

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 613 of 2018 (S.B.)

Shri Rupesh Nandlal Rawat (Raut),
Aged about 28 years,
R/o Regional Mental Hospital Quarter No.32,
Chhindwara Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department of Health,
Mantralaya, Mumbai.
- 2) The Medical Superintendent,
Regional Mental Hospital,
Chhindwara Road, Nagpur-440 013.
- 3) The Collector, Civil Lines, Nagpur.
- 4) Dy. Director, Health Services, Nagpur Circle,
Mata Kacheri, Nagpur.

Respondents.

S/Shri A.R. Prasad, Shaila Qureshi, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

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

Dated :- 12/08/2022.

JUDGMENT

Heard Shri A.R. Prasad, learned counsel for applicant and
Shri V.A. Kulkarni, learned P.O. for respondents.

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

The father of applicant namely Nandlal Rawat (Raut) was
working as Attendant in Class-IV category with the respondent no.2 at
Regional Mental Hospital, Nagpur. He became critically ill and was

not able to perform his normal duty. Therefore, the Medical Board has declared him unfit on 29/01/2001. He was compulsorily retired from the service on medical ground. Thereafter on 09/02/2001 Nandlal Rawat (Raut) died due to the said disease, at that time he was aged about 50 years.

3. After the death of the father of applicant, there was nobody to look after his family. The applicant was minor at the time of death of his father. Therefore, mother of applicant had submitted application in the office of non applicant no.2. The non applicant no.2 forwarded the said application to the Collector, Nagpur (R/3). The mother of applicant approached to the office of respondent no.2, but they did not give any reply. The copy of application is filed on record at Annex-A-2 and A-3.

4. The applicant, i.e., son of deceased after completion of 18 years tried to pursue the matter with the concerned authorities. He has given application for considering his case for appointment on compassionate ground in place of his father. The applicant is educated upto 7th Standard and his date of birth is 16/11/1990. He has now completed 28 years. But the respondents vide communication dated 29/01/2016 informed the applicant that in view of the G.R. dated 22/08/2005 compassionate appointment cannot be given. Therefore, the applicant approached to this Tribunal for quashing and setting

aside the order passed by respondent no.2 on 29/01/2016 and prayed for direction to the respondents to provide him appointment on compassionate ground as per the Government scheme.

5. The O.A. is strongly opposed by the respondent no.2 by filing reply. It is submitted that mother of applicant namely Sarala W/o Nandlal Raut applied for appointment on compassionate ground on 22/06/2001. The respondent no.2 sent said proposal to respondent no.3, i.e., the Collector, Nagpur. The wife of deceased has not passed 4th Standard, which is minimum required qualification for Class-IV category as per Govt. G.R. dated 26/10/1994. Therefore, the respondent no.3 sent back the proposal and advised Smt. Sarala Raut to submit the proposal to the State Government for seeking relaxation of her educational qualification. Accordingly on 01/02/2002 the respondent no.4 submitted the proposal to the Government to ensure that whether Mrs. Sarala Raut is eligible for compassionate employment.

6. It is submitted that wife of deceased Nandlal Raut did not pursue the matter and thereafter the present applicant given letter dated 25/03/2009 for giving him appointment on compassionate ground. It is submitted that the Government has issued G.R. dated 22/08/2005. As per this G.R., the employee who dies during the service, his legal heirs are entitled for appointment on compassionate

ground. It is submitted that in view of the G.R. of 2005, the applicant is not entitled to get compassionate appointment, therefore, he was rightly informed. At last submitted that the O.A. is liable to be dismissed.

7. Heard learned counsel for applicant Shri A.R. Prasad. He has pointed out the decision of Hon'ble Supreme Court in the case of **Indian Bank & Ors. Vs. Promila & Ano. (2020) 2 SCC,729**. He has also pointed out the G.R. of 1994. The Id. Counsel for applicant has submitted that there is no dispute about the death of applicant. There is no dispute that deceased employee was compulsorily retired because he was suffering from severe disease and was not in a position to continue his duty. The learned counsel has submitted that the G.R. of 2005 cannot be given a retrospective effect in view of the Judgment of Hon'ble Supreme Court. At last submitted that the respondents be directed to provide compassionate appointment.

8. Heard learned P.O. Shri V.A. Kulkarni. As per his submission, the cited Judgment is not applicable in the present case, because the applicant applied for the first time after the year 2008.

9. The objection raised by learned P.O. that for the first time the applicant applied after the year 2008 for compassionate appointment. His father died in the year 2001. This objection cannot

be a ground to reject the application of applicant. The Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.439/2020, decided on 20/10/2021 in the case of **Gopal Dayanand Ghate Vs. State of Maharashtra & Ors.**, has held that it is the duty of the department / establishment to guide the dependent of deceased in respect of the government scheme of compassionate appointment. Therefore, the department / respondent cannot say that there is any delay on the part of the dependents of the deceased.

10. In the present case, the mother of applicant had already applied for appointment on compassionate ground. Her proposal was also moved to the Government for relaxation of the condition about education. Nothing is pointed out by the side of the respondents about that proposal. The G.R. of 2005 says that the scheme in respect of providing compassionate appointment on the ground of death of the employee suffering from Cancer and Paralysis are now cancelled. As per the Judgment of Hon'ble Supreme Court in the case of **Indian Bank & Ors. Vs. Promila & Ano. (2020) 2 SCC,729**, the G.R. of 2005 cannot be given a retrospective effect to cancel the scheme provided in the G.R. of 1994. The relevant portion of the G.R. dated 26/10/1994 is reproduced as under –

“२. खालील प्रकारांमध्ये मोडणा-या शासकीय कर्मचा-यांचे (रुपांतरित स्थायी व अस्थायी आस्थापनेवरील कर्मचारी धरून) ३ (अ) येथील नातेवाईक या नियमानुसार अनुकंपा कारणास्तव शासकीय सेवेत नेमणुकीसाठी पात्र असतील-

(अ) शासकीय सेवेत असतांना दिवंगत झालेले कर्मचारी,

(ब) क्षय, कर्करोग इत्यादी गंभीर आजारांमुळे, सक्षम वैद्यकीय अधिका-यांच्या प्रमाणपत्रानुसार अकाली निवृत्त झालेले अधिकारी / कर्मचारी,

(क) मानसिक किंवा शारीरिक विकलांगता आल्याने, सक्षम वैद्यकीय अधिका-याने पुढील सेवेसाठी अक्षम ठरविल्याने, अकाली निवृत्त करण्यात आलेले किंवा वरील कारणास्तव सेवेतून काढून टाकण्यात आलेले कर्मचारी,

(ड) शासकीय सेवेत कर्तव्य बजावित असतांना अपघाताने अपंग झालेले परंतु महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम, १९८२ मधील नियम ७२ (३) अनुसार पर्यायी पद देऊ करूनही ते न स्वीकारता सेवानिवृत्ती स्वीकारणारे कर्मचारी.

३ (अ) दिवंगत/ अकाली निवृत्त शासकीय कर्मचा-यांची पत्नी/पत्नी, मुलगा किंवा अविवाहित मुलगी अथवा मृत्युपूर्वी/ अकाली सेवानिवृत्ती पूर्वी कायदेशीर रित्या दत्तक घेतलेला/ घेतलेली मुलगा/अविवाहित मुलगी ही नियमानुसार नेमुणकास पात्र नातेवाईक मानण्यात येईल. याशिवाय अन्य कुठल्याही नातेवाईकास या योजनेचा फायदा मिळणार नाही.’’

11. There is no dispute that deceased Nandlal Raut was declared unfit on medical ground and therefore he was compulsorily retired. The G.R. of 2017 is the compilation of all the G.Rs. in respect of compassionate appointment. The guidelines are given in the various earlier G.Rs. as to how the appointment on compassionate ground is to be given. As per the G.R., it is the duty of the department / establishment to guide the dependents of the deceased employee in respect of the scheme. Therefore, the respondents cannot say that the applicant not applied earlier and he applied after the year 2008 for the first time. Moreover, the mother of applicant had already applied. It was the duty of the respondents to guide her that as soon as her son / applicant becomes major, he is eligible to get the employment on compassionate ground. The respondents cannot avoid their liabilities.

The scheme for compassionate appointment is meant to provide some employment / solace to the dependents of deceased employee who died during the service or died due to the ailment.

12. In the present matter, the father of applicant was suffering from disease and he was declared unfit. He died due to the ailment suffered during the service. There is no dispute that he was compulsorily retired and he died due to the said disease. The respondents have entertained the application of mother of applicant. Substitution of name of the applicant is permissible, in view of the judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others**. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communication dated 29/01/2016 is hereby quashed and set aside.
- (iii) The respondents are directed to enlist the name of applicant in the seniority list of appointment on compassionate ground and provide the suitable appointment on compassionate ground, as per rules.
- (iv) No order as to costs.

Dated :- 12/08/2022.

(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 : 12/08/2022.

Uploaded on : 17/08/2022.

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