

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.297/2023(S.B.)

Nikhil S/o Pradiprao Thakre,
aged 30 years, Occ. NIL,
R/o C/o Vishweshwar Madhukar Dahapute,
Bazarwada, Post Khubgaon, Tq. Arvi,
Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Its Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai-32.
- 2) The Director of Vocational Education and Training,
Maharashtra State, having office at 3,
Mahapalika Marg, Opp. Metro.
Cinema, Dhobi Talao, CSMT Area,
Fort, Mumbai - 400001.
- 3) The Joint Director of Vocational Education and Training,
Regional Office, Amravati, Morshi Road,
Amravati - 444603.
- 4) The Principal,
Industrial Training Institute,

Nandgaon Khandeshwar, Dist. Amravati.

Respondents

Shri S.P.Palshikar, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

Dated: - 12th February, 2024.

JUDGMENT

Judgment is reserved on 30th January, 2024.

Judgment is pronounced on 12th February, 2024.

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. Pradip Thakre, father of the applicant was working in the respondent department as junior clerk. He died in harness on 24.11.2004. At that time age of the applicant was 12 years. His mother Chhaya Thakre applied for appointment on compassionate ground. Her date of birth is 15.06.1961. Her name was entered in waiting list. By order dated 25.06.2008 (Annexure A-1) her name was deleted from waiting list in view of G.R. dated 22.08.2005 as she had crossed 40 years of age. On 13.09.2011, soon after attaining the age of 18 years the applicant applied for appointment on compassionate ground. By order dated 19.04.2012 (Annexure A-3) the applicant was informed as follows-

उपरोक्त विषयान्वये आपणास कळविण्यात येते की, आपला दि. १२/१२/२०११ रोजीचा अर्ज या कार्यालयास प्राचार्य औद्योगिक प्रशिक्षण संस्था, नांदगाव खंडेश्वर जि. अमरावती यांचे पृ. फा क्र. ८१७ दि. २२/१२/२०११ नुसार या कार्यालयास प्राप्त झालेला आहे, यापूर्वी आपली आई श्रीमती छाया प्रदीपराव ठाकरे यांचे नावाने अनुकंपा तत्वावर नियुक्ती मिळणेबाबतचा अर्ज या कार्यालयास सादर करण्यात आलेला होता. परंतु, शा.नि.क्र. सा.प्र.वि. अंकपा-१००७/१२९५/प्र.क्र.१८१/०७/आठ वि. २३/०४/२००८ चे शासन निर्णयात नमूद प्रमाणे ४० वर्षांची कमाल वयोमर्यादा ओलांडली असल्यामुळे उक्त संदर्भिय आदेशान्वये श्रीमती छाया प्रदीपराव ठाकरे यांचे नाव अनुकंपा तत्वावरील प्रतिका सूचीतून कमी करण्यात आले होते. याबाबतचे पत्र यापूर्वी आपणास देण्यात आले आहे. (सोबत प्रत सहपत्रित) तसेच, प्रथम अर्ज करतेवेळी आपले नावाने (पाल्यांचे नावाने) अनुकंपा तत्वावर नोकरी मिळणेबाबतचा विनंती अर्ज / प्रस्ताव या कार्यालयास सादर न केल्यामुळे आता आपले नाव अनुकंपा तत्वावरील प्रतिका सूचीत घेता येणार नाही.

Identical communication (Annexure A-4) was made on 25.07.2013. On 06.12.2021 the applicant again submitted an application (Annexure A-5) for appointment on compassionate ground. By the impugned communication dated 24.05.2022 (Annexure A-6) the applicant was informed as follows-

उपरोक्त संदर्भकित विषयान्वये आपणांस सादर करण्यात येते की, श्री.निखिल प्रदीपराव ठाकरे यांचे अनुकंपा यादीमध्ये नाव समाविष्ट करून वडिलांच्या जागेवर नोकरी मिळण्याबाबतची वस्तुस्थिती, घटनाक्रम व दस्तावेज सोबत सहपत्रित करण्यात येत आहे. श्री. निखिल प्रदीपराव ठाकरे

यांना संदर्भिय पत्र क्रमांक ०२ अन्वये आपली आई श्रीमती छाया प्रदिपराव ठाकरे यांचे नावाने अनुकंपा तत्वावर नियुक्ती मिळणेबाबतचा अर्ज या कार्यालयास सादर करण्यात आलेला होता. परंतु सामान्य प्रशासन विभाग शा.नि.क्र. अकंपा-१००७/१९९५/प्र.क्र.१८१//०७/आठ,दि.२३/०४/२००८ चे शासन निर्णयात नमुद प्रमाणे ४० वर्षाची कमाल वयोमर्यादा ओलांडली असल्यामुळे उक्त संदर्भिय आदेशान्वये श्रीमती छाया प्रदिपराव ठाकरे यांचे नांव अनुकंपा तत्वारील प्रतिक्षासुचीतुन कमी करण्यात आले आहे असे श्री. निखिल प्रदिपराव ठाकरे यांना कळविण्यात आले आहेत. तसेच प्रथम अर्ज करतेवेळी आपले नावाने (पाल्यांचे नावाने) अनुकंपा तत्वावर नोकरी मिळणेबाबतचा विनंती अर्ज/प्रस्ताव या कार्यालयास सादर न केल्यामुळे आपले नाव अनुकंपा तत्वारील प्रतिक्षासुचित घेता येणार नाही, असे या कार्यालयामार्फत त्यांना वेळोवेळी कळविले आहे. परंतु संबधित वारंवार अनुकंपा तत्वारील प्रतिक्षासुचित नांव समाविष्ट करण्याबाबत या कार्यालयास पत्रव्यवहार करित आहे.

Hence, this O.A..

3. Learned Advocate for the applicant relied on following Judgments (*viz. Judgment of M.A.T., Principal Bench at Mumbai in O.A.No.645/2017, Judgment of M.A.T, Bench at Nagpur in O.A.No.926/2020, Judgment of the Hon'ble Bombay High Court in the case of Shubhangi Vitthal Kamodkar Vs. State of Maharashtra Urban Development Department & Others 2023 SCC OnLine Bom 977 and*

Judgment of this Bench in O.A.No.96/2023 to contend that even after name of his mother was deleted from waiting list the applicant could have submitted an application for appointment on compassionate ground and his application was rejected on completely untenable ground that his mother ought to have mentioned in the application made by her that her son be considered for appointment on compassionate ground. In the latest Judgment of the Hon'ble Bombay High Court Shubhangi Kamodkar (Supra) it is held-

15. In the present case father of the Petitioner expired on 27th April 2014. The name of the Petitioner's brother was included in the waitlist for appointment on compassionate ground as per his application dated 17th May 2014. It is not disputed that the application of the Petitioner's brother was not decided, and the same is pending. It is the case of the Petitioner that since her brother was not given any appointment, he had already accepted the job at some other place. Since the Petitioner completed her education and her mother was dependent on her, she made an application to substitute her name in place of her brother. It is also not disputed by Respondent Nos. 2 and 3 that Petitioner's brother had given consent for such substitution. The Petitioner made an application to substitute her name on 5th June 2021. Instead of deciding her application for substituting her name, Respondent Nos. 2 and 3 issued a letter dated 22nd June 2021 directing

Petitioner's brother to comply with certain requisitions. Though the application filed by Petitioner's brother was pending since 17th May 2014, it was only after Petitioner's application for substituting her name was submitted on 5th June 2021 a letter of requisition was issued on 22nd June 2021 calling upon the Petitioner's brother to comply with certain conditions. Thus the action of Respondent Nos. 2 and 3 amounts to refusal to substitute the Petitioner's name in place of her brother for compassionate appointment. Respondent Nos. 2 and 3 have refused to substitute the name of the Petitioner only on the basis of restrictions imposed by the Government Resolution dated 21st September 2017.

16. In the case of Mohd Zakiyoddin, a similar Government Resolution of the year 2015, was relied upon. This Court, in the said case, has taken the view that such restriction amounts to making it impossible to implement the policy of the Government permitting the appointment on compassionate ground. The principle laid down by this Court in the case of Mohd Zakiyoddin, squarely applies to the facts of the present case. We do not see any valid reason for refusing to substitute the name of the Petitioner in place of her brother in the waitlist of Respondent No. 2 for appointment on compassionate ground.

4. This legal position shows that there was no impediment in allowing the substitution as sought and it was not at all necessary for

mother of the applicant to include name of the applicant in the application initially made her.

5. It will have to be seen whether instant O.A. was filed within limitation. On 25.06.2008 name of mother of the applicant was deleted from waiting list. Date of birth of the applicant is 29.12.1992. When name of his mother was deleted from waiting list he was minor. On 13.09.2011, after attaining the age of 18 years he submitted application for appointment on compassionate ground. By order dated 19.04.2012 (Annexure A-3) application dated 13.09.2011 was rejected. Thus, this was the date on which cause of action arose for the applicant and period of limitation began to run. Again on 25.07.2013 the applicant was informed why his request could not be considered. Between 25.07.2013 and 06.12.2021 when he made application (Annexure A-5) the applicant did nothing. By the time application dated 06.12.2021 was made limitation to file Original Application had already expired. It could not have been subsequently revived. In the communication dated 24.05.2022 (Annexure A-6) it was mentioned that previous application/s made by the applicant was/were already rejected. In these facts and circumstances communication dated 24.05.2022 could not have furnished a fresh cause of action. On behalf of the applicant reliance

was sought to be placed on clause 21 of G.R. dated 21.09.2017 which reads as under-

२१) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे:-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षा सूचीमधील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपा धारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षापेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षापेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दि. २०.०५.२०१५).

6. This clause will not help the applicant. His application dated 13.09.2011 was rejected by order dated 19.04.2012. When application dated 13.09.2011 was made the applicant had already attained the age of 18 years. For the reasons discussed hereinabove I hold that the O.A.

is barred by limitation. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 12/02/2024
rsm.

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 : 12/02/2024.
and pronounced on
Uploaded on : 13/02/2024.