

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.35 OF 2022  
(Subject:- Compassionate Appointment)**

**DISTRICT:-AURANGABAD**

**Vikas Ramchandra Pradhan,** )  
Age -45 Years, Occu. Nil, )  
R/o. M-2, 29/5, Shihagad Colony, )  
N-6, Cidco, Aurangabad. )  
Mob. 9511290915. )....**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through: Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai-32. )
- 2. The Chief Conservator of Forest,** )  
Regional Office, Vanbhavan, )  
Osmanpura, Railway Station Road, )  
Aurangabad. )
- 3. The Dy. Conservator of Forest,** )  
Parbhani, Parbhani Forest Division, )  
Near ZillhaUdyog Kendra, Koregaon, )  
Road, Opposite Jayakwadi Rest House, )  
Parbhani. )**RESPONDENTS**

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**APPEARANCE** : Shri K.B. Jadhav, learnedcounselfor  
the applicant.  
: Shri I.S. Thorat, learned Presenting  
Officer for the respondentauthorities.  
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**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE** : **07.02.2024.**  
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**ORDER**

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is challenging the impugned order dated 15.12.2021 issued by the respondent No.2, thereby deleting the name of the applicant from the waiting list of compassionate appointment on the ground that the applicant has crossed the age of 45 years on 01.06.2021. The applicant is seeking directions to the respondents to appoint him on any Class-III/Group-C post forthwith.

3. Brie facts giving rise to the Original Application are as follows:-

(i) The mother of the applicant namely Sundarabai Ramchandra Pradhan was working with the respondents on the post of Vanmajur and while in service died on 13.09.2010. The applicant belongs to S.C. reserved category and he has passed the B.Com examination. The applicant is qualified for appointment on any of the Group -C post.

Therefore, the applicant had made an application dated 13.07.2011 to the respondent No.3 requesting to appoint him on compassionate ground in place of his mother.

(ii) It is the further case of the applicant that application dated 13.07.2011 submitted by the applicant was forwarded by the respondent No.3 to respondent No.2 for further necessary action by its letter dated 25.07.2011 informing therein that as per the guidelines issued by the State Government by G.R. dated 10.07.2009, the applicant is eligible and entitled for appointment on compassionate ground in place of his mother. The office had forwarded the Schedule -B to the respondent No.2 with copy of succession certificate issued by the competent court. The said letter is marked as Annexure 'A-1' collectively. In view of above, the respondent No.2 has included the name of the applicant for appointment in Class-III post.

(iii) It is the further case of the applicant that he was not appointed till 2016 and therefore, the applicant had again submitted an application dated 16.09.2016 to respondent No.2 and requested to take action for his appointment on compassionate ground.

(iv) According to the applicant his date of birth is 02.06.1976 and as such, he would be crossing the age of 45 years as on 01.06.2021. Therefore, the applicant has submitted an application dated 16.12.2020 to respondent No.2 requesting therein that his name is at Sr. No. 21 in the waiting list, but he is crossing the age of 45 years as on 02.06.2021 and requested to appoint him on compassionate ground before completion of 45 years of age. The copy of said communication dated 16.12.2020 is marked as Annexure 'A-3'.

(v) It is the further case of the applicant that the respondent No.2 has published the waiting list as on 01.01.2021 for Group -C cadre. The name of the applicant is shown at Sr. No. 6 in the waiting list as on 01.01.2021. The copy of said waiting list is marked as Annexure 'A-4'.

(vi) According to the applicant, the respondent No.2 has not issued the appointment order in favour of the applicant since 2011 to 2021 and the applicant has crossed the age of 45 years as on 01.06.2021. On that date, the respondent No.2 has called total 25 candidates for document verification for being appointed on compassionate appointment. The

respondent No.2 by impugned order dated 15.12.2021 informed the applicant that he has crossed the age of 45 years as on 01.06.2021 and in view Clause No. 11-A of the Government Resolution dated 21.09.2017, the name of the applicant is deleted from the waiting list maintained for giving appointment on compassionate ground. Hence, this Original Application.

4. Learned counsel for the applicant submits that there were vacant posts available with respondent No.2, but the applicant was not appointed prior to crossing of the age of 45 years deliberately. After the applicant has crossed the age of 45 years as on 01.06.2011, then the respondent No.2 started the process of appointment of the candidates who are in the waiting list of Group -C cadre. The respondent No.2 has issued the common letter dated 15.12.2021 to the total 25 candidates calling upon them for document verification on 17.12.2021. Learned counsel for the applicant submits that the candidates up to Sr. No. 5 of the said letter are senior to the applicant, but the candidates from Sr. Nos. 6 to 25 of the said letter are junior to the applicant in the waiting list. The respondents are appointing them on compassionate ground

who are admittedly junior to the applicant. Learned counsel for the applicant submits that due to inaction on the part of the respondent No.2, the applicant has crossed the age of 45 years before his appointment.

5. Learned counsel for the applicant submits that as per information collected by the applicant under Right to Information Act from the office of respondent No.2, there were 200 posts vacant for Group –C as on December, 2020 as well as 204 posts shown vacant for Group –C cadre. Therefore, it was incumbent on the part of the respondent No.2 to consider the claim of the applicant before 01.06.2021 as there were 204 vacant posts for Group –C cadre. Though the applicant has given reminder application as he would be crossing the age of 45 years as on 01.01.2021, the respondent No.2 has intentionally not appointed the applicant and subsequently deleted the name of the applicant from the waiting list on the ground of crossing the age of 45 years.

6. Learned counsel for the applicant submits that, in fact, due to the outbreak of Covid-19 pandemic, there was declaration of lockdown since March, 2020 till September, 2021 and during the said period, the applicant has crossed

the age of 45 years. If the respondent No.2 would have started the process of appointments on compassionate grounds during lockdown period then the applicant would have been appointed as per the waiting list seniority maintained by the respondent No.2. In the month of December 2021, they have issued the letter to total 25 candidates. Therefore, there is total inaction of the part of the respondents for not appointing the applicant before completion of 45 years and the applicant has denied the benefit of the compassionate appointment without his fault.

7. Learned counsel for the applicant submits that the period from 15.03.2020 to 03.10.2021 and subsequently till 28.02.2022 has been excluded by the Hon'ble Apex Court from counting the limitation in terms of order passed in **Suo Motu Writ Petition (C) No. 3 of 2020**. Therefore the deletion of name of the applicant is illegal and liable to be quashed and set aside.

8. Learned counsel for the applicant submits that in the identical facts of the case this Tribunal in **Original Application No. 44 of 2020** in a case of **Asha wd/o. Sandesh Gaikwad Vs. the State of Maharashtra & Ors.** by

order dated 27.11.2021 considering the various grounds including the outbreak of Covid-19 pandemic so also declaration of lockdown has allowed the Original Application directing the respondents to consider the claim of the applicant therein for appointment on compassionate ground from the requisite vacant posts or even by creating supernumerary posts by taking into consideration the seniority in the waiting list.

9. Learned counsel for the applicant further relied upon the case of **Smt. Sushma Gosain and Ors. Vs. Union of India reported in AIR 1989 SC 1976** wherein the Hon'ble Supreme Court has held that the compassionate appointment required to be provided immediately to redeem the family in distress even by creating supernumerary posts so also to accommodate such persons without loss of time.

10. Learned counsel for the applicant has further placed his reliance in a case of **Latikabai Uttam Mahajan Vs. the State of Maharashtra & Ors. in Writ Petition No. 12897 of 2023** wherein the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 21.12.2023 in the backdrop of submissions made on behalf of



the respondent corporation on Clause 11 (aa) of the Government Resolution dated 21.09.2017 to the effect that the moment of age of an enlisted candidate crosses 45 years, his name is instantaneously deleted from the list and after considering Central Government Scheme adopted by the State Government held that the Government Resolution dated 21.09.2027, would not be applicable to cases wherein the candidate is applied for compassionate ground within limitation and was eligible when the application is tendered. Subsequently, if such candidate crosses 45 years of age only because of the pendency of the application or awaiting a vacancy, his/her name cannot be automatically deleted from the list in which he/she is included.

11. Learned Presenting officer on the basis of affidavit in reply submitted on behalf of the respondent Nos. 1 to 3 submits that the name of the applicant was included in the waiting list which is maintained by the present respondents. The applicant has made an application on 13.07.2011 requesting the authorities to appoint him on the Group 'C' post and the similar request is again reiterated by the applicant on 16.09.2016.

12. Learned P.O. submits that the date of birth of the applicant is 02.06.1976 and as such, he has completed the age of 45 years as on 01.06.2021 in terms of G.R. dated 21.09.2017. The applicant therefore vide application dated 16.12.2020 requested to redress the grievance as his name was shown at Sr. No. 21 in the waiting list. Later on waiting list of Group -C candidate published which is as on 01.01.2021 wherein the name of the applicant is shown at Sr. No. 6.

13. Learned Presenting Officer submits that the respondent No.2 has started the process of appointment on compassionate ground from the date 15.12.2021. In the aforesaid process the list of the waiting candidates as on 01.01.2021 for Group -C has been taken into consideration. Thus the candidates from Sr. No. 1 to 5 and from Sr. Nos. 7 to 26 have been asked to remain present for verification of documents on 17.12.2021 at 11.00 AM with original documents. However, the name of the applicant was not considered for the reason that on 01.06.2021 the applicant has crossed the age of 45 years. In view of G.R. dated 21.09.2017 as incorporated in Clause 11 (A) the name of the

applicant has been removed from the waiting list as on 01.06.2021 on account of completion of 45 years of age.

14. The learned P.O. has denied that the claim of the applicant was not deliberately considered by the respondents. Leaned P.O. submits that the procedure for considering the claim of every candidates whose name is included in waiting list is in the ratio of the requirement of the Government offices in the Group –C category, the appointment which are given to the candidate of Group –C on compassionate basis from the year 2018 to 2021 is in total number of 34. Learned P.O. submits that the appointment on compassionate basis has to be considered in view of G.R. dated 11.09.2019 issued by the General Administration Department (GAD) and in view of the said G.R. the department through recruitment quota for Group –C and Group –D are to be filled up from the 20% post annually from the vacant post and for filling 20% post the said quota shall be implemented for the calendar years i.e. 2019 to 31.12.2021. In order to give posting on compassionate basis considering the limit as prescribed if the total number of post comes under the number of 0.5 then in

that eventuality one post shall be filled up in on compassionate ground.

15. Learned P.O. submits that during the period of 2020 till the mid of year 2021 the appointments as well as the posting are not made due to outbreak of Covid-19 pandemic. Therefore, during aforesaid period the office of the respondents could not fill up the vacant post from the category of compassionate appointment.

16. Learned P.O. submits that the office of respondents proceeded to give appointment on compassionate ground from the period 15.12.2021 considering the list of Group -C candidates as on 01.01.2021 as maintained and provided by the office of respondent. Therefore the contentions and allegations of the applicant in this regard are false and baseless. Learned P.O. submits that the respondent is pleased to proceed to appoint in all 25 candidates who are duly eligible for appointment and were called for verification of documents but the applicant was not called for because he has crossed the age of 45 years as on 01.06.2021.

17. Learned Presenting Officer has further added that in view of outbreak of Covid-19 pandemic, the respondents

were unable to proceed further in appointing the eligible candidates on compassionate basis. In order to fill up the posts on compassionate basis the Finance Department has prohibited the direct recruitment. In that situation 10% post are required to be filled in and the Finance Department has imposed prohibition in 20% posts are required to filled in. Therefore considering the pandemic situation as well as the provision of G.R. dated 11.09.2019 less posts are vacant and the applicant was no considered during that period and meanwhile the applicant has attended the age of 45 years on 01.06.2021. Learned P.O. submits that there is no merit in the Original Application and the same is liable to dismissed. Learned P.O. has placed his reliance in a case of **State of Maharashtra & Ors. Vs. Asha Sandesh Gaikwad in Writ Petition No. 7918 of 2022** to substantiate is contention.

18. Undisputedly the name of the applicant was taken for the first time in the waiting list maintained by the respondents for appointment on compassionate ground in Group –C cadre on 13.07.2011. It is also a fact that the applicant was not given appointment till 01.06.2021 and after he has crossed the age of 45 years as on 01.06.2021, the

names of candidates in the waiting list maintained for appointment on compassionate ground was cleared which includes juniors in the waiting list to the applicant. The respondents have not tendered any justifiable reasons as to why the applicant was not considered for appointment on compassionate ground right from the year 2011 to 2021. It appears that for the first time the said process of appointing the candidates on compassionate ground started on 15.12.2021. It is also part of record that the applicant has crossed the age of 45 years during the period of Covid-19 pandemic and declaration of lockdown, the Hon'ble Supreme Court has directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of judicial or quasi-judicial proceedings.

19. In terms of G.R. dated 21.09.2017 (Annexure 'A-1) Clause 11(a), the name of enlisted candidate will be removed from the waiting list maintained for appointment on compassionate ground, on completion of age of 45 years.

20. In a case of **Latikabai Uttam Mahajan Vs. the State of Maharashtra & Ors. in Writ Petition No. 12897**

of 2023 in paragraph No. 14, the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad has made the following observation:-

“14. Considering the above legal position, since the Central Government Scheme has been adopted by the State of Maharashtra, and as clause 11(aa) clearly runs counter to clause 7(B), we conclude that Clause 11(aa) under Annexure 'A' of the Government Resolution dated 21/09/2017, would not be applicable to cases wherein the candidate has applied for compassionate appointment within limitation and was eligible when the application was tendered. Subsequently, if such candidate crosses 45 years of age only because of the pendency of the application or awaiting a vacancy, his/her name cannot be automatically deleted from the list in which he/she has been included. We are fortified in our above conclusion by Clause 7(B) (a) Note (I) and (II), read with the order of the Hon'ble Supreme Court in Govinda Janardan Gaikwad (supra).

21. In the instant case the applicant's name was included in the waiting list from the year 2011 and he was eligible for appointment on compassionate ground when an application was tendered. Further after a gap of more than 10 years when he was not given an appointment on compassionate ground, the department was pleased to remove his name from the waiting list maintained for appointment on compassionate ground for the sole reason and in terms of said clause of G.R. dated 21.09.2017, applicant has crossed the age of 45 years.

22. In view of ratio laid down by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad, if such candidate crosses 45 years of age only because of pendency of the application or awaiting a vacancy, his/her name cannot be automatically deleted from the list in which he/she has been included. The said ratio is squarely applicable to the facts and circumstances of the present case.

23. In a case of **Smt. Sushma Gosain and Ors. Vs. Union of India** (supra) relied upon by the learned counsel for the applicant, the Hon'ble Apex Court in paragraph Nos. 9 and 10 has made the following observations:-

“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.

10. In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent No.2 to appoint Sushma Gosain-appellant No.1 in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi



itself. The appointment shall be made within three weeks from today.”

24. In the aforesaid case the petitioner therein was made an application for appointment as Lower Division Clerk as far back in November 1982. In 1983, she passed the trade test and the interview conducted by the DGBR. As the matter of fact, the Hon’ble Supreme Court has observed that there is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.

25. In the instant case also the applicant has filed an application on 13.07.2011 and his name remained in the waiting list for more than 10 years. However, he was not given any appointment and only after he has crossed the age of 45 years on 01.06.2021, the respondent authorities have proceeded to clear the list by calling upon 25 candidates for processing their names for appointment on compassionate ground.

26. I find much substance in the submissions made on behalf of the applicant that the applicant is not at fault

when due to outbreak of Covid-19 pandemic, the recruitment process was stopped.

27. Learned counsel for the applicant has placed his reliance in a case of **Asha wd/o. Sandesh Gaikwad Vs. the State of Maharashtra & Ors. in Original Application No. 44 of 2020** wherein in the identical facts of the case this Tribunal has taken a similar view by considering various grounds including the outbreak of Covid-19 pandemic and directed the respondents to consider the claim of the applicant therein for appointment on compassionate ground from the requisite vacant post or even by creating supernumerary posts by taking into consideration the seniority of the applicant in the waiting list.

28. In the case of **State of Maharashtra & Ors. Vs. Asha Sandesh Gaikwad in Writ Petition No. 7918 of 2022** relied upon by learned P.O., the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the facts of the said case has modified the order passed by this Tribunal to the limited extent that there is no need to create a supernumerary post and further directed that the case of the respondent (Original Applicant) be considered against the

available vacant post and the cannot be rejected on the ground of non availability of vacant post.

29. In view of discussion as above and in terms of ratio laid down by the Hon'ble High Court and Hon'ble Supreme Court, this Original Application deserves to be allowed. Hence, I proceed to pass the following order:-

**ORDER**

- (A) The Original Application is hereby allowed.
- (B) The impugned order dated 15.12.2021 issued by respondent No.2, thereby deleting the name of applicant from the waiting list of compassionate appointments on the ground of crossing the age of 45 years is hereby quashed and set aside.
- (C) The respondents are hereby directed to consider the claim of the applicant for appointment on compassionate ground as per his seniority in the waiting list and appoint the applicant on compassionate ground on any Class-III/Group-C post forthwith.
- (D) In the circumstances there shall be no order as to costs.

(E) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 07.02.2024**

SAS O.A. 35/2022(S.B.)Compassionate Appointment