

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 116/2017

Ku. Prachi D/o Sanjayrao Dhanorkar,
Aged about 26 years,
Occ. Nil, R/o Dhanora Gurav,
Tahsil Nandgaon Khandeshwar,
District Amravati.

Applicant.

Versus

- 1) The Superintendent of Police,
Gramin, Amravati,
District Amravati.
- 2) Smt. Saroj Wd/o Sanjay Dhanorkar,
Aged about 48 years, Occ. Pvt. Service,
C/o Vilas Arunrao Yete
R/o Near Exchange at Amgaon (Khurd),
Post Tq. Salekasa, Dist. Gondia.
- 3) State of Maharashtra,
through its Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai-32.

Respondents

Shri U.J. Deshpande, Advocate for the applicant.

Shri H.K. Pande, P.O. for respondent nos.1&3.

Shri S.G. Karmarkar, Advocate for respondent no.2.

Coram :- Hon'ble Shri A.D. Karanjkar,

Member (J).

JUDGMENT

(Delivered on this 2nd day of November,2018)

Heard Shri U.J. Deshpande, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for respondent nos.1&3. None for respondent no.2.

2. The applicant's father deceased Sanjayrao Dhanorkar was serving as Police Constable Buckle No.1008, he was attached to the Police Station, Chandur Railway, District Amravati. The applicant's father died on 18/04/2006. The mother of the applicant died in the year 1999. The applicant was eldest daughter in the family and therefore on 27/07/2009 she submitted application for appointment in Government service on compassionate ground.

3. After death of mother of the applicant deceased Sanjayrao had performed second marriage with respondent no.2. She was receiving pension after death of deceased Sanjayrao. It is claimed that the applicant is maintaining her grandfather after death of her father and therefore, she requested for employment. It is case of the applicant that no heed was paid by the respondents though time to time, she requested the respondents to appoint her in service on compassionate ground. Therefore this application is filed.

4. The application is opposed by the respondent no.1 mainly on the ground that as per the Government G.R. dated 22/08/2005 the time limit to submit application for appointment on compassionate ground was reduced to one year. It is submitted that the deceased Sanjayrao father of the applicant died on 18/04/2006. The applicant should have submitted application for appointment on compassionate ground within one year from the death of the deceased or within one year after attaining majority.

5. It is contented that the applicant submitted the application on 27/07/2009. In original application, the applicant has described her age 26 years, but she has not mentioned her date of birth in the application dt/ 27-7-2009. The applicant has not produced before the Tribunal; the copy of her birth certificate or school leaving certificate to show what was her age. According to the respondents, as the application was not filed within a period of one year from the death of the deceased, therefore it was barred by limitation.

6. The second submission is that the applicant's step-mother who is respondent no.2 is also claiming for appointment in government service on compassionate ground, both have not filed the succession certificate and therefore the application is liable to be dismissed.

7. The material question involved in this case is whether the application for the appointment on compassionate ground was submitted by the applicant within period of limitation. There is no dispute about the fact that the deceased Sanjayrao father of the applicant died on 18/4/2006 and the applicant submitted the application for appointment on compassionate ground on 27/07/2009. According to the learned P.O., as per government G.R. dated 22/08/2005, the earlier period to file application for appointment on compassionate ground 5 years; it was reduced to one year. My attention is invited to the compilation issued by the GAD dated 26/02/2013. After reading the G.R. dated 22/08/2005, it is clear that by this G.R. the time limit to submit the application, which was 5 years, was reduced to one year from the date of death of the deceased. Thus it seems that when applicant submitted her application on 27/07/2009 the limitation to submit the application was only one year.

8. The application is silent about the date of birth of the applicant, but after perusing Annex-A-3 it seems that the applicant has mentioned in the application that she passed her 10th matriculation examination in March,2005. Thus inference can be drawn that in March,2005 the applicant had completed the age of 16 years and in the year 2007 she completed the age of 18 years. As per the law, if the dependent of the deceased employee is minor he/she could

submit the application within one year after attaining majority. In view of this, it seems that when applicant filed the application on 27-7-2009, it was not filed within one year from the death of her father. On the basis of the facts before this Tribunal it is not possible to accept that the application was filed by the applicant, within one year after attaining majority. In this regard, I would like to point out that it was necessary for the applicant to produce her birth certificate to decide this controversy, but it is not done.

9. The learned counsel for the applicant has placed reliance on the Government G.R. dated 20/05/2015 it is submitted that in this G.R. the Government has permitted the competent authority to condone the delay in filing application upto 3 years from the date of death of the deceased. The material question is that when the application was submitted on 27/07/2009 at that time the G.R. dated 20/05/2015 was not in force. It is submission of the learned counsel for the applicant that this G.R. is retrospective, therefore, it is applicable. After reading the entire G.R. it seems that it is nowhere mentioned in this G.R. that its operation shall be retrospective, even after reading the G.R. it is not possible to draw the inference that it was intention of the Government to apply this G.R. retrospectively.

10. The legal position is explained by the Hon'ble Apex Court in the case of **M/s Purbanchal Cables and Conductors Pvt. Limited**

Vs. Assam State Electricity Board & Ano., (2012) 6 SCR,905, the page no.934 of the Judgment the Hon'ble Apex Court has considered the law in case of **Katikara Chintamani Dora Vs. Guntreddi Annamanaidu (1974) 1 SCC,567**. The paragraphs 32 & 33 reads as under:-

“(32) Katikara Chintamani Dora Vs. Guntreddi Annamanaidu (1974) 1 SCC,567, this Court held –

(50) *It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention to vary such rights (Maxwell on interpretation, 12th Edn.220). That is to say, “in the absence of anything in the Act, to say that it is to have retrospective operation, it cannot be so construed as to have the effect altering the law applicable to a claim in litigation at the time when the Act is passed.”*

(33) In Govind Das Vs. ITO (1976) 1 SCC 906, this Court speaking through P.N. Bhagwati, J., (as he then was) held:-

(11) *Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a*

new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3^d Edn.) and reiterated in several decisions of this Court as well as English courts is that

“all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective.”

and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.”

11. After reading paragraphs 32 & 33 which are reproduced above, I am compelled to say that as the G.R. is silent, the G.R. does not say expressly that it would apply retrospectively, similarly it is not possible to infer that it was desire of the government to give retrospective effect, therefore, the applicant cannot take shelter of this G.R. dated 20/05/2015 and relying upon this G.R., this Tribunal cannot straight way direct the government to appoint the applicant in government service. Even as per this G.R. the competent authority is

designated for condoning the delay, no other authority is empowered to condone the delay.

12. In the present case the applicant has also placed reliance on the Judgment in case of **Suraj S/o Sindhubai Tak Vs. State of Maharashtra & Ors.** in O.A.47/2016 decided by the Single Bench of MAT Bench at Aurangabad delivered on 08/09/2016. The facts in that case were mother of Suraj (applicant) died on 30/05/1999, at that time he was aged 7 years and after attaining majority on 28/10/2010 he submitted the application for his appointment on compassionate ground on 11/12/2012. His application came to be rejected on the ground that it was necessary to file application within 5 years from the date of death of his mother. In that case it was contention of the State that the date of birth of Suraj was 29/12/1992, he attained majority on 28/10/2012 and he submitted application on 11/12/2012, therefore there was delay of 13 months. In this situation the Single Bench considered the fact that already the proposal for the condonation of delay was forwarded to the government and in view of it, directed the Government to take proper decision on the proposal. It is specifically observed by the Single Bench that it was not necessary to examine the merits of the claim regarding prayer for condonation of delay.

13. In the present case at the relevant time when application was filed the G.R. dated 22/08/2005 was in force and as per this G.R.

the limitation to submit the application was one year. It seems that the application filed by the applicant on 27/07/2009 was not filed within one year from the death of the deceased, it is not shown by the applicant that she filed the application within one year after attaining majority. Secondly, the claim of the applicant is opposed by the respondent no.2, who is step-mother of the applicant on the ground that the applicant during pendency of the application performed marriage, therefore, she is not in need of the employment. In view of all these facts and as this Tribunal has no authority to condone the delay, I hold that the applicant is not entitled for the reliefs claimed in prayer clause. In the result, I pass the following order :-

ORDER

The application stands dismissed, no order as to costs.

(A.D. Karanjkar)
Member (J).

dnk.