

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 137/2020(S.B.)

Shri Rupesh S/o. Shankarrao Kawale,
Aged about 25 years, Occu : Nil, R/o.
C/o. Dhanodi (Bahaddarpur), Tq.
Arvi, District Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department
Mantralaya, Mumbai-440032.
- 2) The Superintendent of Police
Wardha, District Wardha.
- 3) The District Collector, Wardha,
District Wardha.

Respondents

Shri S.U.Ghude,counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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

Dated: - 16th September 2022.

JUDGMENT

Judgment is reserved on 30th August, 2022.

Judgment is pronounced on 16th September, 2022.

Heard Shri S.U.Ghude, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

Shankar Kawale, father of the applicant was working as a Police Constable when he died on 21.06.2010. At that time the applicant whose date of birth is 02.06.1993, was minor. By communication dated 13.01.2011 (Annexure F-1) respondent no.2 informed that the applicant could apply for appointment on compassionate ground on attaining majority. Mother of the applicant made representation to respondent no.2 that the applicant be appointed on compassionate ground. On 09.05.2014 the applicant submitted an application (Annexure-H) for appointment on compassionate ground. It was rejected by order dated 22.05.2014 (Annexure H-1) on the ground of Clause 6 (b) of G.R. dated 26.10.1994. To his representation dated 26.09.2016 (Annexure I) the applicant received the impugned reply (Annexure I-1) that his application could not be considered in view of Clause 5(e) of G.R. dated 21.09.1017. Hence, this application.

3. Reply of respondent no.2 is at pp.66 to 70. According to him, the impugned order is based on the guidelines contained in Clause 7(c) of G.R. dated 26.10.1994/Clause 5(b) of G.R. dated 31.12.2002, and hence, it cannot be interfered with.

4. The applicant has placed on record pursis at page 73 that his mother retired on superannuation on 31.12.2020.

5. The impugned communication dated 25.11.2019 (Annexure I-1) states-

उपरोक्त विषयावरील संदर्भीय अर्जाद्वारे आपण दिवंगत वडील पोहवा/१६ शंकर कावळे, हे सेवेत असतांना मृत्यु पावल्याने पोलीस शिपाई पदासाठी अनुकंपा तत्वावर शासकीय सेवेत सामावून घेणेबाबत. विनंती केली आहे. परंतु तुमची आई पोलीस हवालदार संध्या लक्ष्मण साबळे, ब.नं. १०१७, पोलीस मुख्यालय वर्धा येथे नेमणुकीस असुन शासकीय सेवेत असल्याने शासन निर्णय सामान्य प्रशासन, क.अकंपा १०९३/२३३५/प्र.क.१०/९३/आठ दिनांक २६.१०.१९९४ मधील अ.क.७ (ब) मधील तसेच क.अकंपा १२१७/प्र.क. १०२/आठ दिनांक २१/०९/२०१७ मधील अ.क.५ (इ) तरतुदीचे अनुषंगाने अनुकंपा पात्र ठरत नाही.

It may be reiterated that only on the aforesaid ground the application of the applicant for appointment on compassionate ground was rejected.

6. What is stated in para 7 of the G.R. dated 26.10.1994 (Annexure G-4) is reproduced in the G.R. dated 21.09.2017 in para 5 on internal page 8 (at page 81). This para reads as under-

- (५) कुटुंबाची हलाखीची परिस्थिती
- (अ) अनुकंपा तत्वावर नियुक्ती करिता मासिक उत्पन्नाची तसेच ठोक रकमेची मर्यादा यापुढे राहणार नाही. (शासन निर्णय, दि.२६.१०.१९९४)
- (आ) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा, या योजनेच्या मागील भूमिका लक्षात घेऊन जो कर्मचारी मृत झाला आहे

त्याच्या कुटुंबियांना तात्काळ उद्भवणा-या आर्थिक पेच प्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत. (शासन निर्णय, दि.२६.१०.१९९४)

- (इ) दिवंगत शासकीय कर्मचा-याचा नातेवाईक पूर्वीच सेवेत असेल तथापि तो त्याच्या कुटुंबातील अन्य सदस्यांना आधार देत नसेल तर अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हलाखीची आहे किंवा कसे हे ठरविताना नियुक्ती प्राधिका-यांनी अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करित नाही या नावाखाली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.

7. It was submitted by Advocate Shri S.U.Ghude for the applicant that if the relevant para of the G.R. on which the respondents purportedly rely is considered in its entirety, it would become apparent that the ground of rejection of application for appointment on compassionate ground i.e. mother of the applicant being in service in the respondent department, cannot be sustained. The first limb of the aforequoted para lays down that henceforth there would be no limit of monthly income or lump-sum amount for giving appointment on compassionate ground. The second limb states that the scheme is primarily meant to take care of a situation wherein the dependents of the deceased, on account of his death in harness, find themselves in a precarious financial state. The third limb states that if any relative of a deceased employee is already in service it has to be ascertained whether such in-service employee related to the deceased has failed to support the surviving dependent/s of the deceased employee, the appointing authority has to ascertain whether financial

position of the family taken as a whole is dire so as to ensure that the scheme is not manipulated. The fourth and the last limb states that the appointing authority has to take into account amount of pension, number of family members, their assets and liabilities, medical expenses incurred on the treatment of the deceased employee, number of earning members in the family, etc. The last limb mentioned above does not, thus, create an embargo on giving an appointment on compassionate ground even when the deceased employee leaves behind any earning member in his/her family.

8. The applicant has relied on the following rulings-

(1) ***Roshan Vitthal Kale & Others Vs. The State of Maharashtra & Others 2020(2) ALL MR 364.***

(2) ***Smt. Sushma Gosain And Others Vs. Union of India And Others (1989) 4 Supreme Court Cases 468.***

(3) ***Rajani w/o Bharat Chachire & Another Vs. The Divisional Controller, MSRTC & Ors. 2004(1) ALL MR 520.***

(4) ***Bhushan S/o Sudamrao Ekonkar, Tah. Arvi, Dist. Wardha Vs. State of Maharashtra, Thr. Its Secretary, School Education Dept. Mantralaya, Mumbai and ors. (Judgment delivered on 13.12.2021 in Writ Petition No.2678 of 2020).***

(5) *Suraj Uttam Kamble Vs. State of Maharashtra & Ors.*
2019(6) ALL MR 253.

All these rulings are clearly distinguishable on facts.

The applicant has also relied on *"Smt. Sadhana w/o Vilas Lohkare Vs. State of Maharashtra and Others (judgment dated 06.07.2022 delivered by this Tribunal in O.A.No.892/2019"*. This judgment *inter alia* refers to the following rulings-

(1) *Nikhil Maruti Gosarade Vs. District Collector, Sangli and Others [2022 (1) Mh.L.J.] 348"*. In this case it is held-

In cases of compassionate appointment, not only the authorities but also the tribunal is required to be more careful, sensitive and live to the human considerations and adopt a cautious approach before denying benefit under the compassionate appointment provisions.

(2) *Nitin s/o Yohan Arawade Vs. Central Bank of India, Mumbai [2022(2) Mh.L.J.] page 269"*. Wherein it is held-

It is unheard of that the compassionate appointment could be refused to an eligible member of the family which has lost a sole bread-earner, if the family was not indigent.

9. A conjoint consideration of ratio of these rulings and the aforequoted para 5 of the G.R. dated 21.09.2017 leads me to hold that the ground of rejection of application for appointment on compassionate ground as set

out in the impugned communication cannot be sustained. The respondent department will have to reconsider application for appointment on compassionate ground submitted by the applicant in the light of para 5 of the G.R. dated 21.09.2017, facts of the case including the fact that the mother of the applicant has retired on superannuation on 31.12.2020, as well as the guidelines given in the judgments viz. Nikhil and Nitin (supra). Hence, the order.

ORDER

The O.A. is allowed in the following terms-

The impugned communication dated 25.11.2019 (Annexure I-1) is quashed and set aside. The respondent department shall reconsider application dated 09.05.2014 filed by the applicant for appointment on compassionate ground in the light of observations made in this judgment, and decide the same within six weeks from the date of this order. The decision thus taken shall be promptly communicated to the applicant. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 16/09/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 16/09/2022.
and pronounced on
Uploaded on : 16/09/2022.