

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 305/2015

Sagar Rammurti Butoliya,
Aged about 27 years,
R/o Near Durga Mandit,
Shashikant Society, Gorewada,
Nagpur.

-----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Deptt.
Mantralaya, Mumbai.
2. The Director, Directorate of Forensic
Science Laboratories, Home Department,
M.S. Vidyanagri, Hans Bhugra Mar4g,
Santacruz (East), Mumbai. 98
3. The Dy. Director, Regional Forensic Science
Laboratory, Nagpur Region, Rahate
Colony, Dhantoli, Nagpur. 12. ----- **Respondents.**

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1. Shri M.R. Patil, Advocate for the applicant.
 2. Shri A.M. Ghogre, , Id. P.O. for the Respondents.
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CORAM : J.D. Kulkarni : Vice Chairman (J)


DATE : 31st March, 2017



ORDER

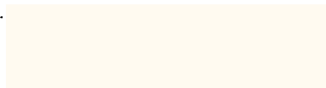
Heard Shri M.R. Patil, the learned counsel for the applicant and Shri A.M. Ghogre, the learned Presenting Officer for the Respondents.

2. From the admitted facts on the record, it seems that the applicant's father was Assistant Superintendent in the office of the Respondents. He died on 22/2/2010 during service period. The applicant's mother immediately filed an application for appointment of her son on compassionate ground on 25/3/2010. She requested that her son be appointed on Class-III post. The request was partly accepted and the applicant was appointed as Laboratory Attendant in the Class-IV post vide order dtd. 3/6/2014 in the Regional Office at Amravati. Immediately after joining the applicant filed the representation to Respondent No. 2 on 11/7/2014 and requested that he be given Class-III post. He submitted that one Smt. Pannaben Patel and Smt. Pratima S. Gavit who were on the wait list at Sr. Nos. 5 and 8 respectively were appointed on Class-III in similar circumstances but the



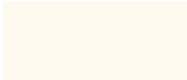
applicant's request was not considered. The applicant has therefore, claimed that the Respondent No. 2 be directed to issue appointment order of the applicant to Class-III post and to decide his representation dtd. 11/7/2014 which was not decided till filing of the O.A.

3. The Respondent Nos. 2 and 3 justified the applicant's appointment on Class-IV post. It is stated that once the compassionate appointment order is issued and accepted by the employee, he has no right to apply for reconsideration for higher post. It is further stated that the applicant's name was at Sr. No. 11 in the wait list and at that relevant time the vacancies of Laboratory Assistant were more than that of any other cadre. The Respondent no. 2 who is appointing authority filled the post of Laboratory Attendant on priority basis. In the absence of any vacancy of the unit, the work gets disturbed. 12 posts to be filled in on the compassionate ground out of which 9 candidates were appointed on the post of Laboratory Attendant. The pay scale of the Laboratory Attendant comes under PB-1, which is



equivalent to Class III post and therefore, the applicant was rightly appointed. The respondents did not deny the fact that the applicant has passed the B.A. degree.

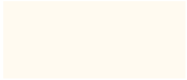
4. This Tribunal vide order dtd. 3/2/2016 was pleased to direct the respondents to file additional affidavit involving the following points :-

- a) What are the waiting list numbers of the candidates who were appointed on compassionate ground in terms of the statement at Annexure-A-9 of the O.A.
 - b) On what basis Smt. Pannaben Patil and Smt. Pratima S. Gavit were granted appointment of Junior Laboratory Assistant, Class-I*II post as they held B.A. degree?
 - c) Whether the fact that the applicant had passed his B.A. final on 2/6/2011 was taken into consideration?
 - d) Whether there are any Recruitment Rules for the post of Junior Laboratory Assistant?
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e) Whether the post of Junior Laboratory Assistant or any other post of Group-C is available.

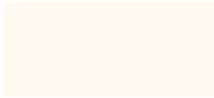
5. In view of the order as aforesaid the Respondent Nos. 2 and 3 filed additional affidavit on 2/3/2016. In the said affidavit, the respondents have given details of the appointment on compassionate ground in the post of Peon, Laboratory Attendant, Junior Laboratory Assistant, Sweeper etc. In para 8 of the said affidavit, the respondents have stated as under :-

Para 8 :- “ It is further submitted that, as per the Order dt.11/9/2015 issued by the Directorate of Forensic Science Laboratories, the Direct Recruitment and Promotional Posts has been notified and as per the said order, 11 post of Scientific Assistant, 8 posts of Senior Laboratory Assistant and 7 posts of Junior Laboratory Assistant are vacant as on today and the same will be filled up after approval of Government.”



6. From the aforesaid circumstances, it is clear that at present there are 11 posts of Scientific Assistant, 8 posts of Senior Laboratory Assistant and 7 posts of Junior Laboratory Assistant which are vacant. Admittedly, all these posts fall in Class-III category. In such circumstances even accepting that there may not be Class-III post available when the applicant was appointed, there is no reason as to why the applicant's representation was not considered for up-gradation of his post in the Class-III category. Admittedly, the applicant is well qualified. The Id. counsel for the applicant has placed reliance on the judgment delivered in **A.I.R.2001 S.C.2415 (Surya kant Kadam, vs. State of Karnataka and others)**, wherein the appellant though senior and qualified was not considered. It was observed that it amounts to hostile discrimination and direction was issued to the State Government to consider appellant for appointment as Sub-Inspector.

7. The Id. counsel for the applicant has also placed



reliance on the judgment delivered in (2003) 10 S.C.C. 275 in the case of State of Haryana and others -vs- Rajiv Deshwal. The order passed by the Apex Court in the said case is required to be reproduced and it is as under :-

“ We have heard learned counsel for the parties. The High Court has interpreted the clause which reads as under :-

“ Further, the compassionate employment being offered shall be at least one step lower than that of the deceased employee except in cases where the deceased employee was working at the lowest level in the Government”

7. In view of the observations as above and considering the facts of the present case, it will be clear that the applicant is well qualified and there is no reason as to why he cannot be considered for the Class-III post. The respondents have not taken any decision on the representation filed by the applicant dtd. 11/7/2014. The said representation was made immediately within one month of joining the post.

The applicant has accepted the Class-IV post that does not mean that he is restrained from claiming higher post. He might have joined and accepted the lower grade post due to financial need at that particular time. When the applicant was well qualified, it was expected from the respondents that he shall be considered for a suitable post and should not have been forced to accept the lower grade post. He was not begging for the post. In view of this, I pass the following order :-

The O.A. is partly allowed. The respondents are directed to consider applicant's claim for Class-III post in view of his representation dtd. 11/7/2014. Such appointment shall be issued within 2 months from the date of this order. It is needless to state that the applicant will not be entitled to any arrears of pay for the up-gradation post retrospectively.

No order as to costs.



(J.D. Kulkarni)
Vice-Chairman(J).

Skt.