

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 207/ 2021 (S.B.)

Anil Bansilal Chavhan,
Aged about 44 years,
Occ. Labour, R/o Plot No. 50-B,
Netaji Housing Society,
Gorewada Near Water Filter,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Public Works,
Government of Maharashtra,
Mantralaya, Mumbai- 32.
- 2) Superintending Engineer,
(Administrative) Public Work Department,
Nagpur Division,
Nagpur.
- 3) District Collector,
Nagpur, Collector Office,
Civil Lines,
Nagpur.

Respondents

Shri R.L.Kadu, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the Respondents.

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

JUDGMENT

Judgment is reserved on 20th April, 2023.

Judgment is pronounced on 24th April, 2023.

Heard Shri R.L.Kadu, ld. counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the Respondents.

2. Case of the applicant is as follows. Pushpabai, mother of the applicant was working as Sweeper on the establishment of respondent no. 2. She died in harness on 14.01.2013. The applicant applied for appointment on compassionate ground on 14.04.2015 (A-1). After condoning the delay which was caused in making the application, his name was directed to be included in the waiting list for Group-D post (A-2). In response to his application under the R.T.I. Act the applicant was supplied *inter alia* copy of waiting list as on 31.12.2018 in which his name stood at Sr. No. 37. Candidates at Sr. Nos. 1 to 12 in this list were given appointment. The applicant made various representations (A-4 collectively). By communication dated 08.06.2020 (A-5) the applicant was informed as follows:-

१. दिनांक १४/०२/२०२० रोजीच्या अर्जान्वये अर्जदाराने सार्वजनिक बांधकाम मंडळ नागपूर अंतर्गत गट ड (वर्ग-४) संवर्गाची बिंदुनामावली व सार्वजनिक बांधकाम मंडळ नागपूर विभाग मंडळ नागपूर क्र. १ अंतर्गत वर्ष २०१३ ते २०२० पर्यंतची रिक्त पदाची बिंदुनामावली व रिक्त पदांची एकुण संख्या बाबत माहिती मागितल्यावर आपण फक्त वर्ष २०१४ पर्यंतची बिंदुनामावली बाबत आठ पानाची

अपूर्ण माहिती दिल्यामुळे वर्ष २०२० पर्यंतची माहिती बिंदुनामावली व रिक्त पदाची संपूर्ण माहिती देण्यात यावी.

२. जर २०१४ नंतरची बिंदुनामावली तयार नसल्यास त्याचे कारण देण्यात यावे.

संदर्भ क्र. २ अन्वये संबंधित सहाय्यक जनमाहिती अधिकारी यांचे कडून प्राप्त माहिती नुसार विषयांकित माहिती खालील प्रमाणे आहे.

वरिल मुदयांच्या अनुषंगाने माहिती उपलब्ध नसल्यामुळे माहिती निरंक. तसेच सदय स्थितित रिक्त असणा-या पदांची माहिती खालील प्रमाणे

१. नाईक - १ पद रिक्त

२. शिपाई - १० पदे रिक्त

३. चौकीदार - ५ पदे रिक्त

By communication dated 10.08.220 (A-7) the applicant was informed that in the waiting list his name was at Sr. No. 26 and his case would be dealt with as per his seniority therein and position of vacancies.

By the impugned communication dated 29.10.2021 (A-9) the applicant was informed that on account of attaining the age of 45 years

his name was deleted from the waiting list. Hence, this original application.

3. Stand of respondent no. 3 is that the applicant's name was at Sr. No. 97 in the comprehensive waiting list when he was on the verge of getting disqualified on attaining the age of 45 years. The applicant applied for appointment on compassionate ground belatedly. Delay in applying for such appointment was condoned. Thereafter name of the applicant was entered in the waiting list after a detailed inquiry. In comprehensive waiting list prepared as per G.R. dated 22.08.2005 issued by the G.A.D., in the years 2019, 2020 and 2021 name of the applicant stood at Sr. Nos. 149, 119 and 97, respectively.

4. In support of his claim the applicant has relied on the following rulings:-

A. Smt. Sushma Gosain and Ors. Vs. Union of India & Ors. AIR 1989 Supreme Court 1976. In this case it is held:-

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.

B. Phoolwati (SMT) Vs. Union of India & Ors. 1991 Supp (2) Supreme Court Cases 689. In this case aforequoted observations in the case of Smt. Sushma have been relied upon.

C. Supriya Suresh Patil Vs. State of Maharashtra & Ors. (2018) 17 Supreme Court Cases 67. In this case widow of the deceased employee crossed the age of getting appointment on compassionate ground. On facts, her daughter was directed to be considered for appointment on compassionate ground. It was clarified that said direction was issued under Article 142 of the Constitution of India and hence it was not to be treated as a precedent.

D. Judgment of Hon'ble Bombay High Court, Bench at Nagpur dated 22.07.2014 in Writ Petition No. 5944/2018 (Smt. Pushpabai Wd/o Rajesh Bisne & Another Vs. State of Maharashtra & 2 Ors.). In this case petitioner no. 1 applied for appointment on compassionate

ground. She then requested the department that her son, petitioner no. 2 be considered for such appointment. This request was accepted and name of petitioner no. 2 was entered in the waiting list. It was then removed on the ground that there was no enabling provision to allow such substitution. Petitioner no. 1 didn't get the appointment and then crossed the age of 45 years. In these facts the respondents were directed to restore the name of petitioner no. 2 in the register so as to give effect to the order by which substitution was initially allowed.

E. Judgment of Hon'ble Bombay High Court, Bench at Aurangabad dated 11.03.2020 in Writ Petition No. 6267/2018 (Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra & 2 Ors.). In this case restriction imposed by the G.R. dated 20.05.2015 in respect of substitution of one dependent of the deceased by another was held to be unjustified and it was directed that it be deleted.

F. Judgment of Hon'ble Bombay High Court, Bench at Aurangabad dated 20.10.2021 in Writ Petition No. 439/2020 (Gopal S/o Dayanand Ghate Vs. State of Maharashtra & Another). In this case it was observed :-

As such, in the peculiar facts of this case, we do not find that the passage of time from the death of the father of the petitioner, the bereaved family was able to generate earnings and sustain itself. The facts of this case, as reproduced above, are glaring. The petitioner had approached us when he was 20 years of age and is about 24 years of age today. Considering his educational qualifications, he can be appointed by the Zilla Parishad as a Junior Engineer.

G. Judgment dated 06.05.2022 of this Tribunal (Nagpur Bench) in O.A. No. 595/2019 (Shri Parag S/o Gajanan Meshram & Another Vs. State of Maharashtra & 3 Ors.). In this case this Tribunal held that substitution of one dependent of the deceased by another was permissible.

H. Judgment of this Tribunal (Principal Bench) dated 27.08.2020 in O.A. No. 79/2021 (Gaurav Chandrakant Gawade Vs. State of Maharashtra & Another). In this case it is observed :-

Suffice to say, the rejection of the claim of the Applicant on the ground of absence of provision of substitution of heir in the scheme of appointment on compassionate ground is totally unsustainable. Insofar as delay aspect is concerned,

application made by the Applicant being made within three years on attaining majority, the competent authority is required to consider this aspect judicially and to provide appointment subject to fulfilment of other conditions and eligibility criteria. Therefore, the Respondents ought to have referred the matter to competent authority for condonation of delay but they failed to do so and mechanically rejected the application on the ground of absence of provision in the scheme which is totally unsustainable as discussed above.

5. In the instant case the applicant submitted application for appointment on compassionate ground belatedly. However, said delay was condoned. Name of the applicant was entered in the waiting list. Before his turn as per seniority in the waiting list could come, he crossed the age of 45 years. As per G.Rs. dated 22.08.2005 and 06.12.2010 outer age limit to get the appointment on compassionate ground is 45 years. This stipulation lays down:-

“कमाल वयोमर्यादा- वयाच्या ४५ वर्षापर्यंतच्याच उमेदवारांना अनुकंपा नियुक्ती अनुज्ञेय असेल. त्यामुळे प्रतिक्षा सूचीतील उमेदवारांना वयाच्या ४५ वर्षापर्यंत नियुक्ती न मिळाल्यास त्यांची नावे वयाची ४५ वर्ष पूर्ण होताच आवश्यक ती नोंद घेउन प्रतीक्षासूचीतून काढून टाकण्यात यावीत. (शासन निर्णय, २२.०८.२००५ व दिनांक ०६.१२.२०१०)”

This being the factual position none of the above referred rulings shall assist the applicant.

In State Bank of India v. Raj Kumar, (2010) 11 SCC 661, elucidating the nature of the scheme of compassionate appointments it is observed:

"It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking

appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."

Emphasis supplied.

Since the scheme of compassionate appointments prescribes the outer age limit of 45 years, no fault could be found with the impugned order. The inevitable consequence of the applicant attaining the age of 45 years without getting an appointment on compassionate ground was deletion of his name from the waiting list. This is in consonance with the scheme. For the reasons discussed hereinabove **the O.A. is dismissed with no order as to costs.**

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

Dated :- 24/04/2023.
aps

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 : 24/04/2023.
and pronounced on

Uploaded on : 25/04/2023.