

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.459 OF 2019

DISTRICT : MUMBAI

1. Smt. Ujwala Anil Sonawale.)
Aged about 50 Yrs, residing at)
M-Wing, 21st Floor, Room No.2101,)
New P.M.G.P, MHADA Colony,)
Mulund (E), Mumbai – 400 081.)
2. Pankaj Anil Sonawale.)
Age about 29 years, residing at)
21st Floor, Room No.2101, New)
P.M.G.P, MHADA Colony,)
Mulund (E), Mumbai – 400 081.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department (Transport),)
Mumbai – 400 032.)
2. The Transport Commissioner.)
Maharashtra State, having its office)
at Administrative Building, 4th Floor,)
Bandra (E), Mumbai – 400 051.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mr. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 04.01.2021

JUDGMENT

1. The Applicants have invoked the jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985 in this second round of litigation challenging the order dated 01.01.2019 passed by Respondent

No.1 – Government of Maharashtra thereby rejecting the claim of Applicant No.2 – Pankaj for appointment on compassionate ground.

2. Undisputed facts to be borne in mind for the decision of this OA are as under :-

(i) Late Anil Vishnu Sonawale (husband of Applicant No.1 and father of Applicant No.2) was Peon in Class-IV cadre on the establishment of Respondent No.2 and died in harness on 18.12.2002 leaving behind widow, two unmarried daughters and son viz. Pankaj, who is Applicant No.2 in the present O.A.

(ii) After the death of husband, the Applicant No.1 – Smt. Ujwala made an application for appointment on compassionate ground and her name was taken in waiting list.

(iii) However, the name of Applicant No.1 was deleted from waiting list on account of attaining 40 years of age in terms of G.R. dated 23.04.2008 and it was communicated to her by letter dated 16th August, 2008.

(iv) In view of deletion of name of Applicant No.1 from waiting list, the Applicant No.2 – Pankaj made independent application on 30.10.2008 requesting Respondent No.2 that he has passed HSC examination and has to maintain mother, two unmarried sisters and there being no other earning source to the family requested for providing appointment to him on compassionate ground.

(v) Respondent No.2, however, rejected his application by communication dated 13.04.2011 stating that the application ought to have been made within one year from attaining majority and since the application has been made at the age of 20 years, he

is not entitled to appointment on compassionate ground in terms of G.R. dated 11.09.1996.

(vi) Applicants have filed Writ Petition No.672/2013 before Hon'ble High Court challenging the communication dated 13.04.2011 wherein on 22nd April, 2014, the Hon'ble High Court passed the following order :-

“In our view, it is apparent that despite the petitioner being eligible for appointment on compassionate ground, the concerned department has acted in most arbitrary manner in not implementing the policy of the State Government in giving appointment on compassionate basis. The principle behind giving appointment on compassionate basis is to ensure that the family can successfully tide over the financial difficulties which are faced on account of death of the earning member of the family. The Respondent No.2 is directed to file an affidavit and give explanation as to why petitioner No.1 was not appointed after 2002. Respondents are further directed to produce the record regarding the number of persons who have been appointed during this period on compassionate ground.”

(vii) Thereafter, when Writ Petition No.672/2013 had come up for hearing before the Hon'ble High Court, it was brought to the notice of Hon'ble High Court that the Respondent No.2 had submitted fresh proposal dated 19.10.2015 favourable to the Petitioners and since the matter was under consideration before the Government, the Writ Petition was disposed of with liberty to the Petitioners to revive Writ Petition if order on representation goes against the Petitioners and all issues were kept open.

(viii) In proposal dated 19.10.2015, the Respondent No.2 requested the Government to consider the request of Applicant No.2 for appointment on compassionate ground sympathetically and to condone the delay as a special case. The relevant portion of proposal is as follows :-

“१. शासन निर्णय दि.११.०९.१९९६ मधील तरतूदीनुसार श्री.पंकज अनिल सोनावले यांनी सज्जान झाल्यावर १ वर्षांच्या आत अर्ज केला नसला तरी, शासन निर्णय दि.२०.०५.२०१५ मधील नियम १ (ड) मधील तरतूदीनुसार १ वर्षा पेक्षा अधिक २ वर्षापर्यंतचा विलंब (सज्जान झाल्याच्या दिनांकापासून ३ वर्षापर्यंत) क्षमपित करण्याचे अधिकार मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात आले आहेत. श्री. पंकज सोनावले यांनी सज्जान झाल्यावर १ वर्षापेक्षा विलंबाने, तथापि, सज्जान झाल्यापासून ३ वर्षांच्या कालावधीमध्ये अर्ज सादर केला आहे. तसेच, विहित मुदतीत अर्ज करण्यास झालेला विलंब हा वर नमूद परिस्थितीमुळे झाला असल्याने श्री. पंकज अनिल सोनावले यांचे नाव प्रतिक्षासुचीवर घेण्याबाबत सहानुभूतीपूर्वक विचार करून, सदर प्रस्तावास शासनाची मंजूरी मिळण्याची विनंती आहे.

२.शासनाची सदर प्रकरणी मंजूरी प्राप्त झाल्यानंतर श्री. पंकज अनिल सोनावले यांना अपवादात्मक बाब म्हणून प्राधान्याने नियुक्ती देण्याबाबत कार्यवाही करण्यात येईल.”

(ix) However, Respondent No.1 rejected the proposal by communication dated 14.12.2015 stating that there is no provision for substitution of heir in G.R. dated 20.05.2015.

(x) The Petitioners again approached Hon'ble High Court for revival of Writ Petition No.672/2013. However, it came to be disposed of with liberty to the Petitioners to avail other alternate remedy by order dated 15.10.2016.

(xi) The Applicant then filed O.A.No.1195/2016 challenging the communication dated 14.12.2015, but the said O.A. was withdrawn by the Applicant with liberty to file fresh O.A. on the ground that the O.A. was not drafted properly. Accordingly, liberty was granted to file fresh O.A. by order dated 18.08.2017.

(xii) The Applicants then filed fresh O.A.No.907/2015 which was decided by this Tribunal by order date 25.07.2018 and recorded findings and issued directions as follows :-

“Discussion and Findings :-

9. Applicant No.1 (wife of the deceased) had applied for compassionate appointment but as she completed 40 years, she was not considered eligible for appointment. Thereafter the Applicant No.2 (son of the deceased) became major and on completion of 16 years on 8.11.2007, he applied for compassionate appointment on 31.10.2009. Thus, he applied within three years. As per the G.R. dated 20.05.2015, the Head of

the Department has authority to condone the delay as per merits of the case, by condoning the delay upto three years.

10. The Applicant No.2 is eligible for compassionate appointment, if the delay is condoned, since it is within three years, as mentioned in G.R. dated 20.05.2015 which reads as under :-

“ड) अनुकंपा तत्वावर नियुक्तीसाठी पात्र वारसदाराला अर्ज सादर करण्यात २ वर्षांपर्यंतचा विलंब क्षमापित करण्याबाबत:-

शासकीय कर्मचा-याच्या मृत्यूनंतर १ वर्षांच्या आत अनुकंपा नियुक्तीसाठी पात्र वारसदाराने अर्ज सादर करणे आवश्यक आहे. तथापि १ वर्षानंतर २ वर्षे इतक्या कालावधीपर्यंत (मृत्यूच्या दिनांकापासून ३ वर्षांपर्यंत) अर्ज सादर करण्यास विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधीत मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात येत आहे.

दिवंगत कर्मचा-यांच्या अज्ञान उमेदवाराच्या बाबतीत तो उमेदवार सज्ञान झाल्यावर त्याला अनुकंपा नियुक्तीसाठी अर्ज सादर करण्यास १ वर्षांपेक्षा अधिक २ वर्षांपर्यंत (सज्ञान झाल्याच्या दिनांकापासून ३ वर्षांपर्यंत) इतका विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधीत मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात येत आहेत.”

(quoted from page no.66 of the O.A.)

11. In view of the foregoing, the Respondent No.1 is directed to consider the case of the Applicant on merits within a period of two months.

12. The impugned order issued on 14.12.2015 (Exhibit 'O', page 36) is therefore set aside.

13. The Original Application is therefore disposed off accordingly within no order as to costs.”

(xii) However, no decision was taken in terms of directions issued by this Tribunal. The Applicants, therefore, filed Contempt Application No.37/2018 in the Tribunal. During the pendency of Contempt Proceedings, the Respondent No.1 – Government has passed order on 01.01.2019 stating that G.R. dated 20.05.2015 have no retrospective effect and rejected the claim of Applicant No.2 – Pankaj. In Contempt Proceedings, Shri Ashishkumar Singh, Principal Secretary (Transport and Ports), Mantralaya, Mumbai had filed Affidavit and tendered unconditional apology for not filing reply in Contempt Proceedings within reasonable time.

(xiii) The Tribunal disposed of Contempt Application No.37/2018 in view of Affidavit filed by Shri Ashishkumar Singh giving liberty to the Applicants to challenge the adverse decision.

3. It is on the above background, the Applicants have filed this O.A. challenging the communication dated 01.01.2019 whereby the claim of Applicant No.2 is again rejected on the ground that G.R. dated 20.05.2015 which *inter-alia* provides for condonation of delay upto three years have no retrospective effect and in order referred the decision of Hon'ble Supreme Court in **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)** wherein it has been held that the claim of compassionate appointment should be traceable only to the scheme framed by the employer and there is no right whatsoever outside such scheme.

4. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the legality of impugned order dated 01.01.2019 contending that it is in fact contempt of final order passed by this Tribunal in O.A.No.907/2017, as Respondents were under obligation to consider the aspect of condonation of delay only on merit in view of specific direction given by the Tribunal but unfortunately, Respondents travelled beyond the order and adopted hyper-technical approach that G.R. dated 20.05.2015 has no retrospective effect. He further submits that having regard to the aim and object of the scheme for appointment on compassionate ground, the Respondents ought to have considered the matter sympathetically taking note that after the death of deceased employee, the family consists of widow, two unmarried daughters and son have no source of income and living in distress and should have provided appointment to Applicant No.2 on compassionate ground. He has further pointed out that the Applicants are fighting for their legitimate claim for more than ten years, but their claim is rejected on very hyper-technical ground, and therefore, the impugned communication is not sustainable in law.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer submits that after the death of deceased employee, the name of his widow i.e. Applicant No.1 was taken in waiting list but her name was deleted having crossed 40 years of age in terms of G.R. dated 20.05.2015 and there being no provision for substitution of heir, the claim made by the Applicant is untenable. As regard G.R. dated 20.05.2015, she sought to support the impugned communication contending that it has no retrospective effect and consequently, there is no illegality in the impugned order.

6. Needless to mention that the claim of appointment on compassionate ground has been framed to alleviate the difficulties of distressed family by providing appointment on compassionate ground to the family of deceased so as to mitigate the hardship due to death of sole bread earner of the family. It is indeed by way of social reform and security to the distress family. This being the position, the employer / Government is under obligation and expected to adopt compassionate and justice oriented approach instead of taking shelter of technical aspect otherwise the very aim and object of the scheme would be defeated.

7. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. Vs. Union of India)** wherein in Para No.9, it has been held as follows :

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

8. At this juncture, it may be recalled the specific order passed by the Hon'ble High Court in Writ Petition No.672/2013 expressing serious displeasure on the arbitrary functioning of the Department. In order dated 22nd April, 2014 (as reproduced above), the Hon'ble High Court specifically castigated the Department stating that the Petitioner being eligible for appointment, the concerned Department has acted in most arbitrary manner in not implementing the policy of the Government and Respondent No.2 was directed to file an Affidavit and to give explanation as to why the Petitioner No.1 was not appointed and further directions were given to produce record regarding number of persons who have been appointed during the said period. True, later Writ Petition was disposed of but fact remains that it was disposed of in view of favourable fresh proposal submitted by Respondent No.2 on 19.10.2015 to the Government. As such, there is no denying that Hon'ble High Court passed severe strictures against the Respondents that they are acting in arbitrary manner in not providing appointment to the widow within reasonable time.

9. The husband of Applicant No.1 died on 18.12.2002 and immediately she applied for appointment on compassionate ground. Her name was taken in waiting list but no appointment was provided for more than six years and ultimately, by communication dated 16.08.2008, her name was deleted from waiting list on attaining age of 40 years in terms of G.R. dated 23.04.2018. Indeed, in view of dicta of Hon'ble Supreme Court in **Sushma Gosain's** case (Cited supra), the Respondents were under obligation to provide appointment immediately even by creating supernumerary post, so that the family is redeemed from economic distress. Regretfully, no such steps were taken by the Respondents which they are obliged to take and after six years, deleted the name of Applicant No.1 from waiting list, as if Respondents were waiting for completion of 40 years of age. There is absolutely no explanation forthcoming on record as to why for six years, no appointment was provided to Applicant No.1.

10. As stated above in first round of litigation i.e. in O.A.No.907/2015 the Tribunal by order dated 25.07.2018 has recorded specific finding that Applicant No.2 is eligible for appointment on compassionate ground, if the delay is condoned since it is within three years as mentioned in G.R. dated 20.05.2015. In other words, the Tribunal has considered and accepted the applicability of G.R. dated 20.05.2015 to the facts of present case and accordingly, directions were issued to pass appropriate order about condonation of delay in terms of G.R. dated 20.05.2015. This being the position, the Respondents ought to have placed the matter before the concerned authority for condonation of delay or to challenge the order dated 05.07.2018 passed by the Tribunal in O.A.No.907/2015, if it was aggrieved by the said order. Admittedly, the Respondents have not challenged the order dated 25.07.2018 before higher forum. As such, the findings recorded by the Tribunal in order dated 25.07.2018 had attained the finality and now it cannot be circumvented by the Respondents stating that G.R. dated 20.05.2015 is prospective and not applicable to the present matter.

11. At this juncture, it would be apposite to refer remarks given by law and judiciary in respect of order passed by this Tribunal in O.A.No.907/2015. The Law and Judiciary made following remarks as seen from Page No.162 of Paper Book.

“ओ) सामान्य प्रशासन विभागाचे उक्त अभिप्राय विचारात घेवून पुन्हा प्रकरणाचा सहानुभूतिपूर्वक विचार करून प्रकरण विधी व न्याय विभागास सादर करण्यात आले होते. त्यावर विधी व न्याय विभागाने खालील प्रमाणे अभिप्राय दिले होते.”

However, if the Home Department is of the opinion that, as advised by the General Administrative Department, G.R. dated 20/5/2015 is not applicable to petitioners case and the case of petitioners for condonation of delay cannot be considered, then the only option for department is to challenge the order of MAT before the Hon'ble High Court, if the Home Department considers it necessary to challenge the order of MAT before the Hon'ble High Court, it is requested to examine the order of MAT on merit and submit the proposal to that effect to the Law and Judiciary Department, after giving the grounds for appeal, along with

the opinion of the concerned Presenting Officer regarding filing of writ petition in the matter.”

Surprisingly, despite the opinion given by Law and Judiciary, the Respondents took a stand that G.R. dated 20.05.2015 have no retrospective operation and rejected the claim of the Applicant No.2. Indeed, once the Tribunal has recorded finding holding Applicant No.2 entitled for appointment on compassionate ground and the matter was remanded only for consideration of issue of limitation, the Respondents ought to have restricted themselves to the point of condonation of delay, but they took totally different stand that G.R. dated 20.05.2015 is not applicable. Such stand is indeed in defiance of specific findings and order passed by the Tribunal in O.A.907/2015 which rather invited action for contempt of Court. Be that as it may, such stand adopted by the Respondents is arbitrary and too technical rather hyper-technical.

12. The perusal of G.R. dated 20.05.2015 reveals that the Government has taken proactive and beneficial decision to condone the delay upto three years in making application for appointment on compassionate ground after attaining majority. Earlier, the limitation was one year but by G.R. dated 20.05.2015, it was extended upto three years subject to condonation of delay by the concerned authority. There is nothing in G.R. to point out that it is made applicable prospectively. There is no such stipulation in the said G.R. At the time of passing of impugned order dated 01.01.2019, the G.R. dated 20.05.2015 was already in force. The proceeding for condonation of delay upto three years being social beneficial procedural provision, it ought to have invoked in the present matter to advance social justice and to fulfill the aim and object of the scheme for appointment on compassionate ground. It is only in case of substantive rights inviting penal liability, there should not be retrospective operation. Suffice to say, the stand taken by the Respondents that G.R. dated 20.05.2015 is not applicable, it being too hyper-technical and against the letter and spirit of the scheme for

appointment on compassionate ground is unsustainable in law. The Respondents ought to have considered that the widow of deceased was not provided the appointment for more than six years though she was eligible for the same and there was no earning member in the family living in distress. The Applicant No.2 on attaining majority, therefore, made an application which was belated by one year but unfortunately, the same has been rejected. As such, the rejection of claim of Applicant No.2 is unsustainable in law.

13. In impugned order dated 01.01.2019, the Respondent No.1 referred to the decision in Raj Kumar's case (cited supra) wherein it has been held that the claim of compassionate appointment has to be traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. I have gone through the full text of the Judgment. In that case, the deceased employee died on 01.10.2004 and his widow made an application on 06.06.2005 for appointment on compassionate ground in State Bank of India. When the application was under process, the Bank substituted the scheme of compassionate appointment by SBI scheme for payment of ex gratia lump sum amount. It is in that context, the Bank advised the family of the deceased to make an application under new scheme for ex gratia payment which was challenged by the family of deceased before Allahabad High Court. The Writ Petition was allowed by order dated 08.05.2008 and the said order was affirmed by the Division Bench by order dated 01.09.2008 directing to re-consider the case for appointment on compassionate ground holding that old scheme is applicable, as new scheme was only prospective in operation. The Bank again challenged the orders by filing SLP in Apex Court. It is in that context, the Hon'ble Apex Court quashed the order of Hon'ble High Court and directed the family of the deceased to file application afresh under new scheme for ex gratia payment in view of specific Clause in new scheme that pending application shall be dealt with in accordance to new scheme. As such, in fact situation, the SLP was allowed. This decision

is of little assistance to the Respondents in the present context. Indeed, in this O.A. in hand, the claim of the Applicants for appointment is very much traceable to the scheme rather fits therein.

14. At this juncture, it would be also apposite to refer the decision of Hon'ble Supreme Court in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** which is squarely applicable to the present situation. In that case also, the name of widow was empanelled under the compassionate appointment scheme but later it was declined on account of crossing the age. Thereafter, her daughter made an application for substitution of her name in place of widow. The claim was opposed on the ground that the family had already managed to survive for 10 years, and therefore, there was no immediate necessity. The Hon'ble Supreme Court held that only because family had managed to survive 14 years, it cannot be the reason for rejection and whether the family pulled on begging or borrowing should not have been the consideration. In Para No.3, the Hon'ble Supreme Court held as under :-

“3. We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”

This decision is squarely applicable to the present situation.

15. Now turning to the facts of present case, the Applicants are struggling and litigating for more than ten years for appointment on compassionate ground. The deceased employee is survived by widow, two unmarried daughters and son. Even if the name of widow was taken

in waiting list for six years no appointment order was issued, and thereafter, her name was deleted on attaining the age of 40 years. As such, indeed there is total inaction on the part of Respondents not to provide immediate relief to the family by creating supernumerary post as per the mandate of Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra).

16. As such, the Respondents ought to have considered the claim of Applicant No.2 in the peculiar facts and circumstances of the case sympathetically by condoning the delay of one year in making application for appointment on compassionate ground. Now instead of remitting the matter to the Respondents for condonation of delay, it would be just and appropriate to condone the delay and direct the Respondent to consider the application of Applicant No.2 for appointment on compassionate ground, so as to avoid further delay and hardship to the Applicants, as period of 18 years is already elapsed in waiting of appointment.

17. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned order dated 01.01.2019 is arbitrary and unsustainable in law and deserves to be quashed. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 01.01.2019 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application of Applicant No.2 for appointment on compassionate ground and it is equitable as well as judicious that the name is included in the waiting list for the issuance of appointment order as a special case, subject to fulfillment of eligible criteria in accordance to Rules.

- (D) This exercise should be completed within three months from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 04.01.2021

Dictation taken by :

S.K. Wamanse.

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