

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.198 OF 2016
WITH
ORIGINAL APPLICATION NO.828 OF 2017**

ORIGINAL APPLICATION NO.198 OF 2016

DISTRICT : SOLAPUR

Shri Chetan S. Vyavahare.)
Age : 33 Yrs, Occu. Nil, R/o. Abhiman)
Shreenagar, Near Arvind Dham Nagar,)
Murarjee Peth, Solapur.)...**Applicant**

Versus

1. The Director of Medical Education &)
Research, M.S, Mumbai having office at)
Government Dental College & Hospital)
Building, 4th Floor, St. Georges Hospital)
Campus, Mumbai 400 001.)
2. The State of Maharashtra.)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.828 OF 2017**DISTRICT : MUMBAI**

Shri Tanmay Prakash Dhoke.)
Age : 26 Yrs, Occu. Nil, R/o. Room No.52/B,)
Old Boys Hostel, J.J. Hospital Campus,)
Byculla (W), Mumbai 400 008.)...**Applicant**

Versus

1. The Director of Medical Education &)
Research, M.S, Mumbai having office at)
Government Dental College & Hospital)
Building, 4th Floor, St. Georges Hospital)
Campus, Mumbai - 400 001.)
2. The Dean.)
Sir J.J. Group of Hospitals, Mumbai)
Having office at Byculla, Mumbai – 8.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

Mr. A.V. Bandiwadkar, Advocate for Applicants.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 02.01.2019

JUDGMENT

1. The subject matter for both these Original Applications pertains to entitlement of the Applicants for the appointment on compassionate ground. Therefore, both these applications are being decided by common Judgment.
2. Briefly stated facts giving rise to the O.A.No.198/2016 are as follows :

The Applicant's father deceased Subhash Vyavahare was working as Office Superintendent. He died in harness on 25.04.2011. He was Group 'C' employee in pay band of Rs.9300-34800 with Grade Pay 4300 as per 6th Pay Commission. After his demise, the Applicant through his mother applied for the appointment of compassionate ground on the post of Clerk by application dated 16.06.2011. However, the Respondents rejected the claim of the Applicant by impugned order dated 19.04.2014 informing the Applicant that his father was in the pay band of Rs.9300-34800 with Grade Pay 4300 which falls in Group 'B' Non-Gazetted employee, and therefore, as per Clause (f) of G.R. dated 28.03.2001 issued by Government of Maharashtra, he is not entitled to the appointment on compassionate ground. Thus, as per impugned order, the benefit of appointment on compassionate ground is available to the employees of Group 'C' and 'D' only. The Applicant, thereafter, made representation dated 10.03.2015 clarifying that, though his father was in pay band of Rs.9300-34800 with Grade Pay 4300, he falls in Group 'C', and therefore, the rejection of the application for appointment on compassionate ground is incorrect and requested to reconsider his application, but in vein. The Applicant has, therefore, approached this Tribunal invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The Applicant contends that the G.R. dated 28.03.2011 which has been relied by the Respondent is prior to the recommendation of 6th Pay Commission.

It was issued on the basis of recommendation of 5th Pay Commission, but after implementation of 6th Pay Commission, there is no amendment in G.R. dated 28.03.2001. The corresponding pay band in 5th Pay Commission was Rs.5500-9000 which has been revised as 9300-34800 with Grade Pay 4300 as per recommendation of 6th Pay Commission. The Applicant's father was Group 'C' employee in terms of definition of Group 'C' post defined in Maharashtra Civil Services (Conduct) Rules, 1979 and it has nothing to do with revised pay band. As such, deceased being Group 'C' employee, the Applicant's claim for appointment on compassionate ground ought to have been accepted by the Respondents. On these pleadings, the Applicant has challenged the impugned order dated 19.04.2014 and sought direction for inclusion of his name in waiting list for the appointment on compassionate ground on Group 'C' post.

4. The facts in O.A.No.828/2017 are as follows :

The Applicant's mother viz. Priya w/o. Prakash Dhoke was appointed as Staff Nurse in 1983. She died on 03.01.2014 in harness while working as Sister In-charge. At the time of death, she was in pay band of Rs.9300-34800 with Grade Pay 4300. She was group 'C' employee. Therefore, the Applicant being son of deceased employee, made an application for appointment on compassionate ground on 21.01.2014. However, the Respondent No.1 by impugned order dated 18.02.2016 rejected the application on the ground that deceased Priya P. Dhoke was Group 'B' Non-Gazetted employee in pay band of Rs. 9300-34800 with Grade Pay 4300, and therefore, in terms of Clause (f) of G.R. dated 28.03.2001, he is not entitled to the appointment on compassionate ground as the same is available to the deceased employees of Group 'C' and "D' only. Therefore, his application for the post of Laboratory Technician was rejected. The Applicant has challenged this order contending that the interpretation made by Respondent that, the deceased employee was not Group 'C', and therefore, his claim is not acceptable is incorrect.

In this O.A.828 of 2017 also, the Applicant has raised same contentions as raised by the Applicant in O.A.198 of 2016 and prayed to quash the impugned order dated 18.02.2016 and sought direction for inclusion of his name in the wait list for the appointment on compassionate ground.

5. In both these O.As, the Respondents resisted the claim of the Applicants by filing Affidavit-in-reply raising common defences. The common defence in both these O.As is that, the deceased were Group 'B' Non-Gazetted employee in the pay band of Rs. 9300-34800 with Grade Pay 4300, and therefore, in terms of G.R. dated 28.03.2001, the Applicant were not entitled to the appointment on compassionate ground. According to Respondents, as per Clause (f) of G.R. dated 25.03.2001, the benefit of appointment on compassionate ground is available to only Group 'C' and Group 'D' employees. As the deceased were in pay band of Rs. 9300-34800 with Grade Pay 4300, they fall in Group 'B' Non-Gazetted post, and therefore, the rejection of the claim of the Applicants is correct.

6. Heard Mr. A.V. Bandiwadekar, learned Advocate for the Applicants and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.

Reasons :

7. At the very outset, it is necessary to point out that, admittedly, in both the matters, at the time of death, deceased employees were in pay band of Rs. 9300-34800 with Grade Pay 4300 as per 6th Pay Commission. The rejection of the application of the Applicants in both these O.As is on common ground that, the deceased employees were in pay band of Rs. 9300-34800 with Grade Pay 4300 which falls in Group 'B' Non-Gazetted post, and therefore, in terms of Clause (f) of G.R. dated 28.03.2001, the Applicants are not entitled to the appointment on compassionate ground. According to the Respondents, as per the said G.R, the benefit of this Scheme is only available to Group 'C' and Group 'D' employees.

8. In view of rejection of the claim of the Applicants, the crux of the matter is whether only because the deceased employees (in both O.As) were in pay band of Rs. 9300-34800 with Grade Pay 4300, the Applicants are not entitled to claim the appointment on compassionate ground. In fact, this issue is no more *res-integra* in view of various decisions rendered by this Tribunal in other matters as well as Judgment of Hon'ble High Bombay High Court confirmed by the Hon'ble Supreme Court.

9. At this juncture, before dealing with the judicial pronouncements, it would be apposite to refer the definition of Group 'C' post given in Maharashtra Civil Services (Conduct) Rules, 1979. Here, we are concerned with the definition mentioned in Section 2 (e) and (f) which reads as follows :

“(e) Group C Posts” means all non-gazetted posts other than Group D posts.

(f) “Group B Posts” means all gazette posts other than Group A posts.

10. Whereas, as per classification of the post mentioned in G.R. dated 02.07.2002, the following is the criteria.

“अ) जुन्या वर्गीकरणानुसार ज्या पदांचा दर्जा “अराजपत्रित” समजला जातो, तोच दर्जा सुधारीत वर्गीकरणानंतरही कायम राहिल. तसेच ज्या पदांना अगोदरच राजपत्रित दर्जा घोषित केला आहे, त्या पदांचा तो दर्जा यापुढेही कायम राहिल. अराजपत्रित पदांना केवळ वेतनश्रेणीच्या आधारे किंवा विशिष्ट गटामधील समावेशनामुळे आपोआज राजपत्रित दर्जा प्राप्त होणार नाही.

ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीच्या कमालमर्यादा रु.४,४००/- पेक्षा कमी नाही आणि रु.९,०००/- पेक्षा कमी आहे, अशी पदे.”

The aforesaid G.R. dated 02.07.2002 was issued in view of implementation of 5th Pay Commission and the pay revised in terms of recommendations.

11. Admittedly, after the implementation of recommendation of 6th Pay Commission, the employees who were in pay band of Rs.5500-9000 were placed in corresponding pay band of Rs. 9300-34800 with Grade Pay 4300.

12. At this juncture, it would be also appropriate to refer G.R. dated 27.05.2016 which was issued by way of clarification and to remove doubts about classification of employees made by G.R. dated 02.07.2002. Clause (2) of this G.R. is material which is as follows :

“दि. ०२.०७.२००२ च्या शासन निर्णयातील परिच्छेद ३,४,५ व ६ मधील आदेश जसेच्या तसे लागू राहतील. तसेच वरील आदेशामध्ये काहीही अंतर्भूत असले तरी पदनिर्मितीच्या आदेशामध्ये आकृतीबंध निश्चितीच्या आदेशामध्ये अथवा सेवाप्रवेश नियमांमध्ये ज्या पदांचा उल्लेख विवक्षितपणे गट अ/ब/क/ड असा आहे त्यांच्या वर्ग करणामध्ये बदल होणार नाही.”

13. It is thus quite clear that, only because the pay is revised in terms of successive recommendations of Pay Commissions, the classification of employees mentioned in service conditions will not change and would remain same.

14. As referred above, as per definition mentioned in M.C.S.(Conduct) Rules, 1979, the Group 'C' posts means all non-gazetted posts other than Group D posts. This being the position, there is no escape from conclusion that the pay band is not the criteria and only because the deceased employees were in pay band of Rs.9300-34800 with Grade Pay 4300, the Applicants cannot be deprived of the benefit of appointment on compassionate ground.

15. Now, turning to the judicial pronouncements holding the field. This aspect is in fact clarified in various decisions and the controversy is no more open to debate.

16. In this behalf, reference may be made to the Judgment of Hon'ble High Court in **Writ Petition No.5440/2009 (Dinesh Somani Vs. State of Maharashtra) decided on 05.02.2010**, wherein the Hon'ble Bombay High Court referred the said provisions of G.R. dated 28.03.2001 and G.R. dated 02.07.2002. Para Nos.4 & 5 of the Judgment is material, which read as follows :

“4. In this Writ Petition, the stand taken on behalf of the respondents in that since late Smt. T.D. Sonawane was working as Craft Instructor in the Pay Scale of Rs.5500-9000, she would be covered in Group –B category specified in Government Resolution dated 02.07.2002. In that view of the matter, the petitioner was not eligible to get appointment on compassionate ground in terms of Government Resolution dated 28-03-2001 as that facility is extended only to heirs and legal representatives of the persons who were employed in Group –C or Group –D category. This is the only objection taken in the reply affidavit.

5. To examine the correctness of this submission, we would straightway refer to Government Resolution dated 02-07-2002. Clause -1 of the said Government Resolution defines the Group –A category. We are not concerned with the said definition. According to the petitioner, the petitioner would be covered by Group –C category, whereas according to the respondents, the petitioner would be covered by Group –B category. Insofar as Group-B category is concerned, it stipulates that in cases where the pay scale is not less than Rs.9000/- and not more than Rs.11500/-, the same will be covered by Group –B category. Insofar as that in cases where the pay scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group –C category. As aforesaid, it is not in dispute that the pay scale of late Smt. T.D. Sonawane was Rs.5500-9000/-. The natural meaning to the assigned to the above clauses, in our opinion, is that if the pay scale is between Rs.4400/- up to Rs.9000/-, such cases would be covered by Group-C category, whereas if the pay scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group –B category. If any other interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the pay Scale of Rs.9000/- will be covered in Group –B category as well as Group –C category since pay Scale of Rs.9000/- is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is covered in Group –B category, cannot be sustained. That stand will have to be stated to be rejected since admittedly the pay scale of the petitioner’s predecessor was Rs.5500-9000.”

17. The aforesaid Judgment of Hon’ble Bombay High Court was confirmed by the Hon’ble Supreme Court in ***Special leave to Appeal No.16998/2001 decided on 03.11.2011 (State of Maharashtra Vs. Dinesh Somani)***. The Hon’ble Supreme

Court dismissed the said Special Leave Petition and confirmed the Judgment of Hon'ble Bombay High Court.

18. Similar situation was posed for consideration before this Tribunal in ***O.A.No.243/2014 (Chetan Gaikwad Vs. State of Maharashtra) decided on 26.03.2015.*** In similar situation, the stand taken by the Respondents was rejected and directions were issued to appoint the Applicant therein on compassionate ground, subject to fulfillment of other conditions. The said Judgment was also upheld by Hon'ble Bombay High Court in ***Writ Petition No.2465/2016 (State of Maharashtra Vs. Chetan Gaikwad) decided on 02.03.2016.***

19. Besides, similar defence was raised by the Government in ***O.A.No.967/2016 (Ashutosh Kamble Vs. State of Maharashtra) decided on 10.04.2017*** as well as in ***O.A.No.1008/2016 (Abhijeet V. Mulik Vs. The District Collector, Kolhapur) decided on 19.07.2017.*** In this O.A, the deceased who died in harness was holding the post of Naib Tahasildar Group 'B' Non-gazetted and similar defence was raised by the State as raised in the present O.As. This Tribunal turned down the defence in view of the settled legal position which attained the finality in the light of the Judgment of Hon'ble Bombay High Court (cited supra) confirmed by Hon'ble Supreme Court in Special Leave Petition.

20. As such, in view of aforesaid judicial pronouncements which has attained the finality, the defence that the deceased employees were in pay band of Rs. 9300-34800 with Grade Pay 4300, and therefore, the Scheme of appointment on compassionate ground is not applicable to the kith and kin of such deceased employees has to be rejected. For all purposes, as per classification mentioned in M.C.S.(Conduct) Rules, 1979, in both the O.As, the deceased employees were necessarily holding Group 'C' posts. This being the position, there is no substance in the defence raised by the Respondents. In fact, they cannot be allowed to

raise such defence again and again, as the issue has been settled by the judicial pronouncements in various matters. The Respondent-State is in fact expected to respect the decisions which has got finality and not to resist the applications on such untenable grounds.

21. Here, it is pertinent to note that, in view of aforesaid legal position, this Tribunal by order dated 17.09.2018 directed the Respondents to reconsider the cases of the Applicants in the light of aforesaid decision and to take appropriate steps to facilitate the appointment of the Applicant on compassionate ground. In response to this order, the Respondents have filed short Affidavit-in-reply of Deputy Secretary, Medical Education & Drugs Department (Page Nos.87 to 89 of the Paper Book of O.A.No.198/2016). In this Affidavit, the Respondents admit about the finality of Judgment in ***Writ Petition No.5440/2009 (Dine Somani cited supra)*** and submitted that, in view of finality of Judgment, the matter will be again resubmitted to the Department of Law and Judiciary for its opinion and decision will be taken accordingly. However, till date, no such decision has been taken by the Respondents in so far as these two O.As are concerned despite the specific order passed by this Tribunal on 17.09.2018. Be that as it may, now both these O.As having heard on merit, deserves to be allowed.

22. For the aforesaid discussion, I have no hesitation to sum-up that the impugned order in both the O.As is not sustainable in law and facts and the O.As are deserve to be allowed. Hence, I pass the following order.

ORDER

- (a) The Original Application No.198 of 2016 and Original Application No.828 of 2017 are allowed.

- (b) The impugned order dated 19.04.2014 challenged in O.A.No.198/2016 as well as impugned order dated 18.02.2016 challenged in O.A.No.828/2017 are hereby quashed and set aside.
- (c) The Respondents are directed to include the name of the Applicants in the waiting list, subject to fulfillment of other conditions as per Rules and Regulations.
- (d) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 02.01.2019

Dictation taken by :

S.K. Wamanse.

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