

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1132 OF 2019**

**DISTRICT : SOLAPUR**

Smt. Kavita Sanjay Ghongade. )  
Age : 40 Yrs, Occu. : Nil, Ex. Junior )  
Clerk in the office of Deputy Conservator )  
of Forest, Solapur and residing at )  
A/p. Kadlas, Taluka : Sangola, )  
District : Solapur. )...**Applicant**

**Versus**

1. The Conservator of Forest )  
[Regional], Pune having Office at )  
Van Bhavan, Near Mendhi Farm, )  
Gokhale Nagar, Pune – 16. )
2. The Deputy Conservator of Forest, )  
Solapur having office at Van Bhavan )  
Nehru Nagar, Vijapur Road, )  
Solapur – 413 004. )
3. The State of Maharashtra. )  
Through Principal Secretary, )  
[Forest], Revenue & Forest Dept., )  
Having Office at Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 11.01.2021**

**JUDGMENT**

1. This is second round of limitation challenging the order dated 04.06.2018 issued by Respondent No.2 thereby confirming order dated 09.02.2016 whereby the order of appointment on compassionate ground was cancelled.

2. Undisputed facts necessary for the decision of this O.A. are as under :-

(i) Deceased Tangubai (Mother-in-law of the Applicant) was Peon on the establishment of Respondent No.2 and she died in harness on 20.09.2008 leaving behind two sons viz. Sanjay, Santosh and one married daughter.

(ii) Santosh was appointed in Government service on regular basis on 17.10.2008.

(iii) Sanjay applied for appointment on compassionate ground in place of mother and Respondent No.2 recommended to Respondent No.1 to incorporate his name for waiting list.

(iv) The name of Sanjay was taken in waiting list.

(v) However, Sanjay died on 23.07.2014 prior to issuance of appointment order.

(vi) After the death of Sanjay, his widow i.e. present Applicant made an application for providing appointment to her on compassionate ground in place of Sanjay.

(vii) Respondent No.2 by order dated 01.01.2016 appointed the Applicant on compassionate ground.

(viii) However, the Respondent No.1 later cancelled the appointment of Applicant on compassionate ground by order dated

04.02.2016 and consequent to it, the Respondent No.2 also issued order of cancellation on 09.02.2016 on the ground that the Applicant was not entitled to appointment on compassionate ground since another family member Santosh was already in Government service and the appointment in the name of Applicant was issued wrongly.

(x) The Applicant had challenged the impugned order dated 04.02.2016 and 09.12.2016 by filing O.A.No.167/2017 before this Tribunal.

(xi) The Tribunal disposed of O.A.167/2017 on 02.02.2018 and allowed the O.A. partly. The Tribunal held that the appointment order was cancelled without giving an opportunity of hearing to the Applicant and gave direction for reinstatement of the Applicant but gave liberty to the Respondents to make an enquiry afresh as regard eligibility of the Applicant for appointment on compassionate ground in place of Mother-in-law and to complete the exercise within three months.

(xii) Accordingly, enquiry was conducted by giving opportunity of hearing to the Applicant and ultimately, by order dated 04.06.2018, the Respondent No.2 confirmed its earlier order dated 09.02.2016 cancelling the appointment of the Applicant.

3. It is on the above background, the Applicant has again approached this Tribunal by filing this O.A. challenging the order dated 04.06.2018 (Page No.34 of Paper Book).

4. Shri B.A. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned order dated 04.06.2018 issued by Respondent No.2 contending that he was not competent to cancel the appointment already given to the Applicant and the competent authority is Principal Chief Conservator of Forest in view of his earlier remark in letter dated

13<sup>th</sup> October, 2015 (Page No.77 of P.B.) stating that the Applicant is entitled to appointment on compassionate ground. He further raised the grievance that no proper opportunity of hearing was given during enquiry conducted after the directions issued by the Tribunal in O.A.No.167/2017. He tried to canvass that there is no suppression of the fact on the part of Applicant and rightly she was issued appointment on compassionate ground which should not have been cancelled.

5. Per contra, Shri A.J. Chougule, learned Advocate for the Applicant contends that initially itself, the name of Sanjay (husband of Applicant) was taken in waiting list wrongly, as the family was not entitled for any such appointment on compassionate ground in view of an admitted position that one of the son of deceased viz. Santosh was in Government service. He, therefore, submits that in such situation, the Applicant's claim being not as per the scheme and G.R. dated 23.08.1996, ought to have been rejected in the very beginning itself but wrongly it was considered and appointment order was issued. He has pointed out that in terms of direction given by the Tribunal in O.A.No.167/2017, full and fair opportunity of hearing was given and it was found that since Santosh was already in Government service, there was no requirement or necessity of appointment on compassionate ground.

6. Material to note that, there is no denying that after the death of Tangubai on 20.09.2008, her son Santosh was appointed in District Court in regular service on 17.10.2008. As such, this is not a case where after the death of sole earning member, the family was economically distressed and there was any such hardship to the family so as to claim appointment on compassionate ground. Needless to mention that the very aim and object of the scheme for appointment on compassionate ground is to provide financial assistance to the distressed family on account of death of sole earning member in the family. Indeed, admittedly, Tangubai herself was appointed on compassionate ground but she died in harness on 20.09.2008. Needless to mention that the

appointment on compassionate ground is by way of concession and it cannot be claimed as a right. It is exception to the regular recruitment as a succor to the family in distress. Such claim for appointment on compassionate ground should be necessarily traceable to the scheme for appointment on compassionate ground and no one can claim the appointment outside the purview of scheme.

7. True, when the Applicant had submitted the application for appointment on compassionate ground (Page Nos.42 to 44 of P.B.), she did not suppress the factum of appointment of Santosh in Government service. She had also given consent letter of Santosh for appointment on compassionate ground. As such, it cannot be said that there is any suppression of facts by the Applicant. However, the fact remains that as per scheme itself, she was not entitled to appointment on compassionate ground since one of the family member viz. Santosh was appointed in Government service after the death of Tangubai. Thus, apparently, the name of Sanjay was taken in waiting list mistakenly and before issuance of appointment order, he died on 23.07.2014. It is on this background, the Applicant again approached the authorities for substitution of her name in place of Sanjay and wrongly the order of appointment was issued by Respondent No.2 on 01.01.2016 which was cancelled by Respondent No.2 on 09.02.2016 on the basis of order issued by Respondent No.1 on 04.02.2016. As the said orders were issued without giving any opportunity to the Applicant, it was set aside by the Tribunal in O.A.167/2017 with direction to conduct the enquiry by giving opportunity of hearing and to pass the appropriate order. Accordingly, the Respondent No.2 had appointed Enquiry Officer who conducted enquiry after hearing the Applicant and opined that in terms of G.R. dated 23.08.1996 and in the light of fact that Santosh was already employed in Government service, the Applicant is not entitled to appointment on compassionate ground. The Respondent No.2, therefore, passed the order on 04.06.2018 thereby confirming his order of confirmation dated 09.02.2016.

8. I do not find any substance in the contentions raised by the Applicant on the ground of competency of Respondent No.2. The learned Advocate for the Applicant sought to contend that since Principal Chief Conservator of Forest, Nagpur in his communication dated 13.10.2015 (Page No.77 of P.B.) observed that the Applicant is entitled for appointment, his subordinate authority i.e. Respondent No.2 cannot cancel the appointment of the Applicant. Here, material to note that the appointment of the Applicant was cancelled by Respondent No.1 – Conservator of Forest, Pune by order dated 04.02.2016 and it is on that basis, the Respondent No.2 by further communication dated 09.02.2016 informed the cancellation of appointment to the Applicant. True, it appears that there was exchange of correspondence between the Departments and in one of the letter dated 13<sup>th</sup> October, 2015 (Page No.77 of P.B.), the Additional Chief Conservator of Forest had observed that after the death of Sanjay, his wife becomes entitled for appointment. With this observation, he asked the concerned to take necessary steps. As such, indeed, no such formal appointment order was issued by Chief Principal Conservator of Forest or Additional Chief Conservator of Forest, Nagpur. Indeed, the perusal of record reveals that the matter was also considered at Government level wherein the Government had also rejected the claim of Applicant for appointment on compassionate ground. In this behalf, noting file at Government level dated 26.11.2015 (Page No.213 of P.B.) is material. The Government has specifically held that since another son viz. Santosh is alive and he is in Government service, the Applicant is not eligible for appointment on compassionate ground. In this behalf, reference was also made to G.R. dated 23.08.1996, which aspect will be dealt with a little later.

9. In view of above, the submission advanced by the learned Advocate for the Applicant that Respondent No.2 was not competent to cancel the transfer order is devoid of merit. Apparently, the appointment order in the name of Applicant was issued wrongly without considering the eligibility of the Applicant and the mistake was later rectified. Initially,

no opportunity was given before cancellation of order but later in view of direction given by this Tribunal in O.A.No.167/2017, full and fair opportunity was given to the Applicant. The perusal of enquiry report also reveals that Enquiry Officer has recorded the statement of the Applicant. This being the matter of record, the contention raised by the Applicant's Advocate that no proper opportunity was given is totally erroneous.

10. As stated above, the very aim and object of the scheme is to provide financial assistance to the family in distress because of death of sole earning member of the family. Since Santosh was alive and got regular service in District Court on 17.10.2008, it cannot be said that the family was in need of financial assistance by way of appointment on compassionate ground.

11. In so far as G.R. dated 23.08.1996 is concerned, it is only in case where son of deceased is not alive and no other family member is eligible for appointment on compassionate ground, in that event only, the widow of deceased son is entitled for appointment on compassionate ground. Whereas, in the present case, Tangubai died on 20.09.2008 leaving behind two sons viz. Sanjay and Santosh and one married daughter. Admittedly, Santosh got regular appointment in District Court on 17.10.2008. Therefore, it cannot be said that the family is in distress so as to ask for appointment on compassionate ground. The appointment order was issued to the Applicant mistakenly which was later rectified. Indeed, in appointment order of the Applicant (Page No.53 of P.B.), it is made clear that the appointment would be purely temporary and it can be terminated at any time even without notice.

12. At this juncture, it would be apposite to refer the Judgments of Hon'ble Supreme Court, which have complete bearing over the present matter.

- (A) In **(2008) 15 SCC 560 (Sail Vs. Madhusudan Das (Page Nos.46 in O.A.770/2018))**, the Hon'ble Supreme Court has observed as under :-

*“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz. That the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right.”*

- (B) In **(2008) 8 SCC 475 (General Manager, State Bank of India & Ors. Vs. Anju Jain)**, the Hon'ble Supreme Court has observed as under :-

*“It has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates are be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.”*

- (C) In **(2012) 11 SCC 307 (Union of India & Anr. Vs. Shashank Goswami & Anr.)**, the Hon'ble Supreme Court has observed as under :-

*“It has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld up the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.”*



(D) In the matter of **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)**, the Hon'ble Supreme Court has observed as under :-

*“The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.”*

14. Suffice to say, the claim of the Applicant for appointment on compassionate ground did not fit in the scheme for appointment on compassionate ground as well as G.R. date 23.08.1996. Since one of the member of family was in Government service, the Applicant was not eligible for appointment on compassionate ground. The appointment on compassionate ground cannot be claimed as a matter of right or succession. Such claim must be traceable to the scheme only. Suffice to say, the order of cancellation of appointment of the Applicant cannot be faulted with. I see no legal infirmity in the impugned order.

13. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed. Hence, I pass the following order.

### **ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 11.01.2021  
Dictation taken by :  
S.K. Wamanse.

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