

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 127 / 2022 (S.B.)**

Shri Vinod S/o Yogeshwar Bokade,
Aged about 47 years, Occupation:-Nil,
R/o Gandhi Ward, Tah. &
Dist. Gondia-441 601 (M.S.)

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Forest and Revenue,
Mantralaya, Mumbai- 32.
- 2) Director of Land Records, Pune.
New Administrative Building,
2nd Floor, Camp,
Pune-411 001.
- 3) Deputy Director of Land Records,
Nagpur Region, Nagpur.

Respondents

Shri M.R.Johrapurkar, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 10th Feb., 2023.

Judgment is pronounced on 15th Feb., 2023.

Heard Shri M.R.Johrapurkar, Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the Respondents.

2. Facts leading to this application are as follows. Yogeshwar Bokade, father of the applicant was working in the respondent department. He died in harness on 27.01.2008. The applicant applied for appointment on compassionate ground. He completed all the formalities including submission of documents. On 22.07.2016 he gave his consent in writing for appointment to Class-IV post/ post of Driver. By letter dated 23.10.2017 (A-14) the applicant was informed that he could not be given appointment on compassionate ground, and his application was filed. As per G.R. dated 15.02.2018 (A-15) percentage of posts to be filled up by giving compassionate appointment was increased from 10 to 20. The applicant again submitted application (A-16) and made a representation (A-17) on 23.07.2018 and 06.07.2018, respectively which

went unheeded. Therefore, he filed O.A. No. 849/2018. By G.R. dated 11.09.2019 it was reiterated that 20% posts falling vacant shall be filled up by giving appointment on compassionate ground. By order dated 27.08.2021 (A-24) O.A. No. 849/2018 was disposed of by observing as follows:-

“2. The learned P.O. has submitted letter dated 9/8/2021 along with chart of existing vacant posts and filled posts. It is taken on record and marked Exh-X. According to this Chart as on 1/8/2021 in Wardha there is one post vacant, in Bhandara also there is one post vacant and in Gadchiroli also there is one post vacant. Since three posts are vacant as per Chart filed by the respondents, the respondents are directed to consider the appointment of applicant as per rules and regulations within two months from the date of receipt of this order. The learned counsel is directed to ask the applicant to approach before the respondents and request them to provide him appointment since as per chart filed by the respondents three posts of Driver are vacant.

3. The correspondence dated 23/10/2017 (A-14, P-51) is quashed and set aside.”

On 03.09.2021 the applicant submitted application (A-25) that he be appointed as per order of this Tribunal dated 27.08.2021. This request was turned down by the impugned order dated 09.12.2021 (A-27) by communicating as follows:-

“उपरोक्त प्रमाणे आपले अनुकंपा नियुक्तीबाबतचे अर्जावर अनुकंपा नियुक्तीबाबत वेळोवेळी विचार करणेत आलेला आहे. पद उपलब्धते अभावी तुम्हास अनुकंपा नियुक्ती देता आली नाही.

शासन निर्णय दिनांक २१.०९.२०१७ मधील परिशिष्ट अ मधील अ.क्र. ३ (११)(आ) मध्ये अनुकंपा नियुक्तीसाठी कमाल वयोमर्यादा नमुद केली असून त्या ठिकाणी ‘वयाचा ४५ वर्षांपर्यंत उमेदवारांना अनुकंपा नियुक्ती अनुज्ञेय असले. त्यामुळे प्रतिका सुचीतील उमेदवारांना वयाच्या ४५ वर्षांपर्यंत नियुक्ती न मिळाल्यास त्यांची नावे वयाची ४५ वर्ष पूर्ण होताच आवश्यक ती नोंद घेवून प्रतीक्षासूचीतून काढून टाकण्यात यावी.’ असे स्पष्ट नमुद आहे.

तुम्हास दिनांक ०२.१०.२०१८ रोजी वयाचे ४५ वर्ष पूर्ण झालेले आहे. त्यामुळे तुम्ही अनुकंपा नियुक्तीकरीता पात्र ठरत नाही.

उपरोक्त विवेचनाअंती, तुम्ही इकडील कार्यालयात सादर केलेला अनुकंपा नियुक्तीबाबतचा दिनांक १०.०८.२००७ रोजीचा अर्ज इकडील कार्यालयाकडून रद्द करणेत येत आहे. तसेच त्यानंतर सादर केलेले अनुकंपा नियुक्तीबाबतचे सर्व अर्ज दिनांक ३१.०३.२०१८, ०३.०९.२०२१ याद्वारे विनाकार्यवाही निकाली करणेत येत आहे. तसेच या कार्यालयातील गट क अनुकंपा प्रतिकाधीन यादीमधून आपले नाव कमी करण्यात येत आहे. याची नोंद घ्यावी.”

Hence, this original application.

3. Stand of respondent no. 3 is as follows. Date of birth of the applicant is 02.10.1973. O.A. No. 849/2018 was filed on 21.09.2018. At that point age of the applicant was 44 years 11 months. When the said O.A. was disposed of on 27.08.2021 his age was 47 years 10 months. As per G.R. dated 21.09.2017 upper age limit for appointment on compassionate ground is fixed at 45 years. For these reasons the impugned order will have to be sustained.

4. In O.A. No. 849/2018 communication dated 23.10.2017 (A-14) was impugned in which it was stated :-

“महाराष्ट्र शासन वित्त विभाग यांचेकडील शासन निर्णय ५ जून २०१५ नुसार नोकर भरतीस निर्बंध आहेत. सदरचे निर्बंध शासन निर्णय सामान्य प्रशासन विभाग यांचेकडील शासन निर्णय दिनांक २८ आक्टोबर २०१५ अन्वये प्रस्तुत निर्बंध असे पर्यंत गट-क व ड संवर्गातील एक वर्षात भरण्यास मान्यता असलेल्या पदाच्या १०% पदे ही अनुकंपा नियुक्तीने भरण्यास यावीत (यानुसार मंजूर पदांच्या ४% किंवा रिक्त पदांच्या ५०% जे कमी असेल इतकीच पदे भरणेची मान्यता आहे). नागपूर विभागात वाहन चालकाची एकुण ७ मंजूर पदे असून रिक्त पद १ आहे. सदर पदांच्या ४% ०.२५ पदे होतात. ०.२५ पदांच्या १०% = ०.०२५ म्हणजेच ० पदे होतात. त्यामुळे वाहन चालकाचे पद अनुकंपा तत्वावर भरणे प्रचलित नियमात बसत नाही. त्यामुळे तुम्हाला वाहन चालक या संवर्गात नियुक्ती देता येत नाही. सबब तुमचा प्रस्तुत अर्ज निकाली ठेवणेत येत आहे.”

5. I have quote order dated 27.08.2021(A-25). While disposing of the said O.A. this Tribunal had referred to the chart furnished by the Id. P.O. showing that one post each of Driver was vacant in Wardha, Bhandara and Gadchiroli Districts on which the applicant could be appointed. By observing thus this Tribunal proceeded to quash and set aside communication dated 23.10.2017. The respondents were directed to consider appointing the applicant on the vacant post of Driver as per Rules and Regulations within two months from the date of this order. This was followed by the impugned order dated 09.12.2021 which stated that the applicant could not be given appointment on compassionate ground since he had crossed the age of 45 years.

6. It was submitted by Shri Joharapurkar, Id. Counsel for the applicant that when the order dated 23.10.2017 was passed the applicant had not completed 45 years, said order was quashed and set aside by this Tribunal in O.A. No. 849/2018 by observing that three posts of Driver were vacant and hence, relevant date for considering the upper age limit of the applicant would be 23.10.2017 since further delay in giving appointment will have to be attributed to the respondents. This submission is fully supported by record. The respondents cannot be allowed to take benefit of their own laxity. For the reasons discussed hereinabove the O.A. deserves to be allowed in the following terms:-

ORDER

- A. The impugned order dated 09.12.2021 (A-27) is quashed and set aside.
- B. The respondents are directed to consider giving appointment on compassionate ground to the applicant to the post of Driver/post of Class-IV without being hindered by upper age limit of 45 years – if he is otherwise found to be eligible and suitable, within two months from today.
- C. **The O.A. is accordingly allowed with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 15/02/2023.
and pronounced on

Uploaded on : 16/02/2023.