

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 19 of 2016 (S.B.)

(1) Smt. Aruna wd/o Dilip Swamy,
Aged about 55 years, Occ. Nil,

(2) Kunal Dilip Swamy,
Aged about 23 years, Occ. Nil,

Both Resident of Dhurv Chowk,
Shukrawarpeth, At and Post Washim,
District Washim.

Applicant.

Versus

1) State of Maharashtra,
through its Secretary,
Ministry of Public Works Department,
Mantralaya, Mumbai-400 032.

2) Assistant Superintending Engineer,
Public Works Division, Yavatmal,
District Yavatmal.

Respondents.

Shri Kunal Nalamwar, Advocate for the applicants.
Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 21st December, 2021.

Date of Pronouncement of Judgment : 24th December, 2021.

JUDGMENT

(Delivered on this 24th day of December, 2021)

Heard Shri N. Phadnis, learned counsel holding for Shri Kunal Nalamwar, learned counsel for applicants and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicants filed this application for direction to the respondents to include the name of applicant no.2 on the waiting list of compassionate appointment in place of his mother i.e. applicant no.1. It is submitted that husband of applicant no.1 was working as Typist in the office of respondent no.2. He died on 11/5/2002 while in service. The applicant no.1 applied for appointment on compassionate ground. The respondent no.2 taking cognizance of the application included her name in waiting list of compassionate appointment. Her name was at Sr.No.19 in the said waiting list. At the relevant time, applicant no.1 had crossed the age of 42 years. The applicant no.1 enquired from time to time, then it was informed that her name is on waiting list and she will get appointment according to the waiting list number. Suddenly on 6/2/2010, the applicant no.1 received communication that she has crossed the age of 40 years, therefore, her name has been removed from the waiting list. Immediately after the communication dated 6/2/2010 she applied to the respondents to include the name of her son i.e. applicant no.2 in the waiting list. The respondents have not taken any cognizance of her application, therefore, the present O.A. is filed for direction to the respondents.

3. The application is strongly opposed by the respondents. It is submitted that as per the Govt. G.Rs., the candidates who have completed 40 years of age, cannot be continued in the waiting list. In view of the Govt. G.R., the name of applicant no.1 is removed from the waiting list. Now the applicant no.2 cannot claim that his name shall be included in the waiting list. Hence, the O.A. is liable to be dismissed.

4. Heard Shri N. Phadnis, learned counsel holding for Shri Kunal Nalamwar, learned counsel for applicants. He has pointed out the decision of this Tribunal in O.A. No. 10/2019 and decision of the MAT, Principal Bench at Mumbai in O.A. 645/2017. The learned counsel for the applicants has submitted that the applicant no.1 had already crossed the age of 40 years at the time of inclusion her name in the waiting list, therefore, it was duty of the respondents to point out the same. But the respondents had not taken any cognizance in this regard and therefore the applicants prayed to allow the O.A.

5. Heard Shri M.I. Khan, learned P.O. for the respondents. He has pointed out the decision of Hon'ble Apex Court in case of **Punjab State Power Corporation Limited & Ors. Vs. Nirval Singh (2019) 6 SCC,774** and the decision in the case of **Sanjay Kumar Vs. State of Bihar & Ors. (2000) 7 SCC,192.** The learned P.O. has submitted that appointment on compassionate ground cannot be

claimed as of right. The deceased employee died long back, therefore, after long period the compassionate appointment cannot be given. The learned P.O. has submitted that applicant no.1 had crossed the age of 40 years, therefore, as per the rules her name was removed from the waiting list. There is no illegality on the side of respondents. Hence, the O.A. is liable to be dismissed.

6. The applicant has filed the waiting list of compassionate appointment of the year 2005. The name of applicant no.1 is at Sr.No.19. On perusal of Annex-A-1 / waiting list, it is clear that the date of birth of applicant no.1 is 3/6/1960, therefore, it is clear that on the date of application i.e. on 12/8/2002 she had crossed 42 years. In such circumstances, it was for the respondent no.2 not to include her name in the waiting list as per the G.R. dated 23/8/1996.

7. It is the duty of the Establishment Officer to give all detailed information to the family members in respect of compassionate appointment etc.

8. It appears that the respondent no.2 had not taken care of the G.R. dated 23/8/1996. The inclusion of name of applicant no.1 in the waiting list itself was not proper, therefore, the respondents cannot deny the inclusion of name of applicant no.2 in the waiting list. The Judgment cited by the P.O. in case of **Punjab State Power Corporation Limited & Ors. Vs. Nirval Singh** is on different footing.

There was change of policy. The earlier policy has been abolished and therefore it was held that compassionate appointment cannot be given instead of compassionate appointment, solatium quantified at Rs. 5 lakhs in lieu of compassionate appointment in terms of new policy was granted. In the case of **Sanjay Kumar Vs. State of Bihar & Ors. (2000) 7 SCC,192.**, the application for compassionate appointment was made after eight long years.

9. In the present case, the applicant no.1 immediately applied for compassionate appointment. That time she was aged 42 years. She was not guided by the respondent no.2 about the scheme of compassionate appointment. As per the Govt. G.Rs. issued from time to time, it is duty of the Establishment Officer to guide the family members of the deceased employee about the scheme of compassionate appointment. It appears that the applicant no.1 was not guided. Her name was wrongly included in the waiting list. The M.A.T., Principal Bench at Mumbai has taken into consideration the Judgement of Hon'ble Apex Court in case of **Supriya S. Patil Vs. State of Maharashtra, 2018 (4) SLR 771** and come to the conclusion as under-

“19. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the request of Applicant by impugned order dated 27.04.2016 for taking his name on the waiting list in place of his mother is arbitrary and not sustainable in law and fact and the

same, therefore, deserves to be quashed and set aside. The Respondents ought to have considered the request of the Applicant in view of consistent decisions rendered by this Tribunal referred to above as well as law laid down by Hon'ble High Court as well as Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly."

10. In view of the scheme of the Government for appointment on compassionate ground, the name of applicant no.2 is to be included in the waiting list. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The Respondents are directed to consider the application of the Applicant no.2 for appointment on compassionate ground and it is equitable as well as judicious that his name is included in the waiting list for the issuance of appointment order, subject to fulfilment of eligible criteria in accordance to Rules.
- (iii) No order as to costs.

Dated :- 24/12/2021.

(Justice M.G. Giratkar)
Member (J).

dnk*.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 24/12/2021.

Uploaded on : 24/12/2021.