

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.70 OF 2018**

**DISTRICT : SANGLI**

Shri Nikhil Maruti Gosarade. )  
Age : 30 Yrs., Occu.: Nil, )  
R/o. 'Datta Kripa Banglow', )  
Near Maheshwari Garden Mangal, )  
Karyalaya, New M.S.E.B. Dhamani Road, )  
Vishrambag, Sangli. )...**Applicant**

**Versus**

1. The District Collector, Sangli. )  
Rajwada Chowk, Sangli. )  
2. The District Collector, Solapur. )  
Tal. Pandharpur, Dist : Solapur. )  
3. Divisional Commissioner (Revenue) )  
Sadhu Vaswani Council Hall, )  
Pune Camp Pune, Vidhan Bhavan )  
(Marathi), M.G. Road, Pune. )...**Respondents**

**Mr. M.B. Kadam, Advocate for the Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**CORAM : SHRI P.N. DIXIT (MEMBER-A)**

**Closed on : 21.06.2018**

**Pronounced on : 25.06.2018**

## **J U D G M E N T**

1. Maruti G. Gosarade was working as Clerk in the Office of Respondent No.1. He expired on 07.12.2016. At the time of his death, he was working as Election Naib Tahasildar. On 11<sup>th</sup> June, 2013, Maruti G. Gosarade who was working as Awal Karkun in the Office of District Collector, Sangli was promoted as Naib Tahasildar. The order is at Exb. 'B', Page 14 of the O.A. The said order states as under :

“१) ही पदोन्नतीसूची निव्वळ तात्पुरत्या स्वरुपाची आहे. पदोन्नतीसूचीतील कर्मचा-यांची पदोन्नतीही ११ महिने अथवा महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवारांच्या अधिसंख्य पदांचा कालावधी संपेपर्यंत अथवा संबंधितांची निवृत्ती यापैकी अगोदर घडेल तोपर्यंत राहिल.”

2. After the death of the Government servant, his son Nikhil M. Gosarade, age 27 years applied for compassionate appointment on 22.12.2016 (Exh. 'F', Page 22). However, his application for compassionate appointment was rejected by the Office of Divisional Commissioner, Pune (Exb. 'G', Page 28 of the O.A.) on 20<sup>th</sup> January, 2017 stating that the compassionate appointment is available only for legal heirs of Group 'C' and Group 'D' employees. It further states that

deceased Maruti G. Gosarade was Election Naib Tahasildar and Naib Tahasildar is a Group 'B' post. Hence, the Applicant has approached before this Tribunal challenging the impugned order.

3. During the hearing of this O.A, this Tribunal passed an order directing the Respondents to consider the Judgment delivered in **O.A.1008/2016 (Shri Abhijeet V. Mulik Vs. The District Collector)** to proceed in the matter accordingly and set aside the earlier order of rejecting his application. In pursuance of the same, the Office of Divisional Commissioner, Pune considered his case and on 13.11.2017 rejected his request stating as under:

- (i) The Office of District Collector, Kolhapur is contemplating to proceed against the order given by this Tribunal before the Hon'ble High Court;
- (ii) As the deceased was Group 'B' employee, his legal heir Nikhil Gosarade is not eligible for compassionate appointment.

4. According to the learned Advocate for the Applicant, the issue of consideration is, whether the Government employee was in Group 'B' or Group 'C'. He contends that, since the Government employee was on temporary promotion, he should be considered as Group 'C' employee. He further contends that even if the deceased was in the rank of Naib

Tahsildar, still his pay scale shows that he needs to be considered as Group C employee and not Group B. In support, he is citing the Judgment given by this Tribunal in **O.A.No.1093 of 2012 (Shri Abhijeet V. Mulik Vs. The District Collector, Kolhapur)**. The relevant Paragraphs 7 & 8 are reproduced as under.

“7. The discussion in Paras 3 to 5 herein would make it clear that the promotion of the late Shri V.G. Mulik as Naib Tahasildar was only and only for three months i.e. till 21.09.2011. Therefore, one can safely presume in the absence of any evidence that it went by efflux of time. Even if it was held that it was extended, then in the present context, the onus lay on the Respondent to prove it. That has not been done. But assuming they did it, the fact remains that the said order only granted temporary promotion on its plain language and by the very nature of things a permanent promotion, a Gazetted post could not have been given by a delegate of State Power, without at least a concurrence from MPSC. On this count alone, it can safely be held that the deceased father of the Applicant held a Group ‘C’ post and not Group ‘B’.

8. Now, let us examine the matter from the angle of pay scale in order to determine if on that anvil, the post of Naib Tahasildar would befall Group ‘C’ or

Group 'B'. The fact as such is not disputed that the pay scales shown in Exh. 'E' (Page 19 of the paper book) for the post of Naib Tahasildar is 5500-9000. That is of Group 'C' post. In that regard, we may usefully rely on an unreported judgment of a Division Bench of the Aurangabad Bench of our High Court in **Writ Petition No.5440 of 2009 (Dinesh Vs. The State of Maharashtra, dated 5.2.2010.** It was confirmed in **Spl. Leave to appeal CC 16998/2011, dated 3.11.2011 (State of Maharashtra and others Vs. Dinesh) by the Hon'ble Supreme Court.** The copies of the two judgments are there on record. The issue involved therein was the same as in this O.A. though the posts held by the deceased employees were different. Their Lordship of our High Court in Para 5 referred to the G.R. dated 02.07.2002. A passage from that Paragraph needs to be reproduced.

“In so far 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 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 Sale 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."

6. The learned Advocate for the Applicant also cites a Judgment given by this Tribunal in **O.A.No.1008 of 2016 (Shri Abhijeet V. Mulik Vs. The District Collector, Kolhapur)**. The relevant Paragraph No. 8 is reproduced as under:

**"8.** The State challenged the order on the 1st OA unsuccessfully. The order dated 26.7.2016 of the

Hon'ble High Court is at Exhibit G page 43 of the PB. Let me reproduce the entire order.

“P. C.

1] The petitioner-State challenges the order dated 18 February 2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai made in Original Application No. 1093 of 2012. By the impugned judgment and order, the MAT has directed the following:

“10. We allow the Original Application and direct the Respondent to consider the claim of the Applicant for appointment on compassionate ground as per the extant Scheme or Regulations and Government Resolutions, subject to other eligibility. No order as to costs.”

2] From the aforesaid, it is quite clear that the MAT has directed the petitioner - State to only “consider” the claim of the respondent for appointment on compassionate ground as per the extant Scheme or Regulations and Government Resolutions, subject to other eligibility requirements. The MAT has not directed the petitioner-State to actually appoint the respondent, but to only consider the case of the respondent for compassionate appointment, in accordance with law and

as per Scheme, Regulations and Government Resolutions as may be applicable.

3] We see no reason to interfere with such a direction. Ultimately, there is no dispute that the respondent's father has died in harness and therefore, the respondent was at least entitled to consideration of his application for compassionate appointment in accordance with law. Accordingly, there is no case made out to interfere with the impugned judgment and order. Therefore, we dismiss the petition. However, we direct the competent authority to consider the case of the respondent favourably in accordance with Rules, Regulations, Scheme and Government Resolutions as may be applicable, as expeditiously as possible and in any case within a period of six weeks from today."

The Judgment further mentions in Para No.14 (Page 46) as under.

**“14.** As far as the 2016 clarificatory GR is concerned, it was heavily relied upon by the respondents (27.5.2016) which pertains to the pay scale aspect of the mater. Now, in the first place the present facts are pre 2016 and Dinesh (supra) rendered by our Hon’ble High Court was confirmed by the Hon’ble Supreme Court and that would be the governing authority. Further as far as



clarificatory circulars are concerned, there is a judgment cited by Shri Bandiwadekar, Ld. Advocate in Writ Petition No.5494 of 2000 (The State of Maharashtra and Others Vs. Shri Uttam Vishnu Pawar, dated 20.10.2000). It was held by Their Lordships that the clarifications issued to the instruments contrary to the GR would be almost non est. Therefore, if in the main GR and the judgment of the Hon'ble High Court and Hon'ble Supreme Court a certain result was produced then by clarificatory circular that result cannot be altered.”

7. The learned Advocate for the Applicant also cites the Judgment given in O.A.No.1020/2017 by this Tribunal. The relevant portion is Para No. 11 (Page 52 of the O.A.) which is as under.

**“11.** The conditions contained in the appointment order read as follows:-

“१. ही तदर्थ पदोन्नती पदोन्नती ११ महिने अथवा महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवारांच्या अधिसंख्य पदांचा कालावधी संपेपर्यंत अथवा संबंधितांची निवृत्ती यापैकी अगोदर घडेल तोपर्यंत निव्वळ तात्पुरत्या स्वरूपाची राहिल.

२. पदोन्नत कर्मचा-याने विहित नमुन्यातील बंधपत्र सादर करणे बंधनकारक आहे.

३. सदर पदोन्नती मा.उच्च न्यायालय, मुंबई येथील रिट पिटीशन क्र. ८४५२/२००४ तसेच महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांच्या क्र. ८५३/२०१२ व ८५४/२०१२ च्या निर्णयाच्या अधीन राहून देण्यांत येत आहे व सदर याचिकेत होणारा निर्णय पदोन्नत अधिका-यांवर बंधनकारक राहिल.

४. सदर पदोन्नती नियमित निवडसूचीस महाराष्ट्र लोकसेवा आयोगाच्या अंतिम मान्यतेच्या अधिन राहून देण्यात येत आहे.

५. प्रस्तुत आदेशान्वये देण्यात आलेली पदोन्नती नाकारल्यास व कालबध्द पदोन्नतीचा फायदा यापुर्वी दिला असल्यास या आदेशाच्या दिनांकापासून कालबध्द पदोन्नतीस असे कर्मचारी पात्र राहणार नाही. तसचे त्या अनुषंगाने मिळणारे फायदे राहणार नाहीत.”

The Judgment further mentions in Para No.13 as under.

“**13.** On the date of death, applicant’s father was serving substantively as Awal Karkoon and on promotional post of Naib Tahsildar on ad hoc basis. The post substantively held by the applicant’s father is Group-C.”

The Judgment further mentions in Para No.17 as under.

“**17.** Though the learned P.O opposed relief, learned P.O is not able to state as to why the ratio laid down in the judgment of this Tribunal in O.A no 1008/2016 based on earlier judgments of Hon’ble High Court and this Tribunal should be disregarded.”

The Judgment further mentions in Para No.19 as under.

“**19.** Learned P.O states that the judgment of Hon’ble High Court referred to and relied upon in the judgment delivered in O.A no 1008/2016 was

challenged before the Hon'ble Supreme Court. and the challenge has failed.”

The Judgment further mentions in Para No.21 as under.

**“21.** On the basis of admitted facts which have been summarized in foregoing paragraphs, which apart from admission are supported by documentary evidence reveals as follows:-

(i) Applicant's father substantively held the post of Awal Karkoon which is a Group-C post.

(ii) He was appointed on purely ad hoc basis and in local vacancy, awaiting receipt of candidates from M.P.S.C.

(iii) Applicant's father was serving as Naib Tahsildar on purely ad hoc and temporary promotion.”

8. The learned Advocate for the Applicant states that, in view of the foregoing, as the facts are similar, the Judgments quoted above confirm that the Applicant in this O.A. deserves to be considered for compassionate appointment.

9. While contesting the above claims that the deceased was promoted on ad hoc basis, the learned Presenting Officer Smt. Kololgi in her Affidavit in Para No.10 states as under:

“**10.** .... But in fact as per the Notification No.NATAHANE/44 to 84/2013 dated 11.6.2.2013 issued by Divisional Commissioner Office, Officers mentioned on Sr.No.1 to 32 were promoted on regular basis and Officers mentioned on Sr.No.33 to 41 were promoted on Ad hoc basis. Among Sr.No.1 to 32 on Sr.No.7 name of Petitioner's father late Maruti Gosarade is included which clearly states that Maruti Gosarade was promoted on regular basis. As Applicant's father was promoted to post of Naib Tahasildar on regular basis he can not avail benefits of Judgment given in W.P.No.1008/2016.”

10. The learned P.O. produced the copy of promotion order dated 11<sup>th</sup> June, 2013. The same is taken on record and marked 'X' for identification. According to the same, the Applicant has been promoted on regular basis and figures at Serial No.7. Distinguishing from the same, the Divisional Commissioner has promoted certain other persons on ad-hoc basis and they are at Serial Nos. 33 to 41. The learned P.O. further clarifies that the persons who have been provided ad-hoc promotions have been promoted on temporary basis for 11 months or till a candidate recommended by M.P.S.C. becomes available. According to her, therefore, the deceased was in Group 'B', and therefore, the legal heirs are not entitled for compassionate appointment as specified in the G.R. of 22<sup>nd</sup>

August, 2005. In support, she also refers to the minutes of the DPC meeting held on 10.09.2012 (Exb. 'R-2' (Page 83) in which, the name of the father of the Applicant is at Serial No.31. This confirms that he was given regular promotion. She also refers to G.R. issued on 13<sup>th</sup> November, 1998 stating that Naib Tahasildar which was in Group 'C', has been declared as Group 'B'.

11. The learned P.O. points out that, as gazetted Group 'B' Officer, Group Insurance Scheme was made applicable to him from 01.01.2010 and he was paid the Insurance amount of Rs.4,80,000/-. According to her, the legal heirs of the deceased have taken relevant financial benefits claiming that he was Group 'B' Officer and the same has been received by them.

12. The learned P.O., therefore, contends that the claim made by the Applicant that he should be given compassionate appointment as his father belonged to Group 'C' needs to be rejected.

13. According to the learned P.O, the citations mentioned in the Judgments are not relevant, because the facts were different. In the earlier cases cited, the deceased was appointed on ad-hoc basis and for a period of three months. In support of her argument, she cites the Judgment given by the Hon'ble High Court in Writ Petition No.1820 of 2018. The relevant Para No.8 which is reproduced as under:

“8. In this case, hardly within six months from the date of such temporary and ad hoc promotion, the respondent’s father died on 19<sup>th</sup> December, 2001. In such circumstances, there was no question of denying the respondent consideration of compassionate appointment by invoking the GR dated 28<sup>th</sup> March, 2001. There is absolutely no error in the view taken by the MAT.”

In the present case, however, the deceased was appointed on regular basis in Group ‘B’, and therefore, his legal heirs are not entitled for compassionate appointment as confirmed by the Judgment given by the Hon’ble High Court cited above. Therefore, she prayed for dismissal of this O.A.

14. The learned Advocate for the Applicant points out that the order promoted the candidates for a period of 11 months and was valid only till the candidates from MPSC become available. He, therefore, contends that the appointment was only on temporary basis and not on permanent basis. He also draws attention to the minutes of the DPC which reads as under.

“दिनांक १०.०९.२०१२ रोजी अब्बल कारकुन / मंडलाधिकारी संवर्गातून नायब तहसिलदार संवर्गात नामनिर्देशित पदावर पदोन्नती देण्यासाठी विभागीय निवड समितीने निवड केलेल्या अधिका-यांची यादी.”

15. According to the learned Advocate for the Applicant, the contention that the deceased had drawn financial benefits as available in Group Insurance was only relevant as far as the pay scale was concerned, and therefore, it cannot be taken as an argument against him. He contends that the pay scale of 4400 up to 9000 has been considered in Group 'C' of this Tribunal as well as by the Hon'ble High Court and Apex Court as mentioned above. The Advocate for the Applicant further stated that as per 6<sup>th</sup> Pay Commission, the Applicant's grade pay is Rs.4300 which is of Group 'C' post and the grade pay of Group 'B' is Rs.4400. The learned Advocate for the Applicant produced the copy of 6<sup>th</sup> Pay Commission, which is taken on record and marked 'X-1' for identification. According to the learned Advocate, whether the Government servant was promoted for 3 months or for 11 months is not relevant. The important thing is that, both are only on temporary basis and drawing the pay scale of 4400 up to 9000. As per the revised pay scale of Naib Tahasildar, he is in the pay scale of Rs.9300-34800 with grade pay of Rs.4300/-.

16. In the light of above contentions, it emerged that the issue to be decided is whether deceased Maruti G. Gosarade is Group 'B' Officer or otherwise? I find that he was Group 'B' officer for following reasons:

18. Perusal of the record produced by the Respondent No.3 shows as under:

- (a) The deceased was considered during the meeting of the DPC on 10.09.2012. The Minutes of the Meeting identified 26 vacant posts and proposed names of Awal Karkun and Mandal Adhikari to the rank of Naib Tahasildar.
- (b) According to the same, the deceased was promoted on regular post and his name figures at Serial No.31.
- (c) He has been promoted and was drawing the salary in the new pay scale of Rs.9300-34800 with grade pay of Rs.4300/- from the date of his promotion till his expiry. His last basic salary was Rs.13989 + 4500/-. His total period in this particular pay scale was for more than four years on a continuous basis without any break till he expired. He has also been given the Group Insurance available to Group 'B' category.

19. Available record confirms that the deceased was working as Naib Tahasildar in the pay scale of Rs.9300-34800 with Rs.4300/- as grade pay. He received the Group Insurance amount of Rs.4,80,000/-.

20. For the reasons above stated, it is clear that the deceased Government servant was Group 'B' Officer. The G.R. dated 22<sup>nd</sup> August, 2005 states that the legal heirs of Group



'C' and Group 'D' are entitled for compassionate appointment. The prayer made by the Applicant to consider him for the compassionate appointment is, therefore, rejected. The Original Application is dismissed, with no order as to costs.

Sd/-

**(P.N. Dixit)**  
**Member-A**  
**25.06.2018**

Mumbai

Date : 25.06.2018

Dictation taken by :

S.K. Wamanse.

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