

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 515 OF 2020**

**DISTRICT:- Nandurbar**

Aniket S/o. Dinanath Rakh  
Age- 36 years, Occ: Nil,  
R/o. 22-A, Walmiki Prasad,  
Swami Narayan Mandir Road,  
Near Sai Garden, Datta Colony,  
Dhule-5

.. **APPLICANT**

**V E R S U S**

1. The State of Maharashtra  
Through the Principal Secretary,  
for Food & Civil Supply,  
Mantralaya, Mumbai-32.
2. The Controller of Legal Metrology,  
Maharashtra State,  
Fountain Telecom Building No. 1,  
7<sup>th</sup> floor, M.G. Road, Hutatma Smarak  
Chowk, Fort, Mumbai-01.
3. Deputy Controller of Legal Metrology,  
Head office, Maharashtra State,  
Fountain Telecom Building No. 1,  
7<sup>th</sup> Floor, M.G. Road, Hutatma  
Smarak Chowk, Fort, Mumbai-01.

.. **RESPONDENTS**

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APPEARANCE : Shri B.R. Kedar, learned counsel for  
the applicant.

: Shri B.S. Deokar, learned Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN  
AND  
SHRI VINAY KARGAONKAR, MEMBER (A)**

**DATE : 23.11.2023**

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**ORDER**

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri B.R. Kedar, learned counsel for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondent authorities.

2. By filing the present Original Application the applicant has raised challenge to the Government Resolution dated 9.5.2017 issued by respondent No. 1. The applicant has also prayed for quashment of the communication dated 5.10.2019, whereby respondent Nos. 2 & 3 have declined the request of the applicant for considering him for giving order of appointment on compassionate ground. The father of the applicant namely Dinanath Waman Vanjari Aias Rakh died while in service in the State of Maharashtra on 12.3.2019. At the time of death the deceased was working on the post of Deputy Inspector of Legal Metrology. After the death of the said Government servant his son namely Aniket, who is applicant in the present O.A. made an application seeking appointment on compassionate ground on 11.7.2019. Request so made by the applicant was rejected by respondent No. 3 on the ground that since deceased Government servant was falling in the category of Group-B officers at the time of his death, his legal heir/s

cannot be considered for appointment on compassionate ground. Aggrieved by the said communication the applicant has approached this Tribunal seeking the reliefs as we have reproduced hereinabove.

3. Shri B.R. Kedar, learned counsel appearing for the applicant submitted that the G.R. dated 9.5.2017 is against the constitutional mandate, since it is discriminative as it is clarified at the bottom of the said G.R. that no change would be made in the pay scale of Inspector of Legal Metrology and only the said post would be treated as Group B post for the purpose of effective implementation of the work of that department. Learned counsel further submitted that even otherwise the respondents could not have rejected the request of the applicant only on the ground that father of the applicant was falling in the cadre of Group-B officers and must have looked into the pay scale in which wages were received to the deceased Government servant. Learned counsel cited the judgment delivered by the Division Bench of the Hon'ble Bombay High Court in the case of **Dinesh Shamrao Sonawane vs. the State of Maharashtra & Ors., W.P. No. 5440/2009** decided on 5.2.2010. Learned counsel pointed out that in the aforesaid judgment the Division Bench of the Hon'ble High Court has elaborately discussed how the

pay scales are material for placing the officer in the particular category of officers. Learned counsel pointed out that the Hon'ble High Court has recorded an unambiguous finding that the officer drawing wages in the pay scale up to Rs. 9000/- can be treated as Group-C officers only and the officers drawing wages in the pay scale starting from Rs. 9001/- only can be placed in the category of Group-B officers. Learned counsel submitted that the identical facts are involved in the present matter. The deceased Government servant was in the pay scale of Rs. 5500-9000 and, as such, according to the learned counsel, decision rendered in W.P. No. 5440/2009 would squarely apply to the facts of the present case.

4. Learned counsel during the course of the arguments tendered Resolution dated 27.9.2021 issued by the General Administration Department of the State. Learned counsel submitted that now the Government has resolved to consider the legal heirs of even officers falling in Group-A & B for their appointment on compassionate ground. Learned counsel submitted that in view of the fact that case of the applicant is pending for adjudication, the said G.R. can very well be made applicable in the case of the present applicant. For the aforesaid two reasons the applicant has prayed for allowing the

prayer of the applicant for directing the respondents to consider the candidature of the applicant for appointment on compassionate ground.

5. Shri B.S. Deokar, learned Presenting Officer pointed out that in the affidavit in reply filed on behalf of the respondents due explanation has been given for declining the request of the applicant for giving him appointment on compassionate ground. Learned P.O. pointed out that the designation of the Gazetted officer was accepted by the deceased Government servant and, as such, now legal heir of the deceased cannot claim appointment on compassionate ground on the basis of legal heir of deceased Government servant falling in the category of Group-B officers. Learned P.O. further pointed out that in the G.R. dated 27.5.2016 it is clarified that employees having pay in the pay scale of Rs. 5500-9000 are to be held in Group-B and the same principle has been reiterated in the G.R. dated 9.5.2017 and on that basis the post of Inspector of Legal Metrology (Lower Grade) and Inspector of Legal Metrology (Higher Grade) both are already declared as Group-B posts. Learned P.O. in the circumstances prayed for dismissal of the O.A.

6. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. We have considered the documents placed on record. The facts that (i) the Government servant died while in service, (ii) the present applicant as a legal heir of the deceased Government servant claimed appointment on compassionate ground within the stipulated period, and (iii) the request of the applicant for appointment on compassionate ground has been rejected by the respondents on the ground that the deceased Government servant i.e. father of the applicant was in the category of Group-B officers at the time of his death, are not in dispute. Aggrieved by the said order, the applicant has approached this Tribunal.

7. As we have noted hereinabove the applicant has given challenge to the Government Resolution dated 9.5.2017. We have carefully perused the contents of the said G.R. and we have also considered the grounds raised in challenge of the said G.R. According to us, the challenge is apparently unsustainable, for the reason that we did not find any arbitrariness or discrimination in the resolution so passed by the department, which has issued the said resolution. Perusal of the said G.R. reveals that the said department find it expedient to place the officers of the level of Inspector Metrology

also in the category of Gazetted officers i.e. Group-B for effective implementation of the work being done by the said department. The resolution so passed does not have any nexus with the pay scale of the officers. In the circumstances, we do not see any reason for declaring the said resolution being arbitrary and unconstitutional.

8. The second prayer made by the applicant however, deserves to be considered in light of the law laid down by the Hon'ble Division Bench of the Bombay High Court in the case of **Dinesh Shamrao Sonawane vs. the State of Maharashtra & Ors.** (cited supra). Though the learned Presenting Officer was more persuasive in submitting that further explanation is provided about the G.R. dated 2.7.2002 and it has been clarified that which of the officer will fall in the category of Group-A officers and which would fall in the category of Group-B officers. We have perused the original G.R., as well as, the explanation specifically given in that regard. The Hon'ble Division Bench of the Bombay High Court has already considered the said issue.

9. In the matter before the Hon'ble Bombay High Court in the case of **Dinesh Shamrao Sonawane vs. the State of Maharashtra & Ors.** (cited supra), the legal heir of the deceased Government servant, who was working as Craft Instructor in the pay

scale of Rs. 5500-9000 had applied for appointment on compassionate ground. The said request was rejected by the concerned department on the ground that the deceased Government servant was drawing wages in the pay scale of Rs. 5500-9000 and was thus the officer falling in the category of Group-B officers. It was further contended that in terms of the G.R. dated 28.3.2001 the appointment on compassionate ground can be extended only to the heirs and legal representatives of the deceased Government employee falling in Group-C or Group-D category. The Hon'ble Bombay High Court rejected the objection so raised. While rejecting the said objection, the Hon'ble High Court has observed thus :-

*"5. To examine the correctness of this submission, we would straightway refer to Government Resolution dated 02-07-2002. Clause-1 of the said Government Resolution defines the Group A category. We are not concerned with the said definition. According to the petitioner, the petitioner would be covered by Group C category, whereas according to the respondents, the petitioner would be covered by Group B category. Insofar as Group B category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs. 9000/- and not more than Rs.11500/, the same will be covered by Group B category. Insofar as Group C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/and not more than Rs.9000/-, the same will be covered by Group C category. As aforesaid, it is not in dispute that that the Pay Scale of late Smt. T.D. Sonawane was Rs. 5500-9000/. The natural meaning to be assigned to the above Clauses, in our opinion, is that if the Pay Scale is between Rs.4400/up to Rs. 9000/-, such cases would be covered by Group C category, whereas if the Pay Scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group B category. If any other interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the Pay Scale of Rs.9000/- will be covered in Group B category as well as Group C category since Pay Scale of Rs.9000/is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is*



*covered in Group B category, cannot be sustained. That stand will have to be stated to be rejected since admittedly the Pay Scale of the petitioner's predecessor was Rs.5500-9000."*

10. The facts involved in the present matter are identical to the facts, which existed in the matter before the Hon'ble High Court (cited supra). In the present matter also the request of the applicant seeking appointment on compassionate ground has been rejected only on the ground that father of the applicant i.e. deceased Government servant was a Group-B officer. Reference is given of the G.R. dated 9.5.2017. We have carefully perused the said G.R. issued by Food, Civil Supplies and Consumer Protection Department of the State. Vide the said G.R., the officers in the said department working on the post of Inspector, Legal Metrology (Non-Gazetted) have been given the status of the Gazetted officers in Group-B. Reading of the said G.R. reveals that the status of the Gazetted officers has been given to the officers working on the post of Inspector, Legal Metrology for the effective implementation of the work being performed by the concerned department. It further reveals that the officers working as Inspectors in the said department were being not held competent to effect the seizure of the weights and measurements, as well as, were being not permitted to work as Assistant Government Pleaders in their matters before the Court for the only reason that they were falling in the category of Group-C employees. It was, therefore, resolved to upgrade their position by awarding them the status of the gazetted officers. It is significant to note that though the status of

these employees was upgraded, there was no increase in their salary and it remained the same. It is thus evident that the said G.R. has been issued for different purposes and on the basis of the said G.R., no such conclusion can be recorded that the deceased Government servant i.e. father of the applicant had become the officer, falling in Group-B category.

11. For classification of the officers, we will have to take into account the G.R. dated 2.7.2002 issued by General Administration Department of the State. As per the said G.R., the Government servant, whose pay scale is not less than Rs. 4400/- and not more than Rs. 9000 would fall in Group-C category. Insofar as Group-B category is concerned, the said G.R. stipulates that in cases where the pay scale is not less than Rs. 9000/- and not more than Rs. 11500/- will be covered by Group-B category. In the instant matter, it is not in dispute that the pay scale of the deceased Government servant i.e. father of the applicant was Rs. 5500-9000. As explained by the Hon'ble High Court in the judgment cited supra, the employee drawing wages in the pay scale of Rs. 4400 - 9000 would fall in the Group-C category.

12. In premise of the observations made and the conclusions recorded by the Hon'ble Division Bench of the Bombay High Court in the decision rendered in the W.P. No. 5440/2009, the G.R. dated 27.5.2016 will have to be ignored. No other interpretation can be given of the G.R. dated 2.7.2002 than given by the Hon'ble Division

Bench of the High Court in the judgment cited supra. We have, therefore, no hesitation in holding that the deceased Government servant namely Dinanath Waman Vanjari alias Rakh, father of the present applicant, was the Government employee falling in Group-C category. As such, the respondents have grossly erred in rejecting the request of the applicant for his appointment on compassionate ground.

13. Moreover, as has been pointed out by the learned counsel, the Government vide its resolution dated 27.9.2021 has resolved to consider the cases of the legal heirs of the officers falling even in the category of Group-A and Group-B, for giving them appointments on compassionate ground. The said resolution is made applicable w.e.f. 1.1.2020. In view of the fact that the case of the applicant was under consideration during the meanwhile period, to do substantial justice, even the benefit of the said resolution also can be extended in favour of the applicant.

13. For the reasons stated above, we are inclined to allow the present Original Application with the following order :-

**ORDER**

- (i) The communication dated 5.10.2019 issued by respondent nos. 2 & 3 is quashed and set aside.

(ii) The respondents are directed to consider the candidature of the applicant for his appointment on compassionate ground and shall include his name in the waiting list being maintained of the candidates eligible to be appointed on the compassionate ground and shall accordingly issue order of appointment as and when the turn of the applicant would come.

(iii) The seniority of the applicant in the waiting list shall be reckoned from the date of filing application by the applicant.

(iv) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**