

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 517 / 2021 (S.B.)**

1. Shri Pranay S/o Nanaji Borkute,
Aged about 26 years, Occupation:-Nil.
2. Sita Wd/o Nanaji Borkute,
Aged about 55 years, Occ. Nil,
Both R/o Kochar Ward, Telkhadi Chowk,
Hinganghat, Tq. Hinganghat & Dist. Wardha.

Applicants.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Public Work Department,
Mantralaya, Mumbai- 32.
- 2) The District Surgeon,
General Hospital,
Bhandara-441 904.
- 3) Medical Officer,
Health Department, Village Hospital
Palandur, Bhandara.

Respondents

Shri Abdul Sudhan, Id. Advocate for the applicant.**Shri S.A.Sainis, Id. P.O. for the Respondents.**

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

JUDGMENT**Judgment is reserved on 27th July, 2022.****Judgment is pronounced on 02nd August, 2022.**

Heard Shri Abdul Sudhan, Id. counsel for the applicants and
Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicants is as follows. Yogesh Borkute, the deceased, was working as Junior Clerk on the establishment of respondent no. 3. He died in harness on 06.07.2015. Applicants 1 & 2 are brother and mother, respectively of the deceased. Both of them were dependent on the deceased. By communication (A-4) applicant no. 2 requested respondent no. 3 that applicant no. 1 be considered for appointment on compassionate ground as dependant of the deceased. Applicant no. 1 accordingly made an application (A-5) to respondent no. 3. One Poonam, claiming to be the wife of the deceased, objected to appointment of applicant no. 1 on compassionate ground. She was asked to submit documents to establish her claim. She filed Succession Case No. 09/2017 but withdrew it on 12.12.2018 (A-6). Respondent no. 3 forwarded documents submitted by applicant no. 1 to respondent no. 2 with letter dated 04.08.2018 (A-7). Respondent no. 1 rejected application of applicant no. 1 by the impugned order dated 15.07.2019 (A-8) without giving opportunity of hearing to the applicants. Through the information received in response to his application under the R.T.I. Act (A-9) the applicants came to know about rejection of application of applicant no. 1. Hence, this application for quashing and setting aside order dated 15.07.2019 (A-8) passed by respondent no. 3.

3. Reply of respondent no. 2 is at pages 36 to 42. According to the respondent no. 2 applicant no. 1 does not fall in any of the categories to whom benefit of appointment on compassionate ground can be extended and hence, the impugned order cannot be faulted.

4. The impugned order states:-

“शा. नि. सा. प्र. वि. शा. नि. क्र. अकंपा-१२१७/प्र.क्र. १०२/आठ, मंत्रालय, मुंबई दिनांक २१.०९.२०१७ अन्वये अनुकंपा तत्वावरील नियुक्तीसाठी खालील नमुद केलेले नातेवाईक पात्र राहतील व त्यापैकी एका पात्र नातेवाईकास नियुक्ती अनुज्ञेय राहिल.

१) पती/पत्नी २) मुलगा/मुलगी ३) दिवंगत शासकीय कर्मचा-याचा मुलगा ह्यात नसेल किंवा तो नियुक्तीसाठी पात्र नसेल तर त्याची सुन ४) घटस्फोटीत मुलगी किंवा बहीण ५) केवळ दिवंगत अविवाहित शासकीय कर्मचा-याच्या बाबतीत त्याच्यावर सर्वस्वी अवलंबून असणारा भाऊ किंवा बहीण.

वरील अनुकंपा नियुक्तीसाठी पात्र कुटुंबात आपण मोडत नसल्याने आपला अनुकंपा तत्वावर नियुक्तीबाबत विचार करता येणार नाही. सबब प्रकरण नस्तीबध्द करण्यात येत आहे.” (Emphasis Supplied)

5. It was submitted by Shri Subhan, Id. Counsel for the applicants that the deceased was unmarried and thus applicant no. 1 would fall in one of the eligible categories i.e brother who was totally dependent on his deceased unmarried brother. To support this contention it was urged that one Poonam who was claiming to be the wife of the deceased had withdrawn her application for issue of heirship certificate and had thereby tacitly conceded that she was not the wife of the deceased.

In reply, it was pointed out by Id. P.O. Shri Sainis that communication dated 24.09.2019 (A-9) Poonam was described as wife of the deceased and this communication was accepted by the applicants without demur. The Id. P.O. further pointed out that in M.J.C. No. 24/2016 (A-3) only applicant no. 2 was declared to be the Class- I heir of the deceased, being his mother. This determination will not have any bearing on the question of dependency so far as facts of the case are concerned.

6. The question involved is whether the deceased was married or not. Initially one Poonam claimed to be the wife of the deceased. Later on, she withdrew the proceeding filed by her for issue of heirship certificate which she had applied for to establish her civil status as wife of the deceased so as to support her objection that applicant no. 1 was not entitled to get the appointment on compassionate ground.

7. The applicants have filed additional affidavit contending therein that said lady Poonam has performed marriage with one Vijay Patharkar.

8. It was submitted by Id. Counsel for the applicants that they be given an opportunity to put forth their stand that Poonam was never married to the deceased and hence claim of applicant no. 1 which is supported by applicant no. 2 deserves to be considered afresh. Having regard to the facts of the case this submission is worthy of acceptance. It may be reiterated that by the impugned order claim of applicant no. 1 was rejected on the ground that the deceased was married (to Poonam). Poonam herself did not pursue the proceeding for issue of heirship certificate for establishing her civil status as wife of the deceased. Hence, the order:-

ORDER

Original Application is allowed in the following terms:-

1. Applicant no. 1 would be at liberty to make a representation to respondents 2 & 3 to reconsider his application for appointment on compassionate ground. On such representation being made respondents 2 & 3 shall decide the same within two months from the date of this order.
2. 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 : 02/08/2022.
and pronounced on

Uploaded on : 03/08/2022.