

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.418/2016.

Vinay Ashok Kyaste,
Aged about 21 years,
Occ- Nil,
R/o C/o Shri Surendra Reddy,
Plot No.21, Swagat Nagar, Nagpur-13.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Works,
Mantralaya, Mumbai-32.
2. The Executive Engineer,
Public Works Division, Yavatmal.
Near Collector's office, Yavatmal.
3. The Executive Engineer,
Special Project, Public Works Division, Yavatmal.
Near Collector's office, Yavatmal.

Respondents.

Shri M.R. Johrapurkar, the Ld. Advocate for the applicant.

Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

Dated:- 13th September 2017.

Order

Heard Shri M.R. Johrapurkar, the learned counsel
for the applicant and Shri M.I. Khan, the learned P.O. for the
respondents.

2. Applicant's father Ashok Kyaste was serving as a Driver in the office of respondent No.3 and died on duty on 3.2.2008. After his death; on 28.7.2012, the applicant filed an application through his mother for grant of appointment on compassionate ground. At that time, applicant's age was about 17 years. His claim for appointment on compassionate ground was forwarded by respondent No.3 to respondent No.2. But vide communication dated 23.8.2012, respondent No.2 refused to include the applicant's name in the wait list on the ground that he has not completed 18 years of age. The said fact was communicated to the applicant by respondent No.3 by letter dated 1.9.2012.

3. After completion of the age of 18 years, the applicant filed another application for grant of appointment on compassionate ground alongwith requisite documents on 5.2.2014. The said application was also forwarded by respondent No.3 to respondent No.2 on 10.3.2014. Vide communication dated 16.4.2014, respondent No.3 issued clarification and the application was pending for nomination. On 21.6.2014, respondent No.3 again submitted a proposal to appoint the applicant on compassionate ground to respondent No.2. But vide impugned communication dated 7.8.2014, a proposal was returned to respondent No.3 on the ground that the application was preferred by the applicant after completion of 18 years of age, but after limitation. It

was stated that the application ought to have been filed immediately after completion of 18 years of age as per G.R. dated 18.9.1996 and, therefore, respondent No.2 refused to include the name of the applicant in the wait list.

4. The applicant thereafter issued notices through his Advocate on 2.8.2015, 3.9.2015 and 4.1.2016. However, vide communication dated 7.8.2014, his claim was rejected by respondent No.2. The applicant has, therefore, claimed that communication dated 7.8.2014 by respondent No.2 to respondent No.3 and consequent letter issued by respondent No.3 to the applicant on 18.8.2014 (Annexures A-1 and A-2) respectively be quashed and set aside.

5. The respondent No.2 has filed affidavit-in-reply and admitted almost all the facts. Defence taken in affidavit-in-reply is that, the first application was filed when the applicant was minor and, therefore, it was intimated to the applicant to file an application after attaining majority. As per the scheme for grant of compassionate appointment, such an application has to be file within one year from the date of attaining majority. However, the application was filed after a period of one year and, therefore, the same has been rightly rejected.

6. From the undisputed facts as already referred, it is clear that the first application filed by the applicant was filed through his mother Smt. Kiran Ashok Kyaste. Application alongwith relevant

documents which is placed on record and the same is at Annexure A-3, it is dated 24th/28th July 2012. In the said application, the applicant stated that he was aged about 17 years and that he shall be considered for appointment on compassionate ground after completion of 18 years of age. It seems that the said application was forwarded to the competent authority for taking proper decision as per forwarding letter which is at Annexure A-4 dated 6.8.2012. However, vide communication dated 27.8.2012, it was intimated to the Executive Engineer, Yavatmal that since the applicant has not completed 18 years of age, his name cannot be included in the wait list. The officer was warned to forward such application only after proper verification. Accordingly, the Executive Engineer, Yavatmal (R.3) intimated the applicant vide letter dated 1.9.2012 that the proposal for appointment on compassionate ground was returned and it shall be submitted after completion of 18 years of age. It seems that in view of this, the applicant again submitted another application.

7. There is a correspondence on record which shows that vide letter dated 21.6.2014, the Executive Engineer, Special Project, PWD, Yavatmal, intimated to the Executive Engineer, PWD, Yavatmal as under:-

वर्षासंदर्भात पानुसार मयत अशोक दानैया याते तेलवाला यांचा मुलगा वनायक अशोक याते यांना १८ वर्षांपूर्ण झाल्यावर

प्यांनी ढ. ६.२.२०१४ रोजी अनुकंमा तवावर नोकरा साठ अज सादर केला आहे. प्यांना सदर अजाया कायालयाचे प . १२६१/आ-२/ढ. १०.३.२०१४ रोजी सादर करायात आला होता. परंतु आपया कायालयाचे प . ३९९०/ आ-२/ ढ. २६.५.२०१४ रोजी आपे घेऊन परत करायात आला आहे. शासन ढणण . १०९३/२३३५/०. . ९०/९३/आठ/मंालय मुंबई ढ. २६.१०.१९९४ अवये सुधारत योजनेया आधारे पूवया अजाखा संदभ देऊन नयाने अज देऊ शकतात असे नमूद आहे. तर संबंधिताचा ताव आपणाकडे गट-ड उमेदवाराची अनुकंमा तवावर नोकरा सामावून घेणे बाबतचा ताव पुढील कायद्याह कता सादर करायात येत आहे.”

8. Thereafter it seems that he applicant has issued a legal notice to the respondents.

9. There is nothing on record to show that the applicant had ever intimated the respondents about time limit within which he can file fresh application for appointment after attaining majority. The learned counsel for the applicant has invited my attention to Annexure A-20 i.e. G.R. dated 15.7.2015 wherein the Head of the Departments have been directed to give full information to the legal heirs of the deceased employee as to within how many days application for appointment on compassionate ground are to be filed They are obliged to give full information and to guide the legal heirs and not only that, they have to obtain written receipt from the legal heirs of the deceased employee that such intimation has been given to them. This G.R. has been issued considering the fact that the legal heirs of the deceased employee may not approach the competent authority within

limitation after the death of deceased employee and, therefore, cannot use an opportunity to apply for appointment on compassionate ground.

10. The learned P.O. submitted that the applicant was intimated by various correspondence and particularly vide letter dated 19.8.2014 that his application cannot be considered, since he has not filed an application within one year after attaining majority. Even accepting this communication, there is nothing on record to show that the competent authority has ever intimated the applicant that he has to file an application within one year after attaining majority.

11. The learned counsel for the applicant has invited my attention to one G.R. dated 20th May 2017 (Annexure A-19). Vide this G.R., the Government has authorized the competent authority in Mantralaya to extend the limitation of one year for further two years to proper cases wherein the legal heirs of the deceased employee could not apply for appointment on compassionate ground within a stipulated period of one year. Thus, this G.R. empowers the competent authority to consider the cases of legal heirs of the deceased employee to apply for appointment on compassionate ground within three years from the date of attaining majority. The learned P.O. submits that this G.R. cannot be considered retrospectively. It is true that this G.R. is issued on 20th May 2015. The very purpose of issuing such a G.R. cannot be ignored. This G.R. is issued only with intention to grant an opportunity

to the minor legal heirs of the deceased employee considering the fact that they may not be knowing that the application is to be filed within one year from the date of attaining majority and also taking into consideration their mental condition due to death of a bread earner.

12. The learned P.O. invited my attention to the judgment of the Hon'ble Apex Court in 2016 (1) Mh.L.J. 594 in case of Canara Bank and another V/s M. Mahesh Kumar. In the said judgment, it has been held by the Hon'ble Apex Court that the claim of compassionate appointment under a scheme of a particular year cannot be decided in light of subsequent scheme that came into force much after claim. I have carefully gone through the said judgment. The said judgment related to a specific family benefit scheme for a particular year. The relevant G.R. in this case for extension of time limit for applying for appointment on compassionate ground by legal heir of the deceased employee after a period of one year i.e. dated 20.5.2015 is issued in continuation of the earlier scheme of appointment of legal heirs of the deceased employee on compassionate ground and, therefore, it is continuation of the scheme. It cannot be said that the said scheme vide G.R. of the year 2015 is a separate scheme of a particular year. In any case, the judgment relied on by the Ld. P.O. is not applicable to the present set of facts.

13. The learned P.O. submitted that the appointment on compassionate ground cannot be claimed as a matter of right and it is not a vested right. He submitted that the Court should not consider the provision by liberal interpretation beyond permissible limit on humanitarian ground. Such appointment should, therefore, be provided immediately to a leading family in distress.

14. This Tribunal is not making any comment on merit of the claim of the applicant. Whether situation at the time of death of applicant's father still exists or not and whether the applicant's claim can be considered on merit or not is a matter to be considered by the competent authority. Rejection of the application on technical ground will definitely cause prejudice and hardship to the applicant. As already stated, the applicant had earlier filed an application through his mother when he was aged about 17 years. Instead of rejecting the said application, the respondent authorities ought to have considered it after the applicant attained the age of 18 years, but it was returned on technical ground and when the fresh application has been filed, same was rejected again on technical ground that it was not filed within one year after the applicant's attaining the age of 18 years. Such approach on the part of the respondent authorities cannot be said to be in consonance with the purpose of the scheme of giving appointment on compassionate ground. I, therefore, pass the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The communication dated 7.8.2014 issued by respondent No.2 to respondent No.3 (Annexure A-1) and consequent order / letter issued by respondent No.3 to the applicant on 19.8.2014 (Annexure A-2) stand quashed and set aside.
- (iii) The respondents are directed to accept the application filed by the applicant for grant of appointment on compassionate ground, in view of G.R. dated 20th May 2015 and shall take a decision as to whether the applicant is entitled to grant compassionate appointment considering all mitigating circumstances as per various circulars available in the field in this regard.
- (iv) A decision as to whether applicant's name shall be included in the list of persons to be appointed on compassionate ground, shall be taken within three months from the date of this order and the same shall be communicated to the applicant in writing.
- (v) No order as to costs.

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

