

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MISC APPLICATION NO 248 OF 2023
WITH
ORIGINAL APPLICATION NO 388 OF 2023**

DISTRICT : THANE

1. Karan Nandkumar Bhosale)
2. Mrs Namrata Nandkumar Bhosale)
R/o: Pancharatna Society,)
Badlapur [W], Tal-Ambarnath,)
Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Thane, having office at Kalwa Bridge)
Thane 400 601.)
3. The Addl. Commissioner of Police)
[Administration], having office at)
Near Kalwa Bridge, Thane 400 601.)...**Respondents**

Ms P.S Phagnekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 04.12.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. Misc Application No. 248/2023 is filed by the applicant seeking condonation of delay of 15 years, 11 months and 1 day.

2. The Original Application is filed by the legal heirs of late Nandkumar Bhosale, on 3.4.2023 for quashing and setting aside the impugned order of termination dated 8.5.2006, of Nandkumar K. Bhosale, passed by the Commissioner of Police, Respondent No. 2, who was serving in Police Force as Constable. It is also prayed that Respondents be directed to appoint Applicant No. 1, legal representative and son of late Nandkumar K. Bhosale in Police Force on compassionate ground. It is further prayed that the Respondent no. 1 be directed to pay entire arrears of pension in accordance with the Maharashtra Civil Services Rules, to Applicant No. 2, widow of Nandkumar K. Bhosale.

3. Learned counsel for the applicant has submitted that during the pendency of the Original Application, the Additional Commissioner of Police, (Administration), Thane, Mr Sanjay Jadhav, passed order dated 20.11.2023, cancelling the order of dismissal of Mr Nandkumar K. Bhosale. He is deemed to be reinstated in service from the date of his suspension dated 8.5.2006. Learned counsel has submitted that the father of the applicant Mr Nandkumar K. Bhosale was dismissed from service under Sections 392, 452, 342 and 170 (1) r/w 34 of IPC and also under the Arms Act. The delinquent officer expired in the year 2009 when the Session Case No. 666/2006 was pending against

him before the JMFC, Ulhasnagar. The co-accused were finally acquitted from all the offences by order dated 11.6.2014. She submitted that the applicant thereafter filed O.A 222/2021 before this Tribunal for giving appointment to the legal heir on compassionate ground. The said Original Application was dismissed by this Tribunal by order dated 3.12.2021. The said Original Application was challenged before the Hon'ble Bombay High Court in W.P No. 15990/2022. The said Writ Petition was disposed of by order dated 7.1.2023 with liberty to challenge the order of termination of deceased Nandkumar as may be permissible under law and before appropriate Forum. Learned counsel pointed out that while disposing of the Writ Petition, the Hon'ble High Court observed that if the termination order is set aside, then the order passed by the High Court will not come in the way while deciding the issue of compassionate appointment. Therefore, as the order of termination dated 8.5.2006 is set aside by the Additional Commissioner of Police, Thane, by order dated 20.11.2023, the present Original Application is filed seeking the same relief of giving appointment to Applicant No.1 on compassionate ground.

4. Learned C.P.O has submitted that the Tribunal to take into account the previous order dated 3.12.2021 passed by the Tribunal in O.A 222/2021 and the order dated 7.1.2023 passed by the Hon'ble Bombay High Court in W.P 15990/2022.

5. After hearing both the sides, considering its consequences which are likely to adversely affect the applicants, we asked the learned counsel for the Applicants No 1 & 2 who were present in the Court whether they are withdrawing the Original Application. However, the learned counsel for the applicants remained present on the next date so the matter was adjourned. She on instructions

has submitted that the applicants refused to withdraw the Original Application.

6. We think this matter needs to be adjudicated on merits as we came across very shocking order which is the basis of this Original Application. The Additional Commissioner of Police, Thane, by order dated 20.11.2023 has cancelled the order dated 8.5.2006 terminating the services of the father of the applicant passed by the Commissioner of Police, Thane.

7. It appears that this Original Application is filed pursuant to the order of the Hon'ble High Court dated 7.1.2023 passed in W.P 15990/2022, the relevant para of which is reproduced below:-

“9. It is for the petitioners to take appropriate steps qua termination of deceased Nandkumar as may be permissible under law and before the appropriate forum.

10. In case some order favourable to the petitioners is passed in challenge to the termination order, then the present proceeding would not be an impediment.”

Thus, the High Court has expressed that if the order of termination is set aside then the issue of appointment on compassionate ground to the applicant No. 1 in place of his father can be considered.

8. We need to refer to the order dated 3.12.2021 passed by this Tribunal in O.A 222/2021, where the same prayer of appointment on compassionate ground was made. The prayer of appointment on compassionate ground cannot be granted as the father of the applicant did not die in harness, but he died after his order of

dismissal was issued. The said order was challenged in the Writ Petition before the Bombay High Court and the High Court did not set aside the order of the Tribunal and has maintained the same.

9. The Applicants have approached the Tribunal with a fresh ground that as the order of termination is cancelled by order dated 20.11.2023, by the Additional Commissioner of Police, the first prayer is not pressed. However, learned counsel has submitted that the second prayer of giving appointment on compassionate ground is pressed.

10. Indeed, we are taken aback to come across such prayers when the High Court expressed that if the order of termination is challenged and set aside, then that may be a fresh ground to consider the prayers of appointment of Applicant No. 1 on compassionate ground. It necessarily means that the said order is to be set aside or to be cancelled by the proper judicial authority as it was termination under Article 311(2)(b) of the Constitution of India and accordingly the applicants have rightly approached this Tribunal with prayer (a) of this Original Application. However, it appears that the applicants have approached the Addl. Commissioner of Police, Thane, with a grievance of termination of services of the father of the Applicant No. 1. We fail to understand from where the Additional Commissioner of Police, Thane has got the powers to review or set aside the order dated 8.6.2005 passed by the Commissioner of Police, Thane, under Article 311(2)(b) of the Constitution of India. According to us, this is an illegal order. The Executive usurping the judicial power of their own is unprecedented.

11. Hence, we find no merit in the Original Application and the same is accordingly dismissed. In view of the above, Misc Application accordingly stands disposed of.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 04.12.2023
Dictation taken by : A.K. Nair.