

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 334 of 2022
WITH CIVIL APPLICATION No.352 of 2022 (S.B.)

Laxman S/o Narayan Bhade,
Aged about 37 years,
Occu- Service (Junior Clerk),
R/o.Jaisignpure Layout, Arni Road,
Yavatmal, Tah. and District-Yavatmal-445001.

Applicant.

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Water Resources Department, Mantralaya, Mumbai-32.
- 2) Superintending Engineer and Circle Officer,
Vigilance Cell Amravati Water Resources Circle Division,
Shivaji Nagar, Amravati, Dist. Amravati.
- 3) Executive Engineer,
Vigilance Cell Amravati Water Resources Circle Division,
Shivaji Nagar, Amravati, Dist. Amravati.
- 4) Sub Divisional Engineer,
Vigilance Cell Amravati Water Resources Circle Division,
Shivaji Nagar, Amravati, Dist. Amravati.

Respondents.

S/Shri S.U. Nemade, S.S. Nemade, Advs. for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 03/04/2024.

J U D G M E N T

Heard Shri S.U. Nemade, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant's father namely Narayan Yashwantrao Bhade was the permanent employee of respondents. He died due to accident during the course of his employment and while discharging duties.

3. The applicant applied for appointment on compassionate ground. The applicant applied to be posted on the post of Senior Clerk according to his qualification. The applicant was posted as per the order dated 18/02/2010 (Annex-A-6) on the post of Junior Clerk instead of Senior Clerk. The applicant joined the service on 09/03/2010. The applicant is now permanent employee. Since last more than 11 years service, the applicant was given the additional charge and duties of Senior Clerk in addition to the duties of Junior Clerk. He has been discharging both the duties since last more than 11 years. The applicant is entitled to get designation of Senior Clerk and pay as per the designation. However, respondent have not granted to him designation of Senior Clerk or pay of the post. Hence, the applicant approached to this Tribunal for the following reliefs –

(9) (i) To quash and set aside the impugned communication/order dated 02.12.2021 issued by the respondent no.3 and the communication/ order dated 18.01.2022 issued by the respondent no.4 (Annexure-A1 collectively), under the facts and circumstances of the present case and in the interest of justice and equity;

ii) Upon quashing and setting aside the aforesaid impugned communications/orders (Annex.A1), to hold and declare that the applicant was entitled to be appointed on the post of Senior Clerk on compassionate ground basis as on the date of his appointment on the post of Junior Clerk at the establishment of the respondents under the policy decision of respondent no.1-State and further on the parity ground basis as the other similar candidates have directly been appointed on the post of Senior Clerk on compassionate ground basis in Pune Region as well as in Aurangabad Region as demonstrated hereunder, under the facts and circumstances of the present case and in the interest of justice and equity;

iii) Upon holding so, direct the respondents to treat or declare the applicant appointed on the post of Senior Clerk w.e.f. 09.03.2010 the date of his joining on the post of Junior Clerk under the said policy decision of the respondent no.1-State and on parity ground basis and further grant him all the service benefits for which he is entitled in law, under the facts and circumstances of the present case and in the interest of justice and equity;

iv) Without prejudice to the aforesaid relief and claim, the applicant further seeks this Hon'ble Tribunal to direct the respondents to treat the applicant as regularly appointed on the designated post of Senior Clerk w.e.f. his joining date 09.03.2010, as he was assigned the additional and regular charge of Senior Clerk while working as Junior Clerk since last more than 11 years and pay him the said salary as per the principle of "pay as per the designation and work", under the facts and circumstances of the present case and in the interest of justice and equity;

v) If this Hon'ble Tribunal is not inclined to grant any such relief as claimed above then to direct the respondents to grant the additional pay benefits to the applicant as per Rule 56 (2) of Maharashtra Civil Services (Pay) Rules, 1981 for which he is entitled in law, under the facts and circumstances of the present case and in the interest of justice and equity;

vi) Allow the instant Original Application by saddling cost on the respondents throughout and grant any other suitable relief for which this applicant is entitled in law, under the facts and circumstances of the present case and in the interest of justice and equity.

(10) (i) By way of an interim order or direction direct the respondents to consider and decide the valid representations made by the applicant on 10.01.2022 and 20.02.2022 (Annexure-A11), pending the decision of the instant original application in the interest of justice and equity;

4. The O.A. is strongly opposed by the respondents by filing reply. The respondents have denied the claim of applicant. It is submitted that the vacancies shown by the applicant are not regular vacancies. Those vacancies are to be filled by promotion and therefore, the applicant cannot be posted on the said post of Senior Clerk. At last submitted that the O.A. is liable to be dismissed.

5. The learned counsel for applicant has pointed out the Government G.R. dated 20/12/1996. The learned counsel for applicant has submitted that similarly situated persons were appointed on the post of Senior Clerk by the Superintending Engineer, Aurangabad as per the order dated 17/07/2008. The Pune Division also the appointment on compassionate ground was granted and one Villas S. Marathe was appointed on the post of Senior Clerk as per order dated 30/04/2008.

6. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.No.183/2021, decided on 03/08/2023. He has pointed out the vacancies of posts in the office of Superintending Engineer, Yavatmal (P-39) and submitted that 21 posts of Senior Clerk are vacant in the year 2008-2009. Therefore,

learned counsel for applicant submits that as per the G.R. and the Judgment of this Tribunal, the respondents be directed to appoint the applicant on the post of Senior Clerk.

7. The P.O. has pointed out the order 04/08/2018 passed by the Government of Maharashtra and submitted that by the Corrigendum some of the part of G.R. dated 21/09/2017 is deleted. It is taken on record and marked Exh-X for identification. He has pointed out para-11 of the reply and submitted that the Pune Regional Offices Mr. Parag Chandrasekhar Mule has been appointed to the post of Senior Clerk on compassionate ground, but after the Government decision dated 22/08/2005, no compassion holder has been accommodated on the post of Senior Clerk by the Amravati Circle Offices, nor the order regarding the appointment to the post of Junior Clerk. No compassionate candidate has made such demand since it was issued and therefore does not agree with the applicant.

8. The learned counsel for applicant has submitted that the Corrigendum dated 04/08/2018 is not applicable, because, the applicant is claiming the post of Senior Clerk as per G.R. of 1996. The applicant was appointed in the year 2010, the Corrigendum is dated 04/08/2018, it cannot be retrospectively given effect.

9. There is no dispute that the applicant was appointed on compassionate ground on the post of Junior Clerk. This Tribunal in

O.A. No.183/2021 relying on the G.R. dated 21/09/2017 directed the respondent authorities to appoint the applicant on the post of Senior Clerk, if the post is vacant and if the applicant is eligible for the said post. The applicant is claiming as per the G.Rs. of 1996 and 2017. The Corrigendum is dated 04/08/2018, it cannot be retrospective given effect.

10. The applicant has shown that 21 posts of Senior Clerk are vacant. The orders filed on record show that in Pune and Aurangabad Division, the appointments on compassionate basis were given on the post of Senior Clerk. The respondents cannot say that such appointments were not made by the Amravati Division. The respondents have to follow the G.R. This Tribunal granted relief in O.A.183/2021 as per the G.R. dated 11/09/2019. The material portion of the G.R. is reproduced below –

शासन निर्णय :

संदर्भाधीन शासन निर्णयातील अनुकंपा नियुक्तीच्या भरतीसाठी असलेली १०% व २०% ची मर्यादा शिथिल करून, वित्त विभागाचे ज्या पदांच्या भरतीवर निर्बंध आहेत आणि ज्या पदांच्या भरतीवर निर्बंध नाहीत अशा सरळसेवेच्या कोट्यातील सर्व पदांच्या बाबतीत, गट-क व गट-ड मधील प्रतिवर्षी रिक्त होणाऱ्या पदांच्या २०% पदे अनुकंपा नियुक्तीद्वारे भरण्यात यावीत.

सदर २०% ची मर्यादा ही सन २०१९ या कॅलेंडर वर्षापासून तीन वर्षासाठी (१ जानेवारी, २०१९ ते ३१ डिसेंबर, २०२१) अंमलात राहिल. त्यानंतर सन २०२२ या कॅलेंडर वर्षापासून (१जानेवारी,२०२२ पासून) संदर्भाधीन शासन निर्णयानुसार अनुकंपा नियुक्ती देण्यासंदर्भात कार्यवाही करावी.

यापुढे अनुकंपा नियुक्तीद्वारे पदभरतीसाठी असणारी मर्यादा विचारात घेऊन, अनुकंपा नियुक्ती देण्यासाठी पदसंख्या निश्चित करताना जर ०.५ पेक्षा कमी संख्या येत असेल तर किमान एक पद अनुकंपा नियुक्तीने भरण्यात यावे.

अनुकंपा नियुक्तीची पदसंख्या निश्चित करण्याच्या अनुषंगाने सुलभ संदर्भासाठी सोबतचे जोडपत्र पहावे.

२. सदर शासन निर्णय हा वित्त विभागाच्या अनौपचारिक संदर्भ क्र. ३७२/आपुक दि.३०.०८.२०१९ अन्वये प्राप्त मान्यतेनुसार निर्गमित करण्यात येत आहे. ”

11. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to appoint the applicant on the post of Senior Clerk, if the post is vacant and if the applicant is eligible for the said post. But retrospective effect of the appointment order shall not be given.

(iii) The respondents can make the appointment order on the said post, afresh.

(iv) The C.A. is also disposed of.

(v) No order as to costs.

Dated :- 03/04/2024.

(Justice M.G. Giratkar)
Vice Chairman.

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 Vice Chairman.

Judgment signed on : 03/04/2024.