

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO.389/2016**

Smt. Panchafula @ Kamal Shrikrushna Daberao,  
Aged about 48 years, Occ. Nil,  
R/o Gawaripura, Khanapur, Akot,  
Tq. Akot, District Akola

**..Applicant**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai 400032
- 2) The Collector, Akola
- 3) Divisional Joint Director of Agriculture,  
Amravati Division, Amravati
- 4) District Superintending Agriculture Officer,  
Akola

**..Respondents**

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Shri S.J. Kadu with Shri Anup Dhore - Advocates for the Applicant  
Shri A.M. Ghogre – Presenting Officer for the Respondents

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**Coram :- Hon'ble Shri A.D. Karanjkar, Member (J)**

**Dated :- 25<sup>th</sup> October 2018.**

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**J U D G M E N T**

Heard Shri S.J. Kadu with Shri Anup Dhore, learned Advocates for the Applicant and Shri A.M. Ghogre, learned Presenting Officer for the Respondents.

2. This application under Section 19 is moved by the applicant for seeking reliefs from this Tribunal.

Facts in brief:

3. Shrikrushna Daberao husband of the applicant died on 22.10.2006, he was serving as Watchman in establishment of Taluka Agriculture Office, Akot. As the applicant is wife of the deceased and there was no source of income to family, therefore, the applicant submitted an application to the respondents no.2 to 4 on 13.8.2009 to employ her in the service on compassionate ground. Directions were issued by respondent no.3 to respondent no.4 to process the application. There was correspondence, the objections were complied with by the applicant. It is grievance of the applicant that respondent no.4 informed her vide letter dated 23.5.2011 that applicant's application for employment on compassionate grounds was required to be submitted within one year from the death of her husband and as it was not done, it was time barred. Again there was correspondence, the applicant was informed that her name was included in the waiting list. Matter was forwarded to the Collector, who took the view that as per GR dated 6.12.2010 as the applicant had crossed the age of 40 years, consequently the respondents refused to employ the applicant in service. The applicant is claiming that respondent no.2 be directed to appoint the applicant on Group D post on compassionate ground and in case it is not possible then directions be given to employ her son Siddheshwar Shrikrushna Daberao on compassionate grounds in her place.

4. The application is opposed by respondent no.2 vide reply which is at page 44 of the paper book. The respondents no.3 and 4 have filed their reply on affidavit, it is at page 57 of the paper book. The main contention of the respondents no.2 to 4 is that the husband of the applicant died on 22.10.2006 and the first application was made by the applicant for her appointment on compassionate grounds on 26.8.2009, therefore, it was barred by limitation. The second contention is that the applicant had crossed the age limit fixed by the Government, consequently the GR dated 22.8.2005 was applicable and applicant could not be appointed on compassionate grounds on Group D post. Hence, the application is liable to be dismissed.

5. I have heard oral arguments on behalf of the applicant and respondents. Only two points are very material to be considered to resolve the controversy, namely:

- (i) Whether it was necessary to submit the application for appointment on compassionate grounds within one year from the date of death of the deceased?
- (ii) Whether the applicant had crossed the age limit fixed by the Government?

6. The Ld. counsel for the applicant submitted that Government has issued GR dated 20.5.2015. It is contended that by virtue of this GR the competent authority is authorised to condone the delay up to 3 years, if the application is not filed within one year. It is submitted that GR dated

20.5.2015 operates retrospectively and therefore there is no substance in the claim of the respondents that the application moved by the applicant for her appointment in service on compassionate ground was time barred.

7. In case of **M/S. PURBANCHAL CABLES & CONDUCTORS PVT. LTD. VS. ASSAM STATE ELECTRICITY BOARD & ANOTHER, (2012) 6 SCR 905**, the Hon'ble Supreme Court has examined the question whether statute operates prospectively or retrospectively. In para 53 of this judgment, it is observed:

“53. This Court, in Shakti Tubes Ltd. (supra) expressly rejected the argument of the learned Senior Counsel appearing for the appellant in that case, that the Act should be given retrospective effect because it was a beneficial legislation, in paragraphs 24 to 26, which have been set out below:

“24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

“13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—nova constitutio futuris formam imponere debet non praeteritis—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).”

25. In *Zile Singh Vs. State of Haryana* (supra), SCC at p.9, this Court observed as follows: (SCC pp. 9-10, paras 15-16)

“15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to ‘explain’ a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is *Attorney General v. Pougett* (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)

‘The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former

statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)"

8. After reading the relevant portion from the judgment discussed supra, it appears that presumption is that the statute always operates prospectively and not retrospectively, unless it is expressly mentioned in the statute that it would operate retrospectively or if by necessary implication it can be said it was intention of the legislature to extend the operation of the statute retrospectively. In the present situation after reading GR dated 20.5.2015 it is not possible to accept that it was intention of the Maharashtra Government to make effect of the GR retrospectively. It is submitted that if retrospective effect is given, thousands of closed matters would be reopened and this will create anomaly and it will be difficult for the Government to handle. Therefore, I am unable to accept the submission of the Ld. counsel for the applicant that the GR is retrospective..

9. It is crystal clear from GR dated 22.8.2005, which is at page 48 of the paper book, Annexure R-2 that earlier the limitation to submit application for appointment on compassionate ground was five years but it was curtailed to one year. Thus, it is clear that at the time when husband of the applicant died in the year 2006 the GR dated 22.8.2005 was in force. Consequently, the applicant was bound to submit the application before expiry of one year from the date of death of her husband. It is not disputed that the application was submitted by the applicant on 13.8.2009, therefore, I am compelled to say that it was barred by limitation as at the relevant time there was no authority to condone the delay.

10. So far as the second point whether applicant was entitled for the appointment though she has crossed the age limit is concerned, in this regard it is necessary to peruse the GR dated 6.12.2010. By this GR the Government enlarged the age limit from 40 years to 45 years for giving employment to the family members of the deceased on compassionate grounds. But clause 3 of the GR specifically says that this GR shall be applicable from 6.10.2010. Annexure 5 is copy of the application in proforma submitted by the applicant. In this proforma the column, 'Date of Birth' is left blank. It is conceded by the Ld. Counsel for the applicant that birth certificate of the applicant or school leaving certificate is not placed on record. Under these circumstances, no evidence is produced before this Tribunal to consider what was the age of the applicant when she applied for the post and in absence of this material information inference cannot be drawn whether the applicant was under age or she had crossed that age. In view of this discussion, it is not possible to accept the contentions raised by the applicant that action of the respondents in not giving her appointment on compassionate grounds was contrary to the law and illegal. Hence, I do not see any merit in the application and pass the following order.

**ORDER**

Original Application is dismissed. No order as to costs.

**(A.D. Karanjkar)**  
**Member (J)**