

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.789 OF 2021

DISTRICT : JALGAON

Ganesh s/o. Yuvraj Pawar,
Age : 28 years, Occu. : Nil,
R/o. At Post Changdeo Nagar, Jamner,
Tq. Jamner, Dist. Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Its Secretary,
General Administration Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai-32.
- 2) The State of Maharashtra,
Through Its Upper Secretary,
Home Ministry of Maharashtra,
09th Floor, New Administrative Building,
Opposite Mantralaya, Mumbai-32.
- 3) The Superintendent of Police,
07th, Mahatma Gandhi Road,
Jilha Peth, Pratap Nagar, Jalgaon-425001.
- 4) The Deputy Superintendent of Police,
Jamner, Tq. Jamner,
District, Jalgaon.

...RESPONDENTS

APPEARANCE : Shri Ramesh Wakde, Counsel for
Applicant.

: Shri I.S.Thorat, Presenting Officer
for the respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 03.01.2023.

ORAL ORDER:

1. Heard Shri Ramesh Wakde, learned Counsel for the applicant and Shri I.S.Thorat, learned Presenting Officer representing respondent authorities.

2. Father of the applicant, namely, Yuvraj Sakharam Pawar was a Police Constable in the service of the State Government. He expired on 21-12-2009 while in service. On 17-02-2010, mother of the applicant made first application with the competent authority seeking appointment on compassionate ground for her son i.e. the present applicant. It was, however, mentioned in the said application that the applicant had not till then attained the age of majority and request was, therefore, made for appointing him on compassionate ground after he attains the age of majority. Similar request was repeated by mother of the applicant by making subsequent applications on 22-02-2011 and 20-06-2011, respectively. Applicant attained age of majority on 24-09-2011, however, at that time he was not holding the requisite qualification i.e. H.S.C. (12th standard) examination passed for appointment on the post of Police Constable. Applicant passed 12th standard examination in the year 2014. On passing of such examination by the applicant,

mother of the applicant preferred the subsequent application on 07-07-2014 thereby requesting the authorities to consider name of the applicant for appointment on compassionate ground. As is revealing from the pleadings in the O.A., name of the applicant was included in the waiting list prepared by respondent no.3 for Jalgaon District. His name was at Sr.No.22 in the said list. It is the grievance of the applicant that in the year 2018, his name was illegally removed from the said waiting list. It is the contention of the applicant that thereafter though applicant again submitted representation, same was not considered and respondent authorities have rejected the claim of the applicant on the ground that he did not submit the application within the stipulated period after attaining the age of majority and further that he has not provided any reason for occurrence of delay in making such application. Said order has been passed on 06-03-2020 by respondent no.4. Said order is challenged by the applicant by filing the present O.A.

3. It is the contention on behalf of the applicant that the application seeking appointment on compassionate

ground, was in fact immediately made within one year of the death of deceased Yuvraj Sakharam Pawar. It is the further contention of the applicant that since at the relevant time the applicant had not attained the age of majority, his mother had preferred said application with a request to consider the applicant for giving him appointment on compassionate ground after he attains the age of majority. According to the applicant though the applicant attained the age of majority in the year 2011, more particularly, on 24-09-2011, since at the relevant time, he had not passed the 12th standard examination which was the requisite qualification for appointment on the post of Police Constable, he did not press the earlier applications. After the applicant passed the 12th standard examination, mother of the applicant submitted an application on 07-07-2014 and annexed with the said application all requisite documents, more particularly, certificate of the applicant having passed the 12th standard examination.

4. According to the applicant since the applicant had complied with all the formalities, his name was duly included in the waiting list prepared at the office of

respondent no.4. Subsequently, his name came to be removed and when the applicant made a grievance in that regard, he has been communicated the reasons for rejection of his claim. As noted hereinabove, request of the applicant has been rejected on the ground that he did not make an application within the stipulated period after attaining the age of majority and he did not submit any reason for occurrence of delay in making such application. Learned Counsel for the applicant submitted that if the conduct of the applicant is seen, he was all the while attentive and he himself and his mother were pursuing their claim for compassionate appointment. Learned Counsel further contended that inclusion of name of the applicant for appointment on compassionate ground in the year 2017 demonstrates that the application for his appointment submitted by mother of the applicant was accepted by the authorities and accordingly his name was included in the waiting list.

5. Learned Counsel for the applicant submitted that before removing the name of the applicant from the waiting list, the applicant was not given any opportunity of hearing and was also not communicated that his name

has been removed from the waiting list. Learned Counsel further submitted that only after having come to know from other sources that his name has been removed from the waiting list, he again made an application with the respondent authorities for including his name in the waiting list. Learned Counsel submitted that the authorities have rejected the claim of the applicant on technical grounds and without regard to the facts that mother of the applicant had submitted the application way back in the year 2011 and applicant did not pursue his request till the year 2014, as till then he had not passed the 12th standard examination. Learned Counsel in the circumstances prayed for setting aside the impugned communication and has also sought further directions against the respondents to include the name of the applicant in the waiting list and to provide the appointment on compassionate ground to the applicant as and when his turn comes.

6. Shri I.S.Thorat, learned P.O. has opposed the submissions made on behalf of the applicant. Learned P.O. submitted that as per the provisions made vide various G.Rs., the candidate concerned aspiring for

appointment on compassionate ground has to make an application within one year after attaining the age of majority if he/she is minor on the date of death of his father/mother. Learned P.O. submitted that there is further provision for explaining delay and seeking condonation of delay if delay has occurred in making application seeking compassionate appointment. Learned P.O. submitted that the present applicant did not submit application seeking appointment on compassionate ground within the period of one year stipulated for making such application and though he subsequently made an application, he did not state or explain anything about the delay which has occurred in making such application. According to the learned P.O., in the circumstances, no error can be found on the part of the respondents in rejecting the request of the applicant on the grounds as are mentioned in the impugned order.

7. Learned P.O. as well as the learned Counsel for the applicant had taken me through various documents which are filed on record in support of their respective contentions. Along with their affidavit in reply the respondents have placed on record G.R. dated 21-09-2017

whereby all earlier G.Rs., Circulars and Notifications issued on the point of compassionate appointment have been consolidated. Learned P.O. invited my attention to clause 10 of the said G.R. which pertains to the limitation for making application for appointment on compassionate ground. I deem it appropriate to reproduce the entire said clause 10, which reads thus:

“(१०) अर्ज करण्यासाठी मुदत :-

(अ) अनुकंपा नियुक्तीसाठी दिवंगत शासकीय कर्मचा—यांच्या कुटुंबातील पात्र नातेवाईकाने शासकीय अधिकारी/कर्मचारी दिवंगत झाल्याच्या दिनांकापासून **एक वर्षांच्या** मुदतीत संबंधित नियुक्ती प्राधिका—याकडे विहित नमून्यात परिपूर्ण अर्ज सादर करणे आवश्यक आहे. (शासन निर्णय, २२/८/२००५ व शासन परिपत्रक, दि.०५.०२.२०१०)

(आ) सेवेत असताना दिवंगत झालेल्या कर्मचा—यांच्या कुटुंबातील अज्ञान वारसदाराच्या बाबतीत एकाने सज्ञान म्हणजे १८ वर्षांचा झाल्यावर एक वर्षांच्या आत अनुकंपा नियुक्तीसाठी परिपूर्ण अर्ज सादर करणे आवश्यक आहे. (शासन निर्णय, दि. ११/९/१९९६ व शासन परिपत्रक, दि.०५.०२.२०१०)

(इ) पात्र वारसदारास विहित १ वर्षांच्या मुदतीनंतर २ वर्षे इतक्या कालावधिपर्यंत (मृत्यूच्या दिनांकापासून ३ वर्षांपर्यंत) तसेच दिवंगत शासकीय कर्मचा—यांच्या अज्ञान वारसदाराच्या बाबतीत तो उमेदवार सज्ञान झाल्यानंतर विहित १ वर्षांच्या मुदतीनंतर २ वर्षांपर्यंत (सज्ञान झाल्यानंतर ३ वर्षांपर्यंत) अर्ज सादर करण्यास विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधित मंत्रालयीन प्रशासकीय विभागाच्या विभाग प्रमुखांना देण्यात येत आहेत.

अनुकंपा नियुक्ती धोरणातील याशिवाय अन्य कोणत्याही अटी व शर्ती शिथिल करण्याचे अधिकार संबंधित मंत्रालयीन प्रशासकीय विभागप्रमुखांना राहणार नाहीत. (शासन निर्णय, दि. २०.०५.२०१५)

(ई) जोपर्यंत अनुकंपा नियुक्तीकरीता आवश्यक असलेली सर्व कागदपत्रे उमेदवारांकडून प्राप्त होत नाहीत तोपर्यंत त्यांचे नांव प्रतिक्षासूचीमध्ये समाविष्ट करता येणार नाही. ज्यादिवशी संपूर्ण कागदपत्रे प्राप्त होतील त्यादिवशीच त्यांचे नाव प्रतिक्षासूचीमध्ये समाविष्ट करावे. (शासन परिपत्रक, दि. ५/२/२०१०)”

8. Learned P.O. submitted that in none of the applications, the applicant has mentioned that the delay has occasioned in filing the application by the applicant because by the said time the applicant had not passed the 12th standard examination. Learned P.O. invited my attention to the applications dated 07-07-2014 and 03-04-2018. Learned P.O. submitted that the application dated 07-07-2014 is not submitted by the applicant but by his mother though on the said date the applicant had attained the age of majority. Learned P.O. submitted that first application submitted by the applicant is dated 03-04-2018 and that was beyond the period of limitation. Learned P.O. further submitted that even in the letter dated 03-04-2018, the applicant has not given any reason for not making the application within the stipulated period

of limitation. According to the learned P.O. in the circumstances, no error can be found on part of the respondent authorities in rejecting the claim of the applicant.

9. I have duly considered the submissions advanced on behalf of the applicant as well as the respondent authorities. I have also gone through the documents filed on record which contain the relevant G.Rs. and Circulars on the point of appointment on compassionate ground. It is not in dispute that the father of the applicant who was a Government servant died in the year 2009 while in service. It is further not in dispute that the mother of the applicant submitted applications on 17-02-2010, 22-02-2011 and 20-06-2011, respectively, seeking appointment for the applicant on compassionate ground after the applicant attained the age of majority. There is further no dispute that the applicant attained the age of majority on 24-09-2011. Documents on record reveal that applicant passed 12th standard examination in February, 2014. Documents further reveal that on 07-07-2014, mother of the applicant made a fresh application seeking appointment for the applicant on compassionate ground

and along with the said application submitted all necessary documents including the certificate of the applicant having passed the 12th standard examination. Respondents have not disputed that the name of the applicant was included in the waiting list in the year 2017 by respondent no.4 and it was at Sr.No.22. Subsequently, name of the applicant came to be removed and the respondents rejected the claim of the applicant on the ground which has been noted hereinabove.

10. Learned Counsel for the applicant has referred to the G.Rs. dated 11-09-1996 and 20-12-1996 whereas the learned P.O. has referred to the G.R. dated 21-09-2017 whereby all previous G.Rs. and Circulars on the point of appointment on compassionate ground have been consolidated. In the said consolidated G.R. dated 21-09-2017 there is a reference of the aforesaid earlier two G.Rs. dated 11-09-1996 and 20-12-1996. Clause 10 of the aforesaid G.R. dated 21-09-2017 is reproduced hereinabove which prescribes the period of limitation for filing the application seeking appointment on compassionate ground. According to the applicant, he had applied for compassionate appointment well within

the stipulated period whereas according to the respondents the applicant did not file any application within the stipulated period.

11. From the documents, it is obvious that the applicant himself did not file any application till 03-04-2018 under his own signature seeking appointment on compassionate ground after he attained age of majority. The previous application dated 07-07-2014 which has been emphasized by the applicant was also submitted by the mother of the applicant and was neither a joint application nor was countersigned by the applicant. The applicant had admittedly attained the age of majority in the year 2011, thus, in the year 2014, he was aged more than 20 years. If the provisions of the G.R. dated 21-09-2017 are considered, it is not mandatory that minor legal heirs of the deceased Government employee must submit the application within one year after attaining the age of 18 years i.e. majority. Some latitude is provided in sub-clause (₹) of clause 10 which provides that the eligible legal heir can file application beyond the period stipulated of one year, within next two years and the delay so occurred in filing the application can be condoned by the

appropriate authority. The impugned order demonstrates that the claim of the applicant has been rejected on the ground that he did not submit the application within one year after attaining the age of majority and applicant did not explain the delay which has occasioned in making the application. According to the learned P.O. very first application made by the applicant is of the year 2018 and thus falls beyond the period prescribed in sub clause (d) of clause 10 of the G.R. dated 21-09-2017 and as such according to him there is no case for the applicant.

12. After having perused the documents filed on record, it appears to me that while rejecting the claim of the applicant the respondents shall not have lost sight of the fact that in the year 2017 itself the name of the applicant was included in the waiting list of the candidates to be provided with compassionate appointment. Inclusion of name of the applicant in the waiting list leads to an inference that the application submitted by mother of the applicant on 07-07-20014 with all requisite documents was accepted by the respondents and accordingly his name was included in the waiting list.

13. As I have noted hereinabove, though the applicant attained age of majority on 24-09-2011, he did not acquire requisite qualification of passing 12th standard examination by the said time and he acquired the said qualification in February, 2014. Thereafter, within a period of 5 months, mother of the applicant made an application and placed on record all relevant documents. It appears to me that the efforts made by the applicant and his mother seeking appointment on compassionate ground by time to time submitting the applications and requisite documents cannot be simply ignored. There is further substance in the contention raised on behalf of the applicant that before deleting the name of the applicant from the waiting list, the applicant was not given any opportunity of hearing. Had such an opportunity been given, perhaps, the applicant would have been in a position to explain why he did not submit the application before passing 12th standard examination as that was the minimum qualification for appointment on the post of Police Constable.

14. I deem it appropriate to reproduce hereinbelow the reason as has been mentioned in the impugned

communication/order dated 06-03-2020 for rejecting claim of the applicant as it is in vernacular, which reads thus:

“दिवंगत युवराज सखाराम पवार यांच्या पत्नीने दि.२१/१२/२००९ रोजी पतीचा मृत्यु झाल्यानंतर, मुलाला अनुकंपा नियुक्ती मिळण्यासाठी १ वर्ष ५ महिन्यांनी दि.२०/०५/२०११ रोजी अर्ज केला. श्री गणेश पवार यांनी दि.२३/०९/२०११ रोजी सज्ञान झाल्यानंतर दि.२२/०९/२०१२ पर्यंत अनुकंपा नियुक्तीसाठी अर्ज करणे आवश्यक होते. तथापि, त्यांनी दि.०७/०७/२०१४ रोजी म्हणजेच १ वर्ष ०९ महिने १३ दिवस विलंबाने अर्ज केला असुन विलंबाबाबत कोणतेही सबळ कारण दिलेले नाही. यास्तव श्री गणेश पवार यांना अनुकंपा नियुक्तीसाठी अर्ज करण्यास झालेला विलंब क्षमापित करता येणार नाही, असे सामान्य प्रशासन विभागाच्या अभिप्रायानुसार कळविण्यात येत आहे. तसेच सदर बाब अर्जदार यांना कळविण्यात यावे.”

15. It is significant to note that the communication dated 06-03-2020 whereby the claim of the applicant has been rejected is addressed to the mother of the applicant and not to the applicant. It is further significant to note that in the caption of subject, the subject is mentioned as “अनुकंपा तत्वावर नोकरी मिळण्याबाबत” and below it name of the applicant is mentioned. From the averments in the letter dated 06-03-2020, it is quite evident that till the said date, application submitted by the mother of the applicant on 07-07-2014 was under consideration of the

respondents and the said application is stated to have been submitted belatedly by committing delay of 1 year 09 months and 13 days. It is further stated that the delay so occasioned has not been appropriately explained. As mentioned in the impugned order, the application was required to be submitted on or before 22-09-2012 i.e. within 1 year after the applicant attained the age of majority. However, as mentioned hereinabove, such an application was submitted with delay of 1 year 09 months and 13 days. As stated in the impugned communication/order, if the application was liable to be submitted on or before 22-09-2012 i.e. within 1 year of attaining the age of majority by the applicant, the application submitted on 07-07-2014 could not have been rejected by the respondents on the ground that the delay had occurred of 01 year 09 months and 13 days in submitting the said application in view of the provision under sub clause (ġ) of clause 10 of the G.R. dated 21-09-2017, which has been reproduced hereinabove. As per the said provision, delay up to the period of 2 years, beyond the period of 1 year, after attaining the age of majority by the candidate eligible for compassionate appointment, can be condoned by the Head of the

concerned administrative department. In the present matter, since the delay was of the period less than 2 years, the competent authority should not have declined to condone the delay and should not have rejected the request of the applicant.

16. Documents on record show that mother of the applicant had consistently pursued the proposal seeking appointment to the applicant on compassionate ground. It has also come on record that the applicant could not have been appointed on the post of Police Constable on compassionate ground without passing the 12th standard examination as it is essential qualification. It has come on record that the applicant has passed the 12th standard examination in the month of February, 2014 and within 5 months thereafter, mother of the applicant submitted an application by annexing the HSC Certificate of the applicant. Thus, in fact, the application was filed well within the period of 1 year. It is, however, true that the said application was also filed by the mother of the applicant and not by the applicant. However, the question arises whether on such too technical ground could it be

just to reject the claim of the applicant when he is otherwise eligible and entitled for such appointment?

17. I reiterate that the respondents have throughout acted upon the applications submitted by the mother of the applicant seeking appointment for the applicant on compassionate ground and on the basis of the application dated 07-07-2014, the name of the applicant was included in the provisional waiting list for appointment on compassionate ground. Thus, name of the applicant was included in the waiting list on the strength of the application submitted by the mother of the applicant. When earlier such request was considered, there was no rationale in rejecting the claim of the applicant on the ground that the applicant himself did not submit the application after attaining the age of majority. For the reasons stated above, it appears to me that the impugned order has to be set aside and the respondents shall be directed to reconsider the request of the applicant by condoning the delay caused in making application by the applicant. It need not be stated that the applicant shall prefer such an application providing the reasons for not filing the application within 1 year of attaining the age of

majority, more particularly, the reason that by the said time he did not acquire the requisite qualification of passing 12th standard examination.

18. For the reasons stated above, I deem it appropriate to pass the following order:

ORDER

[i] Communication/order dated 06-03-2020 whereby the respondents have communicated the rejection of the claim of the applicant is set aside.

[ii] Applicant shall make a fresh application explaining the reasons for not filing the application within stipulated period, within 6 (six) weeks from the date of this order. If such an application is made by the applicant, respondents shall consider the said application sympathetically in view of the provisions of the G.R. dated 21-09-2017, and more particularly, clause 10 thereof within 8 (eight) weeks thereafter.

[iii] O.A. thus stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 03.01.2023.