

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 252/2018

Smt. Manisha w/o Pradip Talwekar,
Aged about 45 years, Occ. Nil,
R/o Freedom Fighter Colony, Plot No.144,
Hudkewar Mhalgi Nagar, Nagpur
Tahsil and District Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Public Works Department Mantralaya,
Mumbai-32
- 2) The District Collector,
Nagpur.
- 3) The Superintending Engineer,
Sarvajanik Bandhkam Mandal,
(PWD) Department Nagpur,
District Nagpur.

Respondents

Smt. Smita S. Dashputre, Advocate for the applicant.

Shri S.A. Sainis, P.O. for respondents.

Coram :- Hon'ble Shri A.D. Karanjkar, Member (J).

Dated :- 01/11/2018.

ORAL ORDER

Heard Smt. S.S. Dashputre, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant's husband Pradip Talwekar was serving as Typist on the establishment of respondent no.3. The applicant's husband died on 07/05/2011, consequently the applicant submitted application for employment on compassionate ground. The copy of the application is at Annex-A-2.

3. The applicant's name was included in the waiting list. The applicant was waiting for appointment order, to the surprise of the applicant she received letter dated 21/09/2017 that as she had crossed the age of 45 years, consequently her name was removed from the waiting list, the letter is at Annex-A-3. The applicant thereafter made representation to the respondents to consider her case sympathetically. It was submitted that though applicant's name was in waiting list, but the appointment was not given by the respondents and it was not her fault. Therefore, the applicant requested that in place of her, name of her son or daughter be inserted in the waiting list, but as no heed was paid by the respondents to the applicant's request, therefore, this O.A. under section 19 of the Administrative Tribunals Act is filed by the applicant.

4. It is claimed by the applicant that direction be issued to the respondent no.3 to consider her claim in view of application dated 8/8/2011, alternatively direction be given to the respondents to consider her representation dated 27/09/2017 and to provide

employment to her daughter or son of the applicant on compassionate ground.

5. It is contention of the respondents that the action of respondent no.2 removing the name of the applicant from the waiting list is in accordance with the G.R. dated 6/12/2010. The respondent no.2 has implemented the direction in the G.R. and as the applicant had crossed the age of 45 years, therefore, the respondent no.2 had no alternative other than to remove the name of the applicant from the waiting list. Secondly, it is submitted by the respondents that there is no provision to substitute the name of legal representative of the applicant and consequently there is no illegality committed by the respondents and application is liable to be dismissed.

6. I have heard oral submissions on behalf of the applicant and on behalf of the respondents. The respondents have placed on record the compilation of the Government G.R. issued by the GAD time to time regarding appointments on compassionate ground.

7. The first G.R. dated 06/12/2010 specifically says that the age limit to provide employment to the dependent of the deceased Government servant was extended from 40 years to 45 years and this G.R. came into force prospectively from 06/10/2010. On perusal of this G.R. it is clear that after completion of 45 years age the person cannot be employed in the service on compassionate ground,

therefore it appears to me that the action of respondent no.3 removing the name of the applicant from the waiting list cannot be labelled as illegal act.

8. Now I would like to consider submission of the applicant that she was not responsible for the delay, on the contrary appointment order was not issued by the Government and therefore, action of the respondents removing her name from the waiting list is illegal.

9. The learned counsel for the applicant has placed reliance on the Judgment in case of **Rajani W/o Bharat Chachire & Ano. Vs. The Divisional Controller, MSRTC & Ors.,2004 (1) ALL MR 520**, here I would like to point out that in that case the name of the petitioner was in the waiting list and she was time to time informed that there was no vacancy. It was brought to the notice of Hon'ble High Court that instead of filling vacant post by appointing the petitioner three other persons were appointed as Cleaners, in view of this background the Hon'ble High Court granted reliefs to the petitioner. In the present case it is not shown by the applicant that when her name was in the waiting list, any person junior to her in the waiting list was appointed or any outsider was appointed on any vacant post. After going through the compilation filed by the respondents it seems that the various guidelines are issued by the

Government time to time how to fill the vacant post, what should be the percentages of the dependent of the deceased. Anyway as no other person was appointed in service disregarding the rules, therefore, it is not possible to accept that as appointment was not given when the applicant was under age, therefore, now she is entitled for the relief.

10. The learned counsel for the applicant has also placed reliance in the Judgment in case of **MGB Gramin Bank Vs. Chakrawarti Singh,2013 ALL SCR,2869.** In this case it is laid down by the Hon'ble Apex Court that appointment on compassionate ground cannot be claimed as of a right and it is not a vested right. It is further observed that such appointment cannot be prolonged for years. It is contention of the respondents that there were filling the posts from the waiting list, as per the guidelines and directions of the Government, therefore it is not possible to accept that there is violation of any Government G.R. by the respondents.

11. Now I would like to consider the second contention of the applicant, it is claimed that if it is not possible to issue direction to the respondents to appoint the applicant on compassionate ground, then in that event direction be issued to the respondents to substitute name of son or daughter of the applicant in her place. In reply it is submission of the learned P.O. that it is not permissible to substitute

the name of legal representative in the waiting list when candidate has crossed the age of 45 years. It is submitted that only concession is given that when the candidate in the waiting list dies then his legal heir can be substituted. In the present case the applicant who was candidate is alive and therefore, according to the learned P.O. it is not permissible to substitute the name of son or daughter of the applicant.

12. After going through the compilation paragraph 21 it is laid down that in case of death of candidate in the waiting list his legal heir can be substituted. The learned counsel for the applicant was unable to show any Government G.R. which permits substitution of the legal heir of the candidate in the waiting list if the candidate completes the age limit of 45 years.

13. The learned counsel for the applicant has invited my attention to the order passed by the Single Bench MAT Nagpur Bench, in O.A.488/2016. After going through this application, it appears that in that case the deceased Vishvas was Government servant, he died on 4/8/2001, thereafter his wife applied for the appointment on compassionate ground, her claim was rejected in 2008 on the ground that she had completed the age of 40 years. As per the G.R. after attaining the majority the applicant Shri Shridhar Vishvas Dhandare submitted application for appointment on compassionate ground on 14/02/2008, his name was inserted in the

waiting list of the candidates, it was at sr.no.29. Shri Shridhar was informed by the department that as his mother's name was removed from the waiting list; therefore, his name was removed from the waiting list. In O.A.488/2016 the learned Single Bench of MAT observed that this action of the respondents in that matter was illegal because, Shri Shridhar was not claiming appointment on compassionate ground as a legal heir of his mother, but he was claiming as a legal heir of his deceased father and that application was tenable.

14. In the present case, I would like to point the applicant is in need of the employment either to her son or her daughter. As the applicant has already crossed age of 45 years she cannot be appointed in Government service and in accordance with Government G.R. it is not permissible to issue direction to straight way insert name of her son or daughter in the waiting list. In this background I would like to point that the applicant's son or daughter on attaining majority have right to apply for appointment in the government service on compassionate ground. They could apply for such appointment within one year after attaining majority and the competent authority designated by the Government Circular is empowered to condone the delay. As this remedy is available to the son and daughter of the

applicant, therefore, they may approach the competent authority for this relief. In view of this, I pass the following order :-

ORDER

The O. A. stands dismissed. No order as to costs.

Dated :- 01/11/2018.

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

dnk.