

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 339 OF 2015

DISTRICT : RAIGAD

- 1) Smt. Vatsala Widow of the Late)
Vishwanath Bana Patil)
Age adult, Occ- Household.)
- 2) Smt. Vishanka daughter of Late)
Vishwanath Bana patil)
Age 20 years, Occ- Unemployed)
Both residing at Koli (Kolhi),)
Tal- Panvel, Dist. Raigad.)...**Applicants**

VERSUS

- 1) State of Maharashtra)
(through Secretary to Govt.)
Public Health Dept.))
New Mantralaya 10th Floor)
G.T. Hospital Compound,)
Mumbai - 400 001.)
- 2) The Commissioner)
E.S.I.S. 6th Floor, Panchdeep)
Bhawan, N.M. Joshi Marg.)
Lower Parel, Mumbai - 400 013.)
- 3) Director (Adm).)
E.S.I.S. 6th Floor, Panchdeep)
Bhawan N.M. Joshi Marg,)
Lower Parel, Mumbai- 400 013.)
- 4) Medical Superintendent)
E.S.I.S. Hospital)
Ulhasnagar- 421 003.)
Dist. Thane)....**Respondents**



Shri M.I. Pathan, the learned Advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 17.06.2016

PER : Shri R.B. Malik, Member (J)

ORDER

1. Heard Shri M.I. Pathan, learned Advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application (O.A.) is brought by the widow and daughter of Late Shri Vishwanath Bana Patil (the said deceased hereinafter) in effect seeking family pension and compassionate appointment.

3. The facts at this stage appear to be far simpler and uncomplicated than the life of the Applicants. The said deceased was working as a gardener (Mali) under Respondent No.4 Medical Superintendent E.S.I.S. Hospital Ulhasnagar from 1976. Respondents 1,2 and 3 are State of Maharashtra through Public Health Department, the Commissioner E.S.I.S. and Director (Admn) E.S.I.S. In 1995 the said deceased came to be arrested on 5.7.1995 and was put to trial along with thirty six others on the allegations of having



committed the dreadful murderous crime. One of his co-accused was his colleague Shri Houshya Atmaram Pawar (the said Shri Pawar). The accused including the said Shri Pawar were convicted by the Court of Sessions Raigad and Sentenced to life imprisonment. That was by the judgment and order dated 26.04.2001. The said deceased was already placed under suspension upon his arrest in 1995. By an order of 14.01.2003 made by the 3rd Respondent the said deceased was dismissed w.e.f. the date of his conviction viz. 26.04.2001.

4. The convicts challenged the judgment and order of the trial court in Criminal Appeals. The said deceased and the said Shri Pawar along with eight others preferred **Criminal Appeal No.385 of 2001 (Dharma Dhaya Joshi and nine others Vs. The State of Maharashtra)**. The said deceased and the said Pawar were appellants Nos.9 and 10 respectively.

5. Pending Criminal Appeal the said deceased died in Jail on 05.05.2003.

6. The Hon'ble High Court decided all the Criminal Appeals arising out of the judgment and order of conviction and sentence herein relevant including that in which the said deceased was a Co-appellant by the judgment dated 16.10.2006. The Appeals were allowed and all the appellants were acquitted of the offence with which they were charged and for which they were tried. The Special Leave Petition came to be dismissed on 14.09.2007. Thus the acquittal of



all the accused including the said deceased became final and conclusive. Needless to emphasise that the stigma that got attached to the ex-convicts including the said deceased got wiped out with all the positive consequences.

7. In fact in case of the ex-convict viz. the said Shri Pawar it was on 31.3.2010 that the 3rd Respondent made an order revoking his dismissal (संबंधित बडतर्फीचे आदेश आता या द्वारे रद्द करण्यात येत आहेत). Directions were given to re-appoint him on the equivalent post w.e.f. 26.04.2001. Further the period of suspension of the said Shri Pawar from 5.7.1995 to 26.04.2001 was regularised. The significance of the two dates was that they were the dates of suspension and dismissal respectively.

8. It seems that the said Shri Pawar brought O.A.No.522 of 2014 and took out therein Miscellaneous Application No.294 of 2014 (Shri Housha Pawar Vs. State of Maharashtra on 12.09.2014) the 3rd Respondent made another order (page no. 3 of the paper book). It was mentioned there that although vide the order detailed in the preceding paragraph the period between 5.7.1995 to 26.04.2001 was regularised but nothing was indicated about the pay etc. for that period. It was by the order under consideration provided that the said period would be treated as on duty. Similarly the period of incarceration from 27.04.2001 and 19.10.2006 was also treated as on duty (कामात म्हणून गणण्यात यावा). Further as far as the period from 20.10.2006 to 04.03.2010 the said Shri Pawan made applications from



26.10.2006 requesting to let him join duties. After crediting the balance of leave as for the remaining period it would be treated as extraordinary leave.

9. It is quite clear that even otherwise the action taken in the matter of the said Shri Pawar was quite accurate and infact the only cause of action to be adopted. If the said deceased had not died on 05.05.2003 while still in prison he was and would have been at complete par with the said Shri Pawar. On 14.06.2008 the Applicant No.2 made a written request to the 2nd Respondent asking for orders similar as in case of the said Shri Pawar. The Applicants also obtained heirship certificate from the Panvel Civil Court (Misc. Application No.690 of 2012 dated 20.03.2013). The 1st Applicant wrote to 2nd Respondent seeking job for her daughter and pension for herself.

10. The case of the Respondents would have to be found from the affidavit-in-reply of the 4th Respondent for himself and 2nd Respondent. Paragraphs 2.2, 9 and 11 need to be reproduced.

“2.2. As the criminal case was filed against the deceased employee, he was suspended thereafter he was dismissed from service vide order dated 14.01.2003 w.r.e. 26.4.2001 and the deceased employee expired during the pendency of writ petition and S.L.P. After the S.L.P. is dismissed deceased employees colleague was reinstated, but as the deceased employee was expired in respect of deceased employee, no decision was taken.



9. With reference to para 6(5), I say that deceased Shri. Vishwanath Bana Patil was dismissed by order dated 14.01.2003 with effect from 26.04.2001. Thereafter appeal filed by deceased Shri Vishwanath Bana Patil in Hon'ble High Court was decided and he was acquitted of the charge by judgment dated 03.10.2007. Thereafter, the S.L.P. was filed by Government of Maharashtra in Hon'ble Supreme Court came to be dismissed on 14.09.2007. In this situation since the deceased Shri Vishwanath Bana Patil was dismissed with effect from 26.04.2001 i.e. about six and half years prior to the S.L.P. decision, and as he died in Jail on 05.05.2003 his order of dismissal is not revoked.

11. With reference to para 6(8), I say that the service of Late Shri Vishwanath Bana Patil were terminated with effect from 26.04.2001 vide this office order dated 14.01.2003. Thereafter he died on 05.05.2003 while in Jail. However, the application in prescribed format for appointment on compassionate ground was submitted by the Applicant No.2 on 27.12.2004 i.e. after eleven years, and therefore as per provisions in para (2) (1) and (3) of G.R. dated 22.08.2005, she is declared ineligible for compenssionate appointment and informed accordingly."

11. No paraphrasing and/ or elaboration is necessary or needed for the above quotes. We may not be able to do better than the expression that the said paras are couched in. We must however reiterate that the cases of the said Shri Pawar and the said deceased were completely at Par. Death was not a disabling factor even for his heirs to claim whatever was due to him viz. family pension and post retiral benefits to the extent of admissibility.



12. In so far as claim for compassionate appointment as laid by the 2nd Applicant it seems that no serious attempt was made especially by Respondents to even do something that could be called a semblance of procedure 2005 G.R. has been annexed with the O.A. There are other G.R.s also in the field. In this O.A. we cannot express any opinion about the entitlement of the second appellant. The matter has got delayed. If really has. But if the second Applicant were to make a proper application for compassionate appointment as per the provisions of the relevant and applicable G.R. We trust that the Respondents will ponder over their own indolence and hence contribution to the delay. It is not our mandate that the Applicant No.2 must apply for compassionate appointment. We also make no pronouncement about 2nd Applicant's entitlement. We grant liberty to the second Applicant to make an application if so advised and if she did that the Respondents shall deal therewith appropriately as early as possible.

13. However as far as pension etc. is concerned we uphold the case of the Applicants. The net result of the above discussion is that the said deceased Shri Vishwanath Bana Patil shall be treated exactly at par with the said Shri Hoshya Atmaram Pawar. The Respondents shall make every order in case of the said deceased that they did in case of the said Shri Pawar including revocation of the order of dismissal vide the order dated 14.1.2003, treatment of the period of absence etc. The Respondents shall proceed on the basis that the said deceased was on duty when he died on



05.05.2003 and accordingly sanction, grant and pay family pension and other retiral benefits to the Applicant No.1. Compliance to commence forthwith and be completed within three months from today including all arrears. The payment of monthly pension to be made regularly. Refer to paragraph no.11 above as far as appointment on compassionate ground is concerned.

14. The O.A. is allowed to the above extent with no order^a s to costs.
in

Sd/-

(R.B. MALIK)
MEMBER (J)

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 17.06.2016

Place : Mumbai

Dictation taken by : SBA

D:\savita\2016\June, 2016\O.A.No.339 of 2015 Vc. & M(J) Family Pension.doc