

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.499/2016.

(S.B.)

Smt. Sunita wd/o late Shri Ajay Dagoriya,
Aged about 46 years,
R/o Nara Road, Plot No.97, Nirmal Colony,
Jaripatka, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Social Welfare & Skill Development,
Ministry of Social Welfare, Cultural Activities,
Sports and Tourism,
Mantralaya, Mumbai-400 032.
2. The Director (Training),
Industrial Training Institute Directorate,
(M.S.), 3, Mahapalika Marg,
Mumbai-400 001.
3. The Deputy Director,
Industrial Training Institute, Regional Office,
Opp. Metro Rail Office, Civil Lines,
Nagpur-440001.

Respondents

Shri S.K. Verma, the Ld. Advocate for the applicant.
Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)

JUDGMENT

(Delivered on this 27th day of March, 2018.)

Heard Shri S.K. Verma, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant is claiming that the impugned communication dated 27.5.2016 (Annexure A-1) issued by respondent No.3, rejecting her claim for appointment to the post of Sweeper be quashed and set aside. The claim of the applicant has been rejected on the ground that she has completed 40 years of age and the Government has not relaxed age limit for appointment and the concerned employee has nominated other person than the applicant for being appointed on the post of Sweeper as per Lad-page Committee's report.

3. The maternal uncle in law of the applicant Shri Pruthvi Dulichand Nayakwal retired voluntarily from the post of Paharekari Safaigar (Sweeper) on 28.10.2000. As per G.R. dated 11.8.2006, the Sweeper retiring is eligible to nominate his or her relative for appointment on compassionate ground in his / her place. Accordingly, Shri Pruthvi Dulichand Nayakwal nominated the

applicant being his daughter-in-law for compassionate appointment in his place. The applicant fulfilled all the conditions required under Lad-page Committee report and as per various G.Rs in this regard. Accordingly she applied in 2005. From time and again, she made number of representations right from 2005 till 2016. But she was not appointed.

4. In 2013-2014, the applicant approached the Hon'ble Shri Devendra Fadnavis, the then B.J.P. President (now the Hon'ble Chief Minister) and Shri Fadnavis recommended the name of the applicant to the competent authority to consider her name for compassionate appointment. On 17.4.2015, Shri Pruthvi Dulichand Nayakwal again submitted his nomination in favour of the applicant and the applicant also gave an undertaking as required. On 19.6.2015, the respondent No.3 recommended the appointment and condonation of age limit of the applicant to the competent authority. But there was no response. The applicant is struggling for her appointment since last 11 years and she was just aged about 35 years, when she filed an application. Even a legal notice was issued to the respondent Nos. 2 and 3 on 10.5.2016. But her claim was not considered. Finally, vide impugned order dated 27.5.2017,

her claim has been rejected. The applicant, therefore, has filed this O.A. and claims that the impugned communication (Annexure A-1) be quashed and set aside and the applicant be appointed on compassionate ground on the post of Paharekari Safaigar (Sweeper) by condoning the age limit.

5. The respondent No.3 has resisted the claim of the applicant. It is an admitted fact that the applicant was allowed to participate in the recruitment process and her name appeared in the wait list of the candidates to be appointed on compassionate ground. However, number of available post was limited and the applicant's name appeared at Sr. No.5 in the wait list and, therefore, she could not be provided an employment. The candidates senior to the applicant have been appointed. Applicant's name was struck off from the wait list, since she attained the age of 45 years. Her name was recommended by the then MLA Shri Devendra Fadnavis (now the Hon'ble Chief Minister). But the age limit was not condoned.

6. So far as nomination is concerned, it is stated that Shri Pruthvi Dulichand Nayakwal is entitled to nominate his relative for appointment on compassionate ground. But he is changing the

nomination from time to time. In para 8 of the affidavit in reply, names of the nominees changed by Shri Pruthvi Dulichand Nayakwal is given as under:-

Sr. No.	Name of hereditary relative of nomination.	Consent letter date
1	Sau. Sunita Dagoriya	30.5.2011
2	Kalpesh Ramesh Nayakwal	16.4.2016
3	Smt. Pinky Sanjay Mardana	23.3.2016
4	Sau. Sunita Dagoriya	21.6.2016
5	Smt. Pinky Sanjay Mardana	18.7.2016

The respondents, therefore, tried to justify the rejection of the applicant's name.

7. The applicant filed rejoinder affidavit and states that the respondents have misinterpreted the age limit as 45 years for compassionate appointment, since the said age limit is to be reckoned at the time of filing an application and the applicant was eligible when she applied.

8. In my opinion, the point as to whether the applicant was eligible for applying to the post on compassionate ground, is not material in this case. Admittedly, on the date of filing of an

application, she was below 45 years of age (35 years as stated in the application) and, therefore, her application was accepted, not only that, her case has been considered. The reason for rejection of the application is not that she has filed an application after completion of the age of 45 years, but the reason that her name has been removed from the wait list, since she has completed the age of 45 years. The said reason for rejection is as under:-

“श्रीमती सुनिता अजय डागोरीया यांनी त्यांच्या वयाची ४५ वर्षे दि. २.११.२०१४ ला पूर्ण केलेली असून परीपत्रक क्र. नपप्रस-२००५/लाड कमेटी/प्र.क्र. ११५ (५)/२६ /का-२४ दि. १०.८.२००७ मधील तरतुदीनुसार वयाची ४५ वर्षे पूर्ण केल्याने प्रतिकायादितुन त्यांचे नाव वगळण्याची तरतूद आहे.

श्रीमती सुनिता डागोरीया यांना ४५ वर्षे पूर्ण झालेली असल्याने नियुक्ती पात्र ठरत नसल्याने सदर प्रस्ताव रद्द करून तसेच दुसरे वारसदार श्री. कल्पेश रमेश नकवाल यांचा प्रस्ताव सुद्धा रद्द करून माझे तिसरे वारसदार श्रीमती पिंकी संजय मर्दाना यांना शासन सेवेत सामावून घेण्याबाबतच्या प्रस्तावावर दि. २६.२.२०१४ च्या शासन निर्णयान्वये शासन सेवेत सामावून घेण्याबाबतची पुढील कार्यवाही करण्यात यावी. असे संबंधित पृथ्वी दुलीचंद नायाकवाल, माजी सफाईगार, औ.प्र. संस्था, कळमेश्वर यांनी या कार्यालयास कळविलेले असल्याने या कार्यालयाकडून शासन निर्णयान्वये त्यावर कार्यवाही करण्यात येईल.

परंतु, वेळोवेळी निर्गमित झालेल्या शासन निर्णयातील तरतुदीत ४५ वर्षांची अट शिथिल करण्यात आलेली नसल्याने आणि संबंधितांनी दुसऱ्या व्यक्तीस नामनिर्देशित केल्याने श्री. लाड व पागे शिफारशीनुसार श्रीमती सुनिता डागोरीया याने शासकीय सेवेत सामावून घेण्याची कार्यवाही करणे या कार्यालयास शक्य नाही.”

9. The learned counsel for the applicant submits that the applicant's case was recommended for extension of age limit.

He invited my attention to the communication (P.60) dated 12.2.2014. It is nothing but the recommendation made by the then MLA of BJP Shri Devendra Fadnavis (now the Hon'ble Chief Minister) to the Joint Director, Vocational Education and Training, Nagpur for grant of appointment on compassionate ground to the applicant. The learned counsel for the applicant then invited my attention to one recommendation made by the Joint Director, Vocational Education and Training, Nagpur to the Director (Training), Mumbai dated 29.6.2015 (Annexure A-9 at page Nos.61 and 62 (both inclusive). Vide the said communication, the Joint Director, Vocational Education and Training, Nagpur requested the Director (Training), Mumbai that the case of the applicant shall be considered as a special case and the age limit of 45 years for appointment on compassionate ground shall be extended in case of the applicant. This recommendation itself will not give rise to any right to the applicant. The said age limit was to be extended by the competent authority i.e. the Government and there is nothing on record to show that the age limit was ever extended.

10. From the discussion in foregoing paras, it will be clear that the applicant applied for the post on compassionate

ground and her name was taken on the wait list. Subsequently, due to non availability of the post, the applicant could not be appointed and ultimately she crossed the age of 45 years. As per the scheme of compassionate appointment, a person who crossed the age of 45 years, is not eligible to be appointed and, therefore, applicant's name was deleted from the wait list. Admittedly, the respondents have not taken any decision to extend the age limit in case of the applicant and, therefore, her name was rightly deleted from the wait list.

11. The respondents have stated that the maternal father-in-law of the applicant Shri Pruthvi Dulichand Nayakwal has changed nomination from time to time. From para 8 of the reply affidavit, it seems that initially he nominated the applicant on 30.5.2011 and, thereafter one Kalpesh Ramesh Nayakwal on 16.4.2016, Smt. Pinky Sanjay Mardana on 23.3.2016, Sau. Sunita Dagoriya on 21.6.2016 and finally Smt. Pinky Sanjay Mardana again on 18.7.2016. Admittedly as per the G.R., an employee who has retired has to nominate the legal heir and employee is changing the nomination again and again. This aspect has also been considered by the respondent authorities.

12. It is the say of the applicant that, there was delay on the part of the respondents in not appointing the applicant, though the posts were available. The respondents were, therefore, directed to file an affidavit in this regard vide order dated 31.7.2017. In the reply affidavit dated 29.11.2017, the respondents have replied the queries made in the order dated 31.7.2017. The respondents replied that no post was available in SC category in the year 2013-2014 and in fact nine posts were in excess. It is further stated that no person was appointed from SC category as per the Ladpage Committee since 2011. It is further stated that in the wait list, the serial number of the applicant was '5' and no junior to the applicant has been appointed in the year 2013-2014. It is stated that no appointment has been made since 2011.

13. It is material to note that, the appointment on compassionate ground is not a right, but it a special scheme in view of policy decision taken by the Government, considering the facts and circumstances and the provisions of this G.R. If the G.R. says that the appointment shall be considered till attaining the age of 45 yrs.by the candidate and his/her name will be removed from the wait list after attaining the age of 45 yrs. the said provision cannot be

said to be illegal. No malafides are proved on the part of the respondent authorities in removing the name of the applicant from the wait list. On the contrary, the competent authority seems to have tried to get her case approved as a special case. In such circumstances, I do not find any merits in the O.A. Hence, I proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
27.3.2018.

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