

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 773 OF 2017
(Subject – Appointment on Compassionate Ground)**

DISTRICT: AURANGABAD

Shri Abhimanyu s/o Shankarayya Kalyan,)
Age : 46 years, Occu. : Nil,)
R/o Tukaram Dugyala, Ghati Medical)
Quarters, Room No. 12, G-1-12,)
Ghati Hospital Area, Aurangabad,)
District Aurangabad.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,)**
through its Secretary,)
Medical Education and Drugs)
Department, Mantralaya, Mumbai.)
- 2) **The Dean,)**
Government Medical College Hospital,)
Aurangabad.)
- 3) **Nikhil s/o Shankar Dubake,)**
Age 21 years, Occu. Barber,)
R/o. GHATI, Aurangabad.) .. **RESPONDENTS**

APPEARANCE : Shri S.R. Barlinge, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for the Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 13.08.2018.

O R D E R

1. The applicant has challenged the communication/ letter 06.01.2015 issued by the respondent No. 2 deleting his name from the waiting list of the eligible candidates to be

appointed on compassionate ground and prayed to quash and set aside the said communication by filing the present Original Application and also prayed to direct the respondent No. 2 to appoint him on compassionate ground from the date of his application dated 01.07.2014.

2. The applicant was born on 05.10.1969. He passed B.A. examination. His father was working as a Naik with the respondent No. 2. His father retired from the service w.e.f. 31.03.1993. Thereafter, the applicant has filed several representations on 17.12.2002, 18.03.2002, 25.09.2006, 10.12.2007, 03.01.2008, 29.02.2009, 17.08.2009, 08.02.2010 & 03.01.2011 and thereafter also, but the respondent No. 2 had not considered his representations.

3. It is contention of the applicant that his mother viz. Smt. Radhabai Shankarayya Kalyan was working as *Kaksha Sevika* (Sweeper) with the respondent No. 2. She died on 20.06.2014, while in service. After her death, the applicant moved an application dated 01.07.2014 for appointment on compassionate ground. It is his contention that his application was not decided by the respondent No. 2 within a stipulated time as per the G.R. dated 10.11.2015 and therefore, he had waited and made representation with the respondent No. 2.

4. It is contention of the applicant that, as per the seniority list prepared by the respondent No. 2, the name of the applicant appears at Sr. No. 37. It is his contention that as per the G.R. dated 01.11.2015, the respondents ought to have taken decision on the application of the applicant for appointment on compassionate ground within a period of 30 days. The age of the candidate on the date of submissions of the application ought to have been considered. It is his contention that on the date of filing of the application, he had not completed 45 years of his age, but the respondent No. 2 has not considered the provisions of the said G.R. and deleted his name from the waiting list on the ground that he has completed his age of 45 years and informed him accordingly by communication dated 06.01.2015. It is his contention that the respondent No. 3, who was at Sr. No. 38 in the waiting list of the eligible candidates to be appointed on compassionate ground has been appointed by the respondent No. 2 vide order dated 16.12.2015. But the name of the applicant has not been considered and therefore, he has filed the present Original Application and prayed to quash and set aside the impugned communication dated 06.01.2015 issued by the respondent No. 2 and sought direction to the respondent No. 2 to appoint him on compassionate ground with effect from the date of his application dated 01.07.2014.

5. The respondent Nos. 1 & 2 resisted the contentions of the applicant by filing their affidavit in reply. They have admitted the fact that the mother of the applicant was serving as *Kaksha Sevika* on the establishment of respondent No. 2 and she died on 20.06.2014 while in service. They have admitted the fact that the applicant filed an application for appointment on compassionate ground on 01.07.2014 to the respondent No. 2. It is their contention that the name of the applicant had been enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground at Sr. No. 37. The date of birth of the applicant is 05.10.1969. He has completed his age of 45 years on 14.11.2014. It is their contention that as per the G.R. dated 22.08.2005, the upper age limit for appointment on compassionate ground was 40 years, but by the G.R. dated 06.12.2010 it has been increased to 45 years. It is their contention that as per the said G.R., the appointment order on compassionate ground can be issued to those candidates, who have not crossed the age of 45 years. But if the candidates crossed the age of 45 years, then his/her name has to be deleted/removed from the waiting list. It is their contention that in view of the G.R. dated 06.12.2010, as well as, G.R. dated 21.09.2017 the name of the applicant has been removed from the waiting list, as he has crossed the age of 45 years and

accordingly, he was informed by the communication dated 06.01.2015 by the respondent No. 2.

6. It is their further contention that the applicant had filed W.P. No. 8677/2010 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad for appointment on compassionate ground in place of his retired father, but the Hon'ble High Court dismissed the said W.P. on 18.11.2010.

7. It is their contention that the respondent No. 3 was at Sr. No. 38 in the waiting list of the eligible candidates to be appointed on compassionate ground. He has not completed 45 years of his age and therefore, he was appointed on temporary basis for the period of 29 days, as he was fulfilling the required criteria and there is no illegality in it. It is their contention that the impugned order has been issued by the respondent No. 2 in view of the provisions of the G.Rs. issued by the Government from time to time and there is no illegality in it and therefore, they prayed to reject the present Original Application.

8. I have heard Shri S.R. Barlinge, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents. I have perused the documents on record filed by both the parties.

9. Admittedly, deceased employee Smt. Radhabai Shanakrayya Kalyan, was mother of the applicant. She was serving as *Kaksha Sevika* on the establishment of respondent No. 2. She died on 20.06.2014 while in service. After her death, the applicant had filed an application dated 01.07.2014 with the respondent No. 2 for getting appointment on compassionate ground. On the basis of his application, the respondent No. 2 enrolled the name of the applicant in the waiting list of the eligible candidates to be appointed on compassionate ground and the name of the applicant was placed at Sr. No. 37. Admittedly, the date of birth of the applicant is 05.10.1969. He has completed his age of 45 years on 04.10.2014. Admittedly, the applicant could not get appointment till completion of his age of 45 years. Consequently, his name has been removed from the waiting list and he was informed by the communication dated 06.01.2015 accordingly.

10. Learned Advocate for the applicant has submitted that on the date of filing of the application dated 01.07.2014, the applicant has not completed his age of 45 years and therefore, he is eligible and entitled to get appointment on compassionate ground in view of the G.R. dated 10.11.2015. He has submitted that as per the said G.R., the date of the application of the

applicant is material and the same has to be considered, but respondent No. 2 has not considered the provisions of G.R. dated 10.11.2015 and wrongly rejected the claim of the applicant by issuing communication dated 06.01.2015.

11. Learned Advocate for the applicant has submitted that in O.A. No. 533/2012 in case of Smt. Siminta wd/o Harishchandra Phad Vs. The State of Maharashtra and Ors. involving similar issue has been decided by the Division Bench of this Tribunal on 20.10.2016 and therefore, he has placed on record the copy of the said decision. He has submitted that in view of the said decision, the respondent No. 2 may be directed to consider the case of the applicant afresh and to give him appointment on compassionate ground by allowing the present Original Application.

12. Learned Presenting Officer has submitted that immediately after receiving the application of the applicant dated 01.07.2014, the respondent No. 2 enrolled his name in the waiting list of the eligible candidates to be appointed on compassionate ground and he has been placed at Sr. No. 37. She has submitted that the applicant was born on 05.10.1969 and he has completed his age of 45 years on 04.10.2014. In view of the G.R. dated 22.08.2005, the upper age limit for giving

appointment on compassionate ground was 40 years. The said limit has been extended/increased to 45 years by G.R. dated 06.12.2010. She has submitted that in view of the said G.R., the name of the candidate, whose name is enrolled in the waiting list has to be removed from the list on completion of age of 45 years. She has submitted that in the latest G.R. issued by the State Government on 21.09.2017, the same provision has been reiterated. She has submitted that as the applicant has crossed the age of 45 years on 04.10.2014, the respondent No. 2 removed his name from the waiting list in view of the provisions of the aforesaid G.Rs. and informed the applicant by communication dated 06.01.2015. She has submitted that there is no illegality on the part of the respondent No. 2 in issuing the communication dated 06.01.2015.

13. She has further stated that the G.R. dated 10.11.2015, on which the applicant has placed reliance is not applicable in the instant case. She has submitted that the said G.R. is in respect of the legal heirs of Sweepers, who are belonging to Walmiki and Mehatar community and therefore, it is not applicable to the applicant. She has submitted that the said G.R. came to be issued on 10.11.2015, which is issued after the date of the impugned order (06.01.2015) and therefore, the

applicant cannot take benefit of it. She has submitted that the G.Rs. dated 22.08.2005, 06.12.2010 & 21.09.2017 are applicable in this case and the respondents removed the name of the applicant on the basis of the aforesaid G.Rs. Therefore, she prayed to reject the present O.A.

14. On perusal of the record, it is crystal clear that after the death of mother viz. Smt. Radhabai Shankarayya Kalyan, who died on 20.06.2014, the applicant filed the application dated 01.07.2014 with the respondent No. 2 claiming appointment on compassionate ground. The said application is at page no. 12 (Annexure-B) of the paper book. On the basis of the said application, the name of the applicant has been enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground on 17.07.2014 at Sr. No. 37. It is evident, from the waiting list produced at page Nos. 32 to 34 (Annexure-C) that the application of the applicant dated 06.01.2014 has been considered by the respondent no. 2 immediately and his name has been enrolled in the said waiting list. The date of birth of the applicant is 05.10.1969. He crossed the age of 45 years on 04.10.2014. The applicant had not received appointment till that date. On crossing the age of 45 years, the name of the applicant

has been removed from the said waiting list on the basis of the G.Rs. dated 22.08.2005 & 06.12.2010 by the respondent No. 2.

15. Initially the scheme for appointment on compassionate ground introduced by the Government in the year 1976 and thereafter, revised scheme has been introduced on 26.10.1994. Thereafter, from time to time, the Government made changes in the said scheme by issuing G.Rs. dated 23.8.1996, 10.03.1998, 22.8.2005, 23.04.2008 & 06.10.2010. By the G.Rs. dated 22.08.2005 and 23.4.2008, the maximum age for appointment on compassionate ground was fixed as 40 years. The said limit has been increased to 45 years by G.R. dated 06.12.2010. The provisions of the said G.R. provide that the name of the candidates, whose name has been enrolled in the waiting list shall be removed from the waiting list on completion of age of 45 years, if no appointment was given to them till that date.

16. The applicant has completed his age of 45 years on 04.10.2014 and before crossing age of 45 years, he had not received any appointment and therefore, his name has been deleted from the waiting list by issuing impugned communication dated 06.01.2015 by the respondent No. 2 to the applicant in view of the provisions of the said G.Rs. The Government issued

latest G.R. dated 21.09.2017 wherein the entire provisions of the different G.Rs. and Circulars issued by the Government from time to time in this regard have been compiled. On perusal of the provisions of the said G.R., it is clear that the name of the candidate, whose name enrolled in the waiting list and who has not received appointment on compassionate ground till completion of age of 45 years has to be removed on crossing the age of 45 years. The said provision is at page no. 62 of the paper book and considering the said provision, in my opinion, there is no illegality in the communication issued by the respondent No. 2 on 06.01.2015 to the applicant informing that his name has been removed from the waiting list, as he crossed the age of 45 years.

17. I have gone through the decision referred by the learned Advocate for the applicant. Facts in that case are not identical with the facts in the present case. In that case, the applicant has been removed from the service on the ground that she had given false information regarding the date of birth and produced false birth certificate. This Tribunal has allowed the O.A. on the ground that no opportunity of hearing was given to the applicant and set aside the impugned order. The facts and

issue involved in that case are totally different; therefore, the said judgment is not useful to the applicant in the present case.

18. Learned Advocate for the applicant has placed on record a G.R. dated 10.11.2015, which is at page Nos. 35 to 41. On perusal of the said G.R., it reveals that the said G.R. has been issued on the basis of recommendation of Lad-Paage Committee. The said Committee has been appointed for giving appointment to the legal heirs of the Sweepers belonging to Walmiki and Mehatar community. The applicant has not moved the application claiming the benefits of the said G.R. On the contrary, his application dated 01.07.2015 shows that he claimed benefits under the scheme made for the appointment on compassionate ground. Not only this, but documents on record, it shows that the mother of the applicant was serving as *Kaksha Sevika* and not as Sweeper. Therefore, the provisions of the said G.R. dated 10.11.2015 are not attracted in the present case. Moreover, the said G.R. has been issued on 10.11.2015 i.e. subsequent to the issuance of the impugned order dated 06.01.2015 and therefore, no question of consideration of the said G.R. by the respondent No. 2 arises, while issuing the impugned communication. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the

applicant in that regard. The application of the applicant is governed by the G.Rs. issued by the Government from time to time under the scheme of appointment on compassionate ground to the Government employees, who died while in service. Therefore, I do not find force in the submissions advanced by the learned Advocate for the applicant in that regard.

19. In view of the above said facts, it is crystal clear that the respondent No. 2 has rightly considered the G.Rs. dated 22.08.2005 and 06.12.2010 and deleted the name of the applicant from the waiting list of the eligible candidates to be appointed on compassionate ground on completion of age of 45 years and informed the applicant accordingly by communication dated 06.01.2015. There is no illegality on the part of the respondent No. 2 in issuing the impugned communication. Therefore, I do not find merit in the present O.A. Consequently, it deserves to be dismissed.

20. In view of the discussions in foregoing paragraphs, the Original application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE :13.08.2018.

KPB S.B. O.A. No. 773 of 2017 BPP 2018 Appointment on compassionate ground

(B.P. PATIL)

MEMBER (J)