

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.804/2016.

(S.B.)

Bharat Manohar Thakare,
Aged about 35 years,
Occ-Nil,
R/o Plot No.11, Ambika Nagar,
Dhumne Layout, Ayodhya Nagar,
Nagpur-440024

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture and Horticulture,
Mantralaya, Mumbai-32.
2. The Divisional Joint Director of Agriculture,
Administrative Building No..2, Civil Lines,
Nagpur Division, Nagpur.
3. District Superintending Agricultural Officer,
Chandrapur.

Respondents

Shri G.N. Khanzode, the Ld. Advocate for the applicants.
Shri P.N. Warjekar, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,

Vice-Chairman (J)

JUDGMENT

(Delivered on this 24th day of July 2018.)

Heard Shri G.N. Khanzode, the learned counsel for the
applicant and Shri P.N. Warjekar, the learned P.O. for respondents.

2. The applicant Shri Bharat Manohar Thakare has prayed that the communication dated 21.3.2016 (Annexure A-17) refusing to grant him employment on compassionate ground by respondent No.3 be quashed and set aside and respondent Nos. 2 and 3 be directed to consider his claim for appointment on compassionate ground. It is also his prayer that the provisions of G.R. dated 22.8.2005 are not applicable to his case and, therefore, he claims declaration to that effect.

3. From the admitted facts on record, it seems that the applicant's father late Shri Manohar Thakare was serving in the office of respondent No.3 as a Tracer. He retired on medical ground on 11.9.1996 and without three months after his retirement, on 11.12.1996, Manohar died due to illness.

4. The deceased Manohar Thakare's widow i.e. the mother of the applicant Smt. Shakuntala applied for appointment on compassionate ground to Class-IV post on 31.5.1997 i.e. within one year from the date of death of deceased Manohar Thakare. On 4.11.1999, applicant's mother Smt. Shakuntala again filed another application and requested that instead of her, her son i.e. the applicant be appointed in Class-IV category. But no action was taken on her request. The applicant admittedly thereafter

approached the Lok Ayukta at Mumbai and there was correspondence between the Lok Ayukta and the respondent Nos. 2 and 3. On 3.10.2015, the Lok Ayukta communicated the decision of respondent No.2 refusing to accept the prayer of the applicant. The applicant, therefore, immediately issued registered notice to the respondents through his Advocate and the District Superintending Agricultural Officer, Chandrapur replied the applicant's notice (Annexure A-17) at page Nos. 46 to 48 (both inclusive) on 21.3.2016 and intimated that the applicant's claim cannot be considered, as there is no procedure to substitute a candidate for appointment on compassionate ground.

5. The respondent No.3 resisted the claim by filing reply affidavit and it is submitted that the applicant's claim has been rightly rejected vide communication dated 21.3.2016. It is further stated that the G.R. dated 26.10.1994 is not applicable to the case of the applicant, as the same has been amended from time to time. It is further submitted that the compassionate appointment is not a heritage right. The case of **Jitendra Gupta (Karanja Lad) V/s State of Maharashtra** has been referred in the reply affidavit wherein it is stated that if long time passed to give employment to the legal heir on compassionate ground after the death of an employee, no

appointment can be given on compassionate ground. It is stated that the father of the applicant expired on 11.12.1996, and after a lapse of 20 years, the applicant's case cannot be considered.

6. From the correspondence placed on record, it seems that there is no dispute of the fact that the applicant's father died on 11.12.1996 and his widow i.e. applicant's mother immediately applied for appointment on compassionate ground on 31.5.1997 and thereafter on 4.11.1999, she filed another application requesting that since her son had passed 8th standard examination and was eligible to be appointed to Class-IV post, instead of her, her son's claim be considered. It seems to be an admitted fact on record that applicant's father got retired on medical ground. Applicant, however, is silent as to on which medical ground he was allowed to retire. The learned counsel for the applicant has placed on record the G.R. dated 26.10.1994, which is marked "X" for identification. The said G.R. is regarding appointment of a candidate on compassionate ground. As per Schedule-A, Item No.2 of the said G.R., legal heirs of employees, who have retired on particular medical ground, are entitled to claim appointment on compassionate ground. The said Clause-2 reads as under:-

“(२) खालील प्रकारामध्ये मोडणाऱ्या शासकीय कर्मचाऱ्यांचे (रूपांतरित 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 अधिकाऱ्यांच्या प्रमाणपत्रानुसार अकाली निवृत्त झालेले अधीकारी / कर्मचारी.

(क) मानसिक किंवा शारीरिक विकलांगता आल्याने, सक्षम वैद्यकीय अधिकाऱ्यांने 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.”

7. From the aforesaid clause, it seems that the employee must get retired on the ground as mentioned in the said G.R. Clause (ब) as referred above clearly shows that the employee must retire on account of disease such as tuberculosis, cancer and equivalent serious disease. It is material to note that, in the entire application, it is not mentioned as to what was the reason for applicant's father which made him to retire. It is merely stated that he got retired on medical ground. But it is not stated as to what was the disease to applicant's father and whether the applicant's father was allowed to retire because of the diseases such as tuberculosis, cancer and equivalent serious diseases. The order of retirement is

also not placed on record. It is material to note that, the respondents are also silent on this point. It is, however, clear that the G.R. dated 26.10.1994 gives right to legal heirs to apply for compassionate appointment, the employee was allowed to retire, because of disease as stated in clause (2) of Schedule-A as referred to above. This G.R. of 1994 can be made applicable to the applicant, since his father died in the year 1996 and got retired three months prior to his death, provided his case falls in Clause-B. The learned P.O. has submitted that the G.R. of the year 1994 is not applicable to the applicant, since thereafter a G.R. dated 22.8.2005 was issued and the said G.R. supersedes to other earlier G.Rs. It is true that there is a reference of G.R. dated 26.10.1994 in the G.R. dated 22.8.2005. But that does not mean that the G.R. of 1994 was superseded. The scheme of compassionate appointment has been modified from time to time and finally as per the G.R. dated 22.8.2005. Had the applicant's case been considered in the year 1996, i.e. immediately after the death of his father, his case should have been considered as per G.R. dated 26.10.1994. The G.R. dated 22.8.2005, therefore, cannot be made applicable to the applicant's case.

8. The learned counsel for the applicant has placed on record the correspondence between the respondents *inter se*, such

as Annexure A-10 dated 29.9.2014 which is a letter issued by the District Superintending Agricultural Officer, Chandrapur to the Joint Director of Agriculture, Nagpur and the Annexure A-12 dated 15.11.2014 between the same authorities and the letter dated 9.6.2015 (AnnexureA-14) written by Under Secretary to the Commissioner of Agriculture, Pune, letter dated 9.6.2015 at page No.41 written by Divisional Joint Director of Agriculture, Nagpur to the Desk Officer of Lok Ayukta, Mumbai and a letter written by Assistant Registrar to the applicant dated 3.10.2015 (Annexure A-15). On perusal of all these correspondence, it seems that admittedly the applicant's mother had applied for appointment on compassionate ground initially on 31.5.1997 i.e. within one year from the date of death of her husband and thereafter on 4.11.1999, she requested that in her place, her son i.e. the applicant's case shall be considered for appointment on compassionate ground. Admittedly, the said application was not registered and the applicant's claim was never considered. She was not intimated anything and thereafter she was required to approach the Lok Ayukta. It seems that because of the cognizance taken by the Lok Ayukta, at least the respondents have initiated some action whereby the documents were asked for and enquiry was made. But ultimately, the claim was rejected on the

ground that, he has not applied within one year and that there is no provision of substitution of name of the candidate to be appointed on compassionate ground. The correspondence also shows that the respondent authorities have also found that some of the officers of respondents were responsible for the negligence caused in not considering the application of the applicant. In the circumstances, it is clear that the applicant's claim should have been considered on merits. But it was ignored and the applicant cannot be held to be liable for such negligence. Even the applicant's application is dated 4.11.1999 and date of birth of the applicant is 2.11.1981. Thus, the applicant was minor when his father died and, therefore, even independently, the applicant was entitled to apply for appointment on compassionate ground within one year of attaining majority and, therefore, the application should have been considered. But this aspect has also not been considered. Thus, the respondents caused great injustice to the applicant in not considering his application for appointment on compassionate ground.

9. The learned P.O. has submitted that as per the G.R. dated 22.8.2005, the legal heirs of those employees only who died during service, are eligible for making an application for appointment on compassionate ground and when the applicant's father died, he

was not in service. As already stated, case of the applicant cannot be considered under the G.R. dated 22.8.2015 (X-1). His cases will have to be considered under the G.R. dated 26.10.1994. The respondent ought to have considered whether the applicant's case falls within the ambit of Clause (2) (b) or clause (2) (c) or any of the clause under Clause (2) of Schedule-A of the G.R. dated 26.10.1994.

10. In view of discussion in foregoing paras, I, therefore, pass the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The communication dated 21.3.2016 (A.7) refusing to grant employment to the applicant on compassionate ground issued by respondent No.3 is quashed and set aside.
- (iii) The respondent Nos. 2 and 3 are directed to consider the claim of the applicant for appointment on compassionate ground as per the G.R. dated 26.10.1994 and shall take a decision on the said applicant's claim within three months from the date of this

order and such a decision shall be communicated to the applicant in writing.

(iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)
24.7.2018.