

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.262 OF 2018

Shri Gaurav Gautam Waghmare,)
Age 27 years, occ. Nil, R/o Room No.15,)
Jafarbai Kazi Chawl, Mazgaon, Tadwadi, Mumbai-10)..Applicant

Versus

1. The Joint Commissioner of Sales Tax)
(Professional Tax), Suburban Sales Tax Bhavan,)
B-Building, 3rd floor, Bandra-Kurla Complex,)
Bandra (E), Mumbai 400051)
2. The Assistant Sales Tax Commissioner)
(Establishment-6), MS, Vikrikar Bhavan,)
Mazgaon, Mumbai 400010)
3. The Special Sales Tax Commissioner, MS,)
Vikrikar Bhavan, Mazgaon, Mumbai 400010)
4. The State of Maharashtra,)
Through Principal Secretary,)
Finance Department, Mantralaya, Mumbai-32)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 24th September, 2019

PRONOUNCED ON : 25th September, 2019

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This is a case for compassionate appointment. Applicant's mother was working as Class IV employee in the establishment of respondent no.2 and expired on 23.1.1999. Applicant's father is working in Indian Railways as Khalasi (Labourer). On 21.4.2005, when the applicant was 15 years, his father submitted an application to respondent no.2 for compassionate appointment to his minor son who was 15 years at that time (Exhibit B page 18 of OA). Applicant became major on 30.6.2008. On 12.12.2008 applicant's father submitted a fresh application to respondent no.2 praying for compassionate appointment to his son (Exhibit C page 20). On 8.10.2015 respondent no.1 directed respondent no.2 that as father of the applicant is working in Indian Railways as Khalasi, examination be done to find out whether economic conditions of family of the applicant is difficult so that decision can be taken about compassionate appointment. On 6.11.2005, Sales Tax Inspector visited house of the applicant and submitted report stating that applicant is staying in a slum. Father of applicant as per his claim, is earning Rs.4000-5000; however at present he is not going anywhere for work. As mother had died applicant was getting pension. However, from 2011, since applicant attained 21 years the pension was stopped. Applicant is searching for job (Exhibit H page 30). On the basis of this report, Joint Commissioner, Sales Tax (respondent no.1) provided certificate that the condition of the applicant's family is difficult and has no other means to support for existence (Exhibit I page 32). On 3.5.2017 applicant submitted application completing all the formalities and praying for compassionate appointment (Exhibit M page 36).

3. On 23.5.2017 respondent no.1 informed the applicant that applicant has submitted his application for compassionate appointment after seven years and four months though he became major on 30.6.2008. As respondent no.1 has power to condone delay up to a period of three years, applicant's prayer cannot be forwarded to the Head of Department (Exhibit A page 17 impugned communication).

4. Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Bombay High Court in Writ Petition No.8771 of 2015 decided 12.12.2018. In similar circumstances where mother of the applicant had applied when the applicant was minor, Hon'ble High Court observed as under:

"7. we hold the respondents were not justified in rejecting the application, merely because the petitioner did not apply within a year from the date of his attaining majority."

5. Applicant has prayed to set aside this impugned order dated 23.5.2017 declining to forward his application to respondent no.4.

6. Respondent no.1 has filed affidavit and reiterated that there is delay of seven years and four months and no application has been made for condonation of delay. Respondent also states that applicant's father is working in the Indian Railways as Khalasi and would be in service till 2022 and therefore the applicant is not eligible for compassionate appointment. The respondents have therefore submitted that OA may be dismissed as it is without merits.

7. I have examined the correspondence made by respondents with applicant's father and the applicant from time to time. I have examined

the report submitted by the Sales Tax Inspector at Exhibit H which confirms that the condition of the applicant is difficult and has no other source to support him.

8. Available record indicates that right from the time of passing away of applicant's mother, applicant's father was in correspondence with the respondents and the case was being actively considered. In view of the above, I find no merit in the arguments that the applicant has submitted the application after a delay of seven years and four months.

9. In view of the above facts the impugned order dated 23.5.2017 (Exhibit A page 17 of OA) is liable to be set aside. I therefore pass the following order.

ORDER

(1) Original Application is partly allowed and the impugned order dated 23.5.2017 is quashed and set aside. The respondent no.1 is directed to submit application of the applicant for compassionate appointment to respondent no.4 within a period of 15 days.

(2) Respondent no.4 should decide the case of the applicant on merits thereafter within a period of two months from the date of receipt of the forwarded application from respondent no.1. No orders as to costs.

(P.N. Dixit)
Vice-Chairman (A)
25.9.2019

Dictation taken by: S.G. Jawalkar.