

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 832 OF 2021

DISTRICT:- LATUR

Suraj Balaji Solunke
Age 19 years, Occu. Education,
R/o. Nitur, Ta. Nilanga,
District. Latur.

APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Health Department,
Gokuldas Tejpal Hospital
Sankul Building, 10th Floor,
Mantralaya, Mumbai-400 001.
2. The Joint Director,
Health Services, (Malaria, Elephantiasis
And Waterborne Diseases) Pune
Director, Health Service Commissionerate,
Pune Office, Central Building,
Pune-411 001.
3. The Assistant Director,
Health Services (Malaria), Latur,
Assistant Director Office, Health
Service (Malaria) Arogya Sankul,
Barshi Road, Latur-413 512.
4. The District Malaria Officer,
Latur Arogya Sankul,
Shaskiya Vasahat,
Barshi Road, Latur.
5. The District Collector,
Collector Office, Latur.

.. RESPONDENTS.

APPEARANCE : Shri S.P. Dhobale, learned counsel for
the applicant.

: Shri M.P. Gude, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
DATE : 21.04.2023

ORAL ORDER

Heard Shri S.P. Dhobale, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent authorities.

2. The applicant has filed the present Original Application seeking quashment of the communication dated 29.11.2021 issued by respondent No. 4, whereby the said respondent has communicated to the applicant that the request of the applicant to appoint him in Class-C post cannot be considered since the applicant is not possessing the required qualification for appointment on the said post. It is the contention of the applicant that, he was eligible to be appointed on Class-C post and his request could not have been rejected by the respondents on the basis of the Notification issued on 29.9.2021, whereby the Recruitment Rules have been brought into force for the recruitment of Multipurpose Health Worker (Men), Group-C.

3. The contention so raised on behalf of the applicant is resisted by the respondents. Respondent No. 4 has filed the

affidavit in reply on record, wherein it is contended that Recruitment Rules for the post of Multipurpose Health Worker have been notified vide Notification issued on 29.9.2021 and as provided in the said rules, the candidates must have passed course of Sanitary Inspector from recognized institute for appointment on Group-C post. It is further contended that since the applicant does not possess the said qualification he cannot be appointed on Group-C post. It is further contended that the respondents are ready to appoint the applicant on compassionate ground on the post in Group-D and one post is kept vacant. It is further contended that the applicant was informed to accept the Group-D post, however, the applicant has not accepted offer so given by the respondents. In the circumstances, the respondents have prayed for rejecting the application.

4. I have duly considered the submissions advanced on behalf of the applicant, as well as, respondents. It is not in dispute that father of the applicant was in the Government employment and died on 20.11.2015 while in service. The applicant filed application seeking appointment on compassionate ground on 14.3.2016 i.e. within one year of the death of his father. His application was however, not

considered at that time since the applicant was minor. The applicant was advised to make an application after becoming major. The applicant attained the age of majority on 3.3.2020 and immediately applied for the appointment on compassionate ground. Accordingly, the name of the applicant was included in the waiting list of the candidates held eligible for their appointment on compassionate ground. It appears that the applicant was offered appointment on Group-D post, however, he refused to accept appointment on the said post and insisted for appointment in any of the Group-C post. His request has been rejected by the respondents vide the impugned communication.

5. The impugned communication has been challenged by the applicant on the ground that the condition of passing examination of Sanitary Inspector came to be incorporated in the Recruitment Rules, brought into effect vide Notification dated 29.9.2021 and this condition imposed in the said Notification could not have been made retrospectively applicable in the case of the applicant. According to the applicant, when the applicant made an application no such condition was in existence and, as such, the respondents could not have refused the appointment to the applicant on Group-C post. Learned

counsel for the applicant has invited my attention to the appointment given to one Lahu Bhimrao Raut on 17.11.2021 and more particularly to the terms and conditions incorporated in the said order. Learned counsel pointed out that vide condition 23 the said candidate i.e. Lahu Raut has been given time for taking necessary training prescribed for Group-C post and subject to that, appointment has been given to said Lahu Raut. According to the learned counsel by not resorting to same course in the case of applicant the respondents have given discriminatory treatment to the applicant.

6. The objection of the applicant however, cannot be accepted and his challenge to the impugned communication cannot be sustained for the following reasons:

7. At the outset, it has to be stated that the compassionate appointment is not a vested right. In cases where there are statutory rules governing the field of eligibility, such appointment will be disallowed if the eligibility criteria is not fulfilled by the candidate concerned. The applicant is claiming the appointment on Group-C post in Malaria Department of the Health Services. On 29.9.2021 a Notification has been issued whereby the recruitment rules have been brought into force for the recruitment of Multipurpose Health Worker (male) Group-C.

As provided in the said rules a person seeking appointment on Group-C post must have passed the examination of Sanitary Inspector. Admittedly the applicant has not passed the examination of Sanitary Inspector and thus does not qualify or satisfy the eligibility criteria as per the aforesaid rules. The applicant is having a qualification of 12th pass and nothing more than that. Since the applicant is not fulfilling the eligibility criteria, the respondents have declined his request to give him appointment on any Class-C post on compassionate ground. Prima-facie, I do not find any error on part of the respondents.

8. The contention of the applicant that the rules which are brought in force on 29.9.2021 cannot be made applicable to the applicant since his name was included in the waiting list in the year 2020 is liable to be rejected at the threshold. Mere inclusion of the name in the waiting list of the candidates held eligible for compassionate appointment will not vest any right in the applicant from the date his name is included in the waiting list. His services will be governed by the rules, which may be in force on the date of his appointment. As is revealing from the contentions raised by the respondents in their affidavit in reply, when turn of the applicant came for issuance of appointment,

the recruitment rules have already been brought in force. The applicant was, therefore, required to possess the qualification as prescribed in the rules. Applicant admittedly does not possess the said qualification.

9. It is the further contention of the applicant that he was at sr. no. 1 in the said waiting list in the year 2020 and by that time recruitment rules had not come into force. It is the further contention of the applicant that had the respondents given the appointment to the applicant promptly i.e. immediately after the name of the applicant was included in the waiting list at sr. no. 1 he would have been given appointment on Class-C post. According to the learned counsel, that is also one of the reasons that rules brought in force w.e.f. 29.9.2021 would not apply in the matter of the applicant. The contention so raised is also without any substance. As I mentioned hereinabove the compassionate appointment is not a vested right. Secondly, inclusion of the name of the applicant at sr. no. 1 in the waiting list would not mean that he is vested with a right to be given an appointment immediately or on priority basis. The compassionate appointment is a need-base appointment. From out of the vacant posts few percent seats are earmarked for the candidates whose names are included in the waiting list. It is

thus evident that the person whose name is included in the waiting list will be given an appointment as and when his turn will come. As has been contended by the respondents turn of the applicant came after the recruitment rules have come in force. The applicant, who is not holding the eligibility criteria on the date an appointment is offered to him would certainly not get the said appointment.

10. The applicant has alleged that the appointment has been issued in favour of one Mr. Lahu Raut on Class-C post though he has not passed the examination of Sanitary Inspector. The applicant has placed on record the order of appointment issued in favour of said Lahu Raut on 17.11.2021. Clause 23 of his letter appointment is emphasized by the applicant to buttress his contention that Lahu Raut has not passed the examination of Sanitary Inspector but he was allowed to acquire the said qualification within the given time limit and was appointed subject to the said condition. According to the learned counsel, the respondents must have given same treatment to the applicant and must have given time to acquire the necessary qualification after joining the duties. The aforesaid contention of the applicant also cannot be accepted for the reason that the applicant has not placed on record any concrete information in

regard to qualification of said Lahu Raut. Contents of clause 23 of the letter of appointment issued in favour of said Lahu Raut do not mean that the applicant has not passed the examination of Sanitary Inspector and therefore time has been provided to him to acquire the said qualification. Clause 23 reads thus :-

“23. आरोग्य कर्मचारी (वर्ग-3) 40 टक्के पदासाठी विहित प्रशिक्षण विहित केलेल्या मुदतीत पुर्ण करून उत्तीर्ण होणे आवश्यक राहिल. ”

Nothing is there on record to show that the prescribed training as mentioned in clause 23 and the examination of Sanitary Inspector are one and the same. On the contrary, apparently it appears that the reference to prescribe training in clause 23 is other than passing of examination of Sanitary Inspector. Clause 23 also provides that said clause is applicable to 40% posts. No more particulars are available about said 40% posts and whether the appointment claimed by the applicant falls within said 40% appointments. A candidate seeking compassionate appointment cannot complain of discrimination on the ground that some other has been given such appointment unless he could prove, his case was comparable with said other person in whose favour discrimination is claimed to have been made. In the present matter the applicant has failed in bringing any such material on record to arrive at a

finding that his case is comparable with the case of said Lahu Raut.

11. As has come on record the respondents have communicated to the applicant to accept the appointment on any of class-D post and give a written consent in that regard as according to his qualification he is eligible only for Class-D post. It has to be specifically stated that the respondents have also informed the applicant that one such Group-D post is kept vacant.

12. After having considered the facts and circumstances involved in the present matter it does not appear to me that the applicant has made out any case for setting aside the communication dated 29.11.2021 issued by respondent no. 4. No relief is, therefore, liable to be granted in favour of the applicant as prayed by him in this application. In the result, the following order is passed:-

ORDER

(i) The Original Application is dismissed without any order as to costs.

(ii) It is clarified that dismissal of this application shall not come in the way of the applicant, if he shows willingness for accepting appointment on Group-D post as has been offered to him by the respondents.

VICE CHAIRMAN

O.A.NO.832-2021(SB)-2023-HDD-
Compassionate appointment