2005 the application of the applicant cannot be

entertained and accordingly the respondents had rejected the application of the applicant. It is their contention that the appointment on compassionate ground will be given to the candidate eligible for appointment as per the availability of posts and as per seniority in the waiting list. It is their contention that, since the name of Shri Shami Pasha was already included in the waiting list of candidate eligible for appointment on compassionate ground, no question of considering the application of the applicant for appointment, arises and therefore application of the applicant was rightly rejected by the res. no. 4. It is their contention that, there is no illegality in the impugned order and therefore they prayed to reject the O.A.

7. I have heard the arguments advanced by Shri Quadri Taher Ali, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

8. Admittedly deceased father of the applicant viz. Aziz Pasha Sher Mohammed was serving as a Sr. Clerk in the office of res. no. 4 since 1.10.1994. He died on 20.7.2007 due to ill health while in service. Admittedly he left his widow Smt. Bashirunnisa Begum Aziz Pasha, three sons viz. Sami Pasha, Shafi Pasha, Rafi Pasha and one daughter Humera Jabin Aziz Pasha as his legal heirs.

Admittedly after the death of Aziz Pasha Sher Mohammed his elder son Sami Pasha has filed an application to res. no. 3 in the prescribed form for appointment on compassionate ground on 12.10.2007. After considering the application of Sami Pasha his name had been enrolled in the waiting list of the candidates eligible for appointment on compassionate ground by the res. no. 3 and his name was at sr. no. 98 in the said waiting list. Admittedly Shri Sami Pasha had not received any appointment till 2015. Admittedly on 30.9.2015 wife of deceased Aziz Pasha has moved another application with res. no. 4 with a request to cancel name of Sami Pasha and consider name of her second son Shafi Pasha for appointment on compassionate ground. Said application came to be rejected by the impugned communication as there is no provision to substitute name of another heir, in place of the heir whose name has already been enrolled in the waiting list of eligible candidates for appointment on compassionate ground & as it is not within limitation.

9. Learned Advocate for the applicant has submitted that brother of the applicant Sami Pasha filed the application long back on 12.10.2007 but respondents had neither informed him as to whether his name enrolled in the waiting list nor gave appointment to him on compassionate ground till the year 2015

and therefore mother of the applicant filed another application and requested to cancel name of Sami Pasha and record name of applicant Shafi Pasha in his place. He has submitted that due to family problem mother of the applicant informed to res. no. 4 accordingly, but res. no. 4 rejected the application vide impugned communication. He has submitted that in case of similarly situated persons this Tribunal has issued directions to the concerned respondents and substituted name of applicant in the said matter. He has placed reliance on the order passed by the Tribunal of this Bench in **O.A. no. 465/2012 [Mohd. Zakiyoddin s/o Mohd. Anisoddin Vs. the State of Maharashtra & Ors.]** dtd. 24.3.2015. The said decision has been challenged by the respondents before the Hon'ble Bombay High Court, Bench at Aurangabad in writ petition No. 1384/2016, but it was dismissed on 27.2.2017. He has submitted that object of the scheme of granting compassionate appointment is to give financial assistance to the family of Government employee, who died while in service as sudden financial crisis has occurred. Considering these objects & facts he prayed to allow the present O.A. by setting aside the impugned order dtd. 7.1.2016 passed by the res. no. 4.

10. Learned P.O. has submitted that name of Sami Pasha has been enrolled at sr. no. 98 in the waiting list of the eligible candidates for appointment on compassionate ground. Appointment on compassionate ground will be given to Sami Pasha as per the vacancy created and as per his turn and there was no provision to replace the name of candidate whose name has already been enrolled in the waiting list of candidates eligible for compassionate appointment by substituting name of other heir. He has submitted that name of applicant's brother Sami Pasha was already enrolled in the waiting list of candidates eligible for compassionate appointment and there is no provision to substitute the name of other heir in place of heir whose name has already been enrolled in the waiting list. He has submitted that even if it is presumed that the applicant has filed the application for appointment on compassionate ground, it is not within time and therefore he prayed to reject the present O.A.

11. Learned P.O. has further submitted that facts in the above cited decisions relied by the learned Advocate for the applicant are not identical to each in the present case. In that matter name of sister of the applicant was recorded in the waiting list of eligible candidates for appointment on compassionate ground and as she was to be married, her mother filed application for substituting

name of applicant in her place and therefore considering the facts in that case, directions were given by this Tribunal to respondents to consider the application of the applicant in that case. He has submitted in the present case the application dtd. 30.9.2015 filed by the mother of the applicant does not disclose reason for substitution of name of applicant in place of his brother's name in the waiting list. It does not disclose as to why she wants to replace name of Sami Pasha by inserting name of the applicant. He has submitted that right conferred on the heirs of the deceased under the said scheme is not a vested right of the applicant and appointment on compassionate ground will be made strictly as per rules framed by the Government, taking into consideration the financial condition of the deceased's family. He has drawn my attention towards observations made by Hon'ble Supreme Court in the case of **Union of India Vs. Shashank Goswami [AIR 2012 SC 2294]** and **MGB Gramin Bank Vs. Chakrawarti Singh [AIR 2013 SC 3365]**, which are reproduced in the decision of Hon'ble High Court in the case of **The State of Maharashtra & Others Vs. Mohd. Sakiyoddin Mohd. Anisoddin (writ petition no. 1384/2016)** dtd. 27.2.2017, relied on by the learned Advocate for the applicant. He has submitted that the applicant as of right cannot claim that his name should be replaced for the name of his brother Sami Pasha in the waiting list of eligible candidates for

appointment on compassionate ground without assigning reasons and therefore application of the applicant came to be rejected by the res. no. 4. He has submitted that there is no illegality in impugned order. Therefore, he prayed to reject the O.A.

12. On perusal of record it reveals that on the basis of application moved by the brother of applicant i.e. Sami Pasha, his name has been enrolled in the waiting list of the eligible candidates for appointment on compassionate ground maintained by the res. no. 4. His name was at sr. no. 98 in the waiting list. The appointment to the candidates enrolled in the waiting list has to be given as per rules made by the Government on the basis of vacancies available and as per seniority maintained in the list. Since there were no vacancies and the name of Sami Pasha was not reached for the appointment on compassionate ground, no appointment was given to Sami Pasha. In the year 2015 mother of the applicant moved the application dtd. 30.9.2015 requesting the res. no. 4 to give appointment to applicant Shafi Pasha on compassionate ground by cancelling the proposal in that regard in the name of her elder son Sami Pasha. Not a single reason has been assigned therein for cancelling the name of Sami Pashi, whose name has already been enrolled in the waiting list at sr. no. 98. Since there is no provision in the scheme & Rules to replace

the name of heir, whose name has been enrolled in the waiting list of the eligible candidates for appointment on compassionate ground, by another heir, the res. no. 4 issued the impugned order. I found no illegality in the impugned order issued by the res. no.4.

13. I have gone through the decisions cited by the learned Advocate for the applicant. On going through the facts in this case, it is clear that in the case cited by the learned Advocate for the applicant the name of sister of the applicant in that case was enrolled in the waiting list of the eligible candidates for appointment on compassionate ground and as she was going to marry, her mother filed the application with a request to replace her name by inserting name of applicant. Considering the facts in that case, directions were given by the Tribunal to consider application of the applicant for compassionate appointment and the said decision of this Tribunal was upheld by the Hon'ble High Court. I have no dispute regarding the legal proposition laid down therein by the Hon'ble High Court in the said case. While deciding the writ petition no. 1384/2016 on 27.2.2017 Hon'ble High Court has reproduced observations of Hon'ble Supreme Court in the cases of **Union of India Vs. Shashank Goswami [AIR 2012 SC 2294]** and **MGB Gramin Bank Vs. Chakrawarti Singh [AIR 2013 SC 3365]**, which are as under :-

“9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crises occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class / group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

“5. Every appointment to public office must be made strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. Moreso, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be

claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

6. *In Umesh Kumar Nagpal V. State of Harayana and Ors., (1994) 4 SCC 138 : (1994 AIR SCW 2305), this court has considered the nature of the right which a dependent can claim while seeking employment on compassionate ground. The Court observed as under :-*

“The whole object of granting Compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned. the only ground which can justify compassionate employment is the penurious condition of the deceased’s family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis.”

14. There is no dispute regarding settled legal principles laid down in the said decision. The very object of the scheme of granting compassionate appointment is to give financial assistance to Government employee, who died while in service as sudden financial crisis occurs in his family. Considering the said situation, name of applicant’s elder brother Sami Pasha was enrolled in the waiting list. No reason was given for substituting

name of applicant in place of his brother Sami Pasha in the waiting list. Therefore, decisions of this Tribunal in O.A. no. 465/2012 dtd. 24.3.2015 as well as Hon'ble High Court in writ petition no. 1384/2016 dtd. 27.2.2017 are not attracted in this case as facts in the present case and facts in that case are totally different.

15. Since, there is no provision to replace the name of legal heir of deceased Government employee, whose name has already enrolled in the waiting list of eligible candidates for appointment on compassionate ground, by another legal heirs, the application of the applicant has been rightly rejected by respondent no. 4. Therefore no interference is called for in the impugned order dtd. 7.1.2016 issued by the res. no. 4 the Sub Divisional Agricultural Officer, Parbhani. There is no merit in the O.A. Consequently, it deserves to be dismissed. Hence, I pass the following order :-

ORDER

The original application is dismissed without any order as to costs.

PLACE : AURANGABAD
DATE : 3rd August, 2018

(B.P. PATIL)
MEMBER (J)