

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 45 of 2017**

Smt. Pratibha Wd/o Rajesh Jangam,
Aged about 39 years, Occ. Nil,
r/o c/o Padmakar Ragari
Opp. Naaz Apartment, near Major Gate,
Durgapur Road, Chandrapur,
Tq. & Dist. Chandrapur (M.S.)

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Director General of Police,
Maharashtra State, Shahid Bhagat Singh,
Marg, Kulaba, Mumbai-01.
- 3) Special Inspector General of Police,
Nagpur Range, Nagpur.
- 4) Superintendent of Police,
Chandrapur, Tq.& Dist. Chandrapur (M.S.).
- 5) State of Maharashtra,
through its Secretary,
General Administration Department (GAD),
Mantralaya, Mumbai.

Respondents.

**S/Shri Akhtar N. Ansari, Anwar Ali Saiyyed, Advs. for the
applicant.**

Shri A.M. Ghogre, P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

JUDGMENT**Per : Anand Karanjkar : Member (J).****(Delivered on this 1st day of March,2019)**

Heard Shri A.N. Ansari, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant is a wife deceased Rajesh Jangam. Deceased Rajesh Jangam was appointed as Police Constable (Buckle No.285) on the establishment of Superintendent of Police, Chandrapur (R/4). Deceased Rajesh Jangam was promoted as Police Head Constable and he served at various places. On 20/04/2011 deceased Rajesh Jangam met with an accident and sustained head injury and he was in coma. As a result of accident, due to physical disability deceased Rajesh Jangam was on leave, consequently he was referred to Medical Board in Indira Gandhi Medical College (IGMC), Nagpur. The Medical Board issued Certificate to the effect that deceased Rajesh Jangam was unable to perform his official duty as Police Head Constable and in consequence the Superintendent of Police, Chandrapur (R/4) passed order dated 29/01/2015 and retired deceased Rajesh Jangam from the service on the medical ground.

3. Deceased Rajesh Jangam was alive till 31/03/2016 and he died on 01/04/2016. After the death of deceased Rajesh Jangam the applicant submitted application to appoint her on compassionate

ground and her request was forwarded by the department to the Government. It was view of the S.P. that when deceased Rajesh Jangam died, he was not in service of the government and therefore the applicant was not entitled to be appointed in service on compassionate ground.

4. Being aggrieved by the order passed by the department the present O.A. is filed by the applicant. The learned counsel for the applicant submitted that the order dated 29/01/2015 passed by the respondent no.4 retiring deceased Rajesh Jangam from service is against the provisions of the Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "Disabilities Act, 1995"). It is submitted that as per Section 47 of the Disabilities Act,1995 the respondent no.2 was under obligation to create supernumerary post for deceased Rajesh Jangam or provide him any other suitable work in the department. It is submitted that deceased Rajesh Jangam was bed ridden, he was not in condition to do any work, consequently there was no alternative but to create supernumerary post for deceased Rajesh Jangam. Thus it is submitted that deceased Rajesh Jangam was entitled to serve on the supernumerary post till his date of retirement.

5. Today the learned counsel for the applicant has produced the copy of Pan Card issued by the Income Tax Department to deceased Rajesh Jangam. On perusal of this Pan Card it appears that deceased Rajesh Jangam was born on 02/08/1968 and his date of superannuation was 31/08/2026. Deceased Rajesh Jangam died on 01/04/2016, consequently he was entitled to receive salary till his death.

6. The second submission is that by virtue of Section 47 of the Disabilities Act,1995 the deceased had right to remain in service till 31/08/2026 , consequently the order of retirement at Annex-A-3 passed by the respondent no.4 is illegal. It is further submitted that by virtue of Section 47 of the Disabilities Act,1995 deceased Rajesh Jangam was deem to be in service, therefore, as he died before the date of his retirement, the applicant was entitled to apply for service on compassionate ground.

7. The respondent no.2 has submitted reply which is at page no.41. In para-5 it is contended by the respondent no.2 that the respondent no.2 forwarded a proposal to appoint the applicant in government service on compassionate ground and request was made to consider the case as a special case and has further submitted that as no decision was taken by the government, consequently nothing could have been done.

8. We have heard submissions on behalf of the applicant, and respondents, learned P.O. submitted that action of the government and respondent no.4 is based on law and as per the service Rules, as the deceased was unable to perform his duty, therefore, he was rightly retired from service, there is no illegality in it.

9. In the present application the applicant has challenged the government G.R. dated 22/08/2005 and the applicant is seeking further direction to the government to appoint the applicant in service on compassionate ground. The applicant has also challenged the order of retirement dated 29/01/2015 (Annex-A-3) issued by the respondent no.4 and other consequential benefits.

10. We have perused Section 47 of the Disabilities Act, 1995. The second proviso to sub section 1 is as under –

(47) Non-discrimination in Government employment –

“(1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier”.

11. After reading second proviso it is clear that it is mandatory and it was obligation on the respondent no.4 to create supernumerary post till retirement of deceased Rajesh Jangam. Here it must be

mentioned that as deceased Rajesh Jangam was not in condition to do official work, therefore, there was no alternative other than to create supernumerary post for him. This issue is examined by the Hon'ble Apex Court in case of **Kunal Singh Vs. Union of India & Ano., (2003) 4 SCC, 524.** On the basis of the law in this case it is submitted that the protection under sections 47 & 72 of Disabilities Act,1995 is mandatorily available to an employee acquiring disability during his service and it cannot be denied on the ground that he is given the benefit of invalid pension as per the the Maharashtra Civil Services (Pension) Rules, 1982.

12. In para-9 of this Judgment the Hon'ble Apex Court has observed as under –

“An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads “no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service”.

13. In view of this settled legal position, we are compelled to say that the order passed by the respondent no.4 at Annex-A-3 cannot be sustained in law. It is apparently illegal. The respondent

no.4 passed the order disregarding the Government Circulars dated 16-3-2007 and 04/08/2011.

14. In view of this discussion, we accept the contention of the applicant that premature retirement of the deceased Rajesh Jangam on medical ground is illegal and he had right to work on supernumerary post till retirement on superannuation i.e. 31/08/2026.

15. Once it is accepted that deceased Rajesh Jangam was entitled to serve till 31/08/2026 on supernumerary post, therefore, he was entitled to receive the salary till his death. As deceased Rajesh Jangam died on 01/04/2016 he died during continuation of the service, consequently the applicant was entitled to apply for appointment in service on compassionate ground on the basis of the G.R. dated 22/08/2005. In view of this discussion, we allow the application. Hence, the following order –

ORDER

(i) The application is allowed. It is declared that order dated 29/01/2015 (Annex-A-3) passed by respondent no.4 retiring deceased Rajesh Jangam w.e.f. 31/01/2015 is set aside.

(ii) It is further directed that the supernumerary post shall be created from 01/02/2015 to adjust deceased Rajesh Jangam on that post and all salary and allowances till death of Rajesh Jangam be paid to him. The respondent no.4 is directed to accept the

application submitted by the applicant to appoint her in service on compassionate ground and to take suitable action in this regard.

(iii) The respondents are further directed to pay all consequential monetary benefits to the applicant. This order shall be complied within a period of three months from the date of this order.

(iv) The respondents to pay Rs.10,000/- on account of cost of this proceeding to the applicant.

(v) No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 01/03/2019.

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