

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.747/2013.

Varun Durvas Shende,
Aged about 26 years,
R/o West Samarth Nagar, Murmadi,
Tq. Lakhani, Distt. Bhandara.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Agriculture Department,
Mantralaya, Mumbai-32.
2. The Divisional Deputy Director (Agriculture),
Administrative Building No.2, 7th floor,
Civil Lines, Nagpur.

Respondents.

Shri S.D. Sirpurkar, the Ld. Advocate for the applicant.
Shri A.P. Tathod, Ld. C.P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 23rd July, 2014.

Order

Per: Member (J)

With the consent of learned counsel for the parties, heard finally at the stage of admission.

2. The short question that arises for our consideration is whether the applicant is entitled for appointment to the suitable post on the establishment of the respondent No.2 on compassionate ground.

3. On 11.7.2000, one Durvas Shende, father of the applicant died in harness. He was holding the post of Krushi Paryavekshak. At that time, the applicant was minor. He attained majority on 27.3.2006. However, he applied for appointment on compassionate ground only on 5.2.2009, i.e. after about three years of his attaining majority. Presumably, this was for the reason that he was

prosecuting his studies and doing post graduation in agriculture. Vide communication dated 9.8.2011, the respondents offered him the post of Krishi Sevak. The applicant declined to join on the ground that he holds a degree of M.Sc. (Agriculture) and, therefore, the post offered should be commensurate with the qualification or at least it should not be lower to the post of Krushi Paryavekshak. Since the respondents did not accede to his request, he has approached this Tribunal for appropriate relief.

4. The respondent No.2 submitted reply. It is stated that after receiving communication from the applicant, he was asked to join as Krishi Sevak. The applicant declined to join the said post, mainly on the ground that he was prosecuting further studies i.e. doctoral research in the University of Bidhanchandra Krishi Vishva Vidyalaya, Mohanpur. Again on 22.2.2013, the respondent No.2 wrote to the applicant to join the post offered to him. As the applicant did not respond to the same, on 6.4.2013, the appointment of the applicant to the post of Krishi Sevak was cancelled. Justifying the said action, it is stated that the policy of the Government is to accommodate legal heir of an employee died in harness on compassionate ground, so that the family who had lost bread earner, gets some immediate help and is saved from vagrancy.

5. Shri S.D. Sirpurkar, the learned counsel appearing for the applicant took us through the documents placed on record and contended that the post of Agriculture Supervisor asked for by the applicant is also a post falling in Group-C category and particularly having regard to the qualification possessed by the applicant, he should have been appointed to that post instead of offering an appointment to the lowest post of Krishi Sevak. He further submits that because the applicant was minor when his father died, he could not apply till 5.2.2009.

Further, he was doing post graduation in agriculture. In these circumstances, rejection of the claim of the applicant, is unjust and opposed to the scheme of providing appointment to the legal heir of an employee died in harness.

6. Mr. A.P. Tathod, the learned C.P.O. for the respondents contended that the person seeking appointment on compassionate ground has no right to claim a particular post. Object is to save the family from destitution and not to offer post for the post or create hereditary right.

7. The legal position on this issue is well settled by the various decisions of the Supreme Court and the High Courts. It can be summarized thus:

As a rule, appointment in public service should be made strictly on the basis of open invitation of applications and merits. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure. Appointment on compassionate ground is an exception. Purpose of providing appointment on compassionate ground is to mitigate hardship due to death of bread earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. It cannot be on the ground of descent simplicitor, but under exceptional circumstance i.e. to relieve the family of the financial destitution. The object is not to give the member of the family a post much less a post for post held by the deceased. Mere death of an employee in harness does not entitle his family to such source of livelihood. Therefore, each case has to be examined on its own merit. Having regard to the financial condition of the family of the deceased, the concerned authority has to be satisfied, that but for the provision of employment, the family will not be able to meet the crisis. If the dependant of the deceased-employee finds it below his dignity to accept the post offered, he is free

to do so. The post is not offered to cater to his status, but to help the family in distress. Therefore, the compassionate employment cannot be granted after a lapse of reasonable period, since it is not a vested right which can be exercised at any time in future.

8. Reference can gainfully be made to the decision in case of **State of Jammu and Kashmir V/s Sajad Ahmed Mir, AIR 2006 SC 2743**. In that case, the father of the applicant died in harness in March 1987 and for the first time, the application was made by the applicant after more than four years i.e. in September 1991. The family thus survived for more than four years after the death of the applicant's father. Considering these aspects of the matter and in the light of Article 14 of the Constitution of India, their Lordships observed thus:

“We may also observe that when the Division Bench of the High Court considering the case of the applicant holding that he had sought ‘compassion’, the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the setback. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say ‘goodbye’ to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution”.

9. In the case in hand, none of the members in the family of the deceased felt necessary to apply for appointment on compassionate ground immediately after the death of their bread earner. Durvas Shende died on

11.7.2000. After about nine years i.e. on 5.2.2009 and that too for the first time application was submitted for appointment on compassionate ground. On this sole ground, the applicant has no case. This is for the reason that over such a long period, family survived and could overcome the situation of distress which did exist on account of death of bread earner in the family. Facts of the case show that the applicant could manage to prosecute his studies and obtain M.Sc. degree. Thereafter he engaged in doctoral research. By the time, he approached this Tribunal, he attained the age of 26 years.

10. Apart from the above, it was expected of the applicant to apply immediately on his attaining majority. He attained majority on 27.3.2006 whereas for the first time, the application for compassionate appointment was submitted on 5.2.2009. This shows that the family was not at all in need of any compassionate appointment or was not in distress. In fact, the respondents could have refused to entertain the application of the applicant solely on the ground that it was submitted after about three years of his attaining majority and after 9 years of death of an employee.

11. In the result, we do not find any substance in this O.A. Accordingly, the O.A. is dismissed with no order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

