

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.2/2023
IN
ORIGINAL APPLICATION NO.356/2022**

Raosaheb Shamrao Kore)
Since deceased through his legal heirs)
and representative)
Shri Arun Raosaheb Kore (son))
R/o. Shyam- Laxmi Bunglow,)
Behind Hotel Newratna,)
Old Kupwad Road, Sangli.) **....APPLICANT**

VERSUS

1. The State of Maharashtra)
Through the Principal Secretary,)
Home Department (Excise))
Having office at Mantralaya,)
Mumbai 400 032)

2. The State of Maharashtra,)
Through Additional Chief Secretary)
General Administration Department,))
Having office at Mantralaya,)
Mumbai 400 032)

3. The Commissioner,)
State Excise, (M.S.) Mumbai)
Having office at 2nd Floor, Old)
Customs House, S.B. Marg, Fort,)
Mumbai 23) **....RESPONDENTS.**

Mr. Arvind V. Bandiwadekar, learned Counsel for the Applicant.

Ms. Archana B.K., learned Presenting Officer for the Respondents

CORAM : Justice Mridula Bhatkar (Chairperson)

DATE : 02.02.2024.

J U D G M E N T

1. Learned Counsel for the Applicant Mr. Bandiwadekar has submitted that by order dated 23.12.2022 the Single Bench of this Tribunal has partly allowed the O.A.No.356/2022. The Review Application No.2 /2023 is filed on 20.01.2023 by Smt. S.R. Kore and Mr. A.R. Kore, legal heirs of Mr. R.S. Kore. Learned Counsel has submitted that during the pendency of R.A., Applicant No.1, Smt. S.R. Kore died in April, 2023 and thus now Applicant No.2, Mr. A.R. Kore is prosecuting this R.A.

2. Learned Counsel has prayed for ex-gratia payment of Rs.50 lakhs along with interest on delayed payment of GIS scheme amount, medical reimbursement, saving fund and Provident Fund Insurance amount in R.A. Learned Counsel has submitted that letter of appreciation dated 22.05.2020 which was also part of O.A. was given by the Collector for the work done by the Applicant as preventive measure during COVID period. He has further relied on additional affidavit-in-rejoinder dated 23.01.2024. Learned Counsel has relied on memo dated 03.11.2022 issued by the Law and Judiciary Department in favour of Ms. Neelam Anil Choudhary who was working as Court-Clerk in Mumbai Metropolitan Magistrate expired on 15.05.2021 and was granted ex-gratia payment of Rs.50 lakhs. Similarly, memos dated 23.06.2023 and 06.10.2023 were issued in respect of Mr. Sudhir Keshavrao Chavan, Clerk-typist working in the office of Chief Metropolitan Magistrate, Mumbai and Mr. Nitin Shridhar Babar, Senior-clerk, Joint Civil Judge, Junior Division, Pandharpur, District Solapur, who lost their lives on 14.04.2021 and 02.05.2021 respectively while performing their court

duty. Therefore, family members were awarded ex-gratia of Rs.50 lakhs. Learned Counsel has submitted that the Applicant could lay hands over these documents after the decision of these three orders. A new material is found and this was not within the knowledge of the Applicant when the O.A. was filed and heard. Learned Counsel has submitted that this is new and important matter and similarly the learned Judge did not take into account the letter dated 22.05.2020 disclosing the contribution of the Applicant during the COVID pandemic period and therefore he has applied for Review Application of the said judgment. Learned Counsel has submitted that the Review Application is filed within limitation and therefore it is to be entertained and considered, in view of G.R. dated 29.05.2020 (Exhibit-R8 of O.A.). Learned Counsel has submitted that the other conditions mentioned in respect of eligibility of the deceased Government Servant is under this G.R. and therefore this Review application be allowed and he be given the benefit and ex-gratia benefit of 50 lakhs. He has further submitted that though the order was passed on 23.12.2022, the Applicant received other payment of gratuity and leave encashment etc. in the month of November, 2023. Thus, there is delay of eight to nine months in receiving the payment and therefore the applicant is entitled to receive the interest on this delayed payment.

3. Learned P.O. for the Respondent Ms. Archana has relied on the affidavit-in-reply dated 13.02.2023 on behalf of Respondent Nos.1 and 2 through Mr. Aunp Basavraj Puranik, Deputy Commissioner in the office of Commissioner of State Excise. She has submitted that letter dated 22.05.2020 was issued in appreciation of the deceased Government servant such as detection of crime, breach cases etc. and such work is

purely part and parcel of the duties and responsibilities assigned to the Inspector of State Excise. It does not fall in the definition of 'covid related duties', as mentioned in the Government Resolution dated 29.05.2020 (Exhibit-R1). She has also relied on the letter dated 27.06.2022 (Exhibit-R2) of one Ms. Vijaya Bankar, Resident Deputy Collector of District Disaster Management Authority, Nagpur issued to the Superintendent, State Excise, Nagpur, wherein she has specifically mentioned that the deceased Government servant was not appointed during the COVID period. She has relied on G.R. dated 29.05.2020 which is correctly interpreted by the Tribunal in order dated 23.12.2022 while deciding O.A.No.356/2022. Therefore this cannot be considered in the Review. The Applicant should have filled appeal.

4. At the outset, considering the delay taken by the Department to pay the amount of Gratuity, Leave Encashment etc., the prayer of interest cannot be entertained as it was not mentioned in the order itself and it is not subject of Review Application. I have perused the order dated 23.12.2022 passed by the Single Bench wherein in paragraphs 10 and 11 the scope has been elaborately and rightly discussed. Paragraphs 10 and 11 are quoted herewith :

“10. Now, material question comes as to whether deceased Government servant was given duty relating to survey, tracing, testing. etc. of Covid pandemic. In this behalf, the Respondents have placed on record letter issued by Collector dated 27.06.2022 (Page No.239 of P.B.) in which he certified that deceased Government servant was not assigned any Covid related duty by his Office. However, Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that policy decision taken by the Government by G.R. dated 29.05.2020 being benevolent provision having regard to its aim and object, the benefit of such policy deserves to be given to deceased Government servant, since till hospitalization, he was in active duty in Excise Department for

implementation of Bombay Prohibition Act. Thus, according to him, even if Applicant was not given Covid related duty, the G.R. dated 29.05.2020 has to be construed liberally with compassion, so that heirs of deceased Government servant who died due to Covid infection while discharging office duties should get compensation. Though this submission in first place seems to be attractive, but on careful perusal of G.R. dated 29.05.2020, it does not stand to the test of scrutiny. By G.R. dated 29.05.2020, the Government has taken policy decision for the welfare of the families of Government servants who were working for survey, tracing, testing etc. and other relief activities of Covid pandemic.

11. It is crystal clear that the deceased Government servant was not given any such assignment relating to Covid work. He was working in Excise Department only. When Government has taken policy decision to extend the benefit of grant of ex-gratia payment for certain categories of employees only, then such benefit cannot be extended beyond the employees covered under the policy. The Tribunal cannot go beyond the terms and conditions of policy. The inclusion of other employees who are not covered by the policy would amount to expansion or enlargement of the policy which cannot be done by the Tribunal, since it exclusively falls within the domain of executive. Here, one need to confine to the terms and conditions of the policy and if the claim is outside the policy, then interference by the Tribunal is totally unwarranted. Since it is a matter of financial implication, one need to strictly confine to the terms and conditions, specifically and expressly provided in the policy and decision cannot be driven by mere compassion or sympathy.”

It is held in paragraph 11 that for the reasons stated above, the deceased Government Servant was not given any duty relating to survey, tracing, tracking, prevention and relief activities during COVID pandemic and the duties he was discharging were totally unrelated to COVID and hence ex-gratia payment of Rs.50 lakhs was denied. However, in this order dated 23.12.2022, it appears that the Hon'ble Single Bench has missed the relevant document which was produced by the Applicant, (Exhibit-L of O.A.) filed at the time of filing O.A. The Applicant has relied on G.R. dated 29.05.2020 relevant portion of which reads as below :

“३. तथापि, आरोग्य सेवा संबंधित कर्मचा-यांव्यतिरिक्त अन्य कर्मचारी (जिल्हा प्रशासन, पोलीस, होमगार्ड, आंगणवाडी कर्मचारी, लेखा व कोषागारे, अन्न व नागरी परवटा, पाणी पुरवठा व स्वच्छता, घरोघरी सर्वेक्षणासाठी नेमलेले अन्य विभागांचे कर्मचारी इत्यादी मोठ्या प्रमाणात कोव्हिड संबंधित कर्तव्ये पार पाडीत आहेत. कोव्हिड-१९ च्या सार्वत्रिक साथीशी लढा देणासाठी सक्रीय राहून कर्तव्य बजावणा-या अशा कर्मचा-यांना पाठबळ देण्याच्या दृष्टीकोनातून व अशा कर्मचा-यांचा दुर्दैवाने मृत्यू झाल्यास त्यांचे कुटुंबियांच्या पाठीशी उभे राहण्यासाठी शासनाने खालील प्रमाणे निर्णय घेतले आहेत.

अ) कोव्हिड विषाणूच्या सार्वत्रिक साथीच्या अनुषंगाने सर्वेक्षण, शोध, माग काढणे, प्रतिबंध, वाचणी, उपचार व मदत कार्य या कार्यवाहीशी संबंधित कर्तव्यावर कार्यरत सर्व कर्मचा-यांना रु. ५० लक्ष रकमेचे सर्वकष वैयक्तिक अपघात विमा कवच पुरविण्यात येईल. या बाबतची कार्यपद्धती विमा कंपन्यांशी विचार विनियम करून अंतिम करण्यात येत आहे.”

5. Moreover, learned Counsel for the Applicant has now produced three the orders dated 03.11.2022, 23.06.2023 and 06.10.2023 which were passed by the Law and Judiciary Department in respect of granting ex-gratia payment to the Court staff of Metropolitan Magistrate and also Joint Civil Judge, Junior Division, Pandharpur, Solapur. Thus, the orders of granting ex-gratia payment are not challenged. On perusal of the letter dated 27.06.2022 issued by the Collector it appears that he has given description of the duties which were performed by the Applicant. The submissions of learned P.O. that it is an appreciation letter, is also correct. However, in the letter of appreciation the concerned Officer has specifically mentioned the work performed by the deceased Government servant.

6. In respect of the Excise Department, it appears that there were two phases during the COVID period,

One phase was from March, 2020 till May, 2020 the liquor sale and the shops were closed and it was prohibited but during that period the deceased Government servant has done good job as such 429 cases were registered, 314 people were arrested, 173 vehicles and a liquor of more than Rs.1 crore were confiscated. Further, it is mentioned that he has distributed 20 thousand liters of sanitizers with the co-ordination of

various hospitals and people. Issue is that whether any Government servant was exposed to infection while he was required to do or was given a field job of coming in contact with the people. The deceased Government servant being Excise Officer visited the liquor shops, took the stock of the liquor and supervised whether the sale of liquor was under the COVID guidelines.

The second phase was when the Government allowed opening the liquor shops from June, 2020 onwards and the applicant was given field work. He did come in contact with people and got infected which led to his death. In the letter dated 07.06.2022 issued by Ms. Bankar, Resident Deputy Collector of District Disaster Management Authority, Nagpur it is mentioned that in her opinion the Applicant was not given COVID related duty. This statement is a very narrow and incorrect interpretation of G.R. The G.R. has mentioned various functions carried out by different Government servants during that period to restrict the spread of COVID pandemic. Thus, the Government servants were asked to be on duty and especially those Government servants who were on field and were likely to get exposed to the infection of COVID have definitely contributed in prevention, co-ordination and helping other Departments. The G.R. does not say that the period has restricted the period of COVID pandemic, so the period is of lockdown. The period of COVID started with lockdown w.e.f. 22.03.2020 and it went on even prior to G.R. and after the G.R. as well. The Applicant being State Excise Officer was required to do field work and was definitely exposed to fatal infection. The work done by the Applicant though may not fall in

treatment, tracing and tracking, but it falls in the relief and prevention measures.

7. Moreover, learned Counsel Mr. Bandiwadekar by way of additional and new material has produced the orders, issued by the Law and Judiciary Department, which were not available to the Applicant when My Brother dealt with the issue in his order. The Court staff in the Metropolitan Magistrate who were also exposed and succumbed to pandemic infection while performing their duty during the COVID pandemic were given ex-gratia payment. I am of the view that the Review Application covers and falls in the ambit of Order 47 and Section 114 of the Civil Procedure Code. I am informed that these orders are not challenged by the Government. Thus in view of Article 14 considering the nature and duty performed by the deceased Government servant and language in G.R. I am inclined to pass the following order :

ORDER

- (A) Review Application No.2/2023 is allowed.
- (B) Earlier order dated 23.12.2022 is hereby withdrawn only to the extent of rejection of ex-gratia payment in respect of deceased Government servant.
- (C) Ex-gratia payment of Rs.50 lakhs is to be paid to the Applicant within two months' from the date of this order.

SD/-
(Mridula Bhatkar, J.)
Chairperson