MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

TRANSFER APPLICATION NO. 15 OF 2013
[WRIT PETITION NO. 2789 OF 2013]

DISTRICT: - NANDED.

Smt. Sumanbai W/o Niwrati Bamne,
Age : - 40 years, Occu: Nil,
R/o Khanapur Tq. Degloor,
District Nanded. **.. APPLICANT.**

V E R S U S

1. **The State of Maharashtra,**
   Through District Collector,
   Nanded.

2. **The Executive Engineer,**
   Public Work Department,
   Nanded, Division Nanded.

3. **The Deputy Engineer,**
   Public Work Department,
   Sub-Division, Degloor **.. RESPONDENTS**

APPEARANCE : Shri A.D. Gadekar – learned Advocate for the applicant.

: Shri I.S. Thorat – learned Presenting Officer for the respondents.

CORAM : **HON'BLE SHRI J.D. KULKARNI, VICE CHAIRMAN (J)**

DATE : **24TH AUGUST, 2017.**

O R D E R

1. Heard Shri A.D. Gadekar – learned Advocate for the applicant and Shri I.S. Thorat – learned Presenting Officer for the respondents.

2. It seems that the applicant initially filed Writ Petition No. 2789 of 2013 before the Hon'ble Bombay High Court Bench at Aurangabad. Vide order dated 16.8.2013, this case has been transferred to this Tribunal since the subject matter was as regards appointment under the State Government and alternate remedy was available to the applicant before this Tribunal. On transfer of the said W.P., this Tribunal renumbered the same as T.A. No. 15/2013.

3. From the admitted fact on record, it seems that the applicant is the widow of Nivarti Bamne, who was working as a Gangman in Public Works Department at Nanded. He died on 09.02.2003 while in service.

4. There is no dispute that the applicant applied for the appointment on compassionate ground in place of her

husband on 19.03.2003 i.e. within limitation, in Class-III or Class-IV post and her name was recorded on the wait list of the candidates to be appointed on compassionate ground. Initially, her name appeared at Sr. No. 26 in consolidated waiting list and thereafter at Sr. No. 17 in 2010. Admittedly, the candidates up to Sr. No. 16 in the wait list have been given appointment on compassionate ground and it was the turn of applicant to be appointed. The applicant was waiting for her number / turn, but she was never appointed.

5. According to the applicant, in October, 2012 she came to know that her name has been deleted from the wait list on the ground that she has completed 40 years of her age. On enquiry, she also came to know that the age limit has been extended from 40 to 45 years and, therefore, she immediately requested the respondent authorities to consider her name for appointment on compassionate ground. However, nothing has been intimated to her. The applicant has, therefore, prayed direction to respondent No. 2 to add her name at Sr. No.

17 in waiting list of compassionate appointments in Nanded District and to appoint her in Class-III or Class-IV post.

6. Respondent Nos. 2 and 3 have filed affidavit in reply. The respondents admitted that Sr. No. of the applicant was 17 on the wait list of the candidates to be appointed on compassionate ground and 16 persons prior to her have been given appointment. It is also material to note that in paragraph No. 7 of the affidavit in reply, it has been stated that the applicant's name in the waiting list of appointment of compassionate ground was at Sr. No. 44 for 2010-2011 and 2011-2012, but in the next paragraph it has been stated that the applicant's name has been deleted since she crossed the age limit of 40 years and, therefore, the Government Resolution dated 6.10.2010 is not applicable to the applicant.

7. Learned Advocate for the applicant submits that as per the Government Resolution dated 6.12.2010, a copy of which is placed on record at page Nos. 43 and 44 (both

inclusive), the age limit of the candidates on wait list has been increased from 40 to 45 years.

8. Learned Presenting Officer however, submits that the said Government Resolution has been made applicable from the date of issuance of the G.R. i.e. 6.10.2010 and the applicant has already attained the age of 40 years in 2009 i.e. prior to issuance of the G.R. dated 6.12.2010. The very purpose of issuing the G.R. dated 6.12.2010 was to extend the age limit as the persons on wait list were not getting appointment since there was age limit of 40 years and, therefore, the Government decided to increase the age limit. However, the G.R. has been made applicable from 6.10.2010. The very purpose of the G.R. and decision taken by the Government is obviously to give opportunity to the candidates and the same reads as under : -

> **"प्रस्तावना :- शासकीय कर्मचा-यांसाठी असलेल्या प्रचलित अनुकंपा नियुक्ती योजनेमध्ये शा.नि.दि.२२.८.२००५ व दि. २३.४.२००८ अन्वये अनुकंपा नियुक्तीसाठी कमाल वयोमर्यादा ४० वर्षे इतकी विहित करण्यात आलेली आहे. या कमाल वयोमर्यादेच्या अटीमुळे**

प्रतीक्षासूचीवरील उमेदवारांची नांवे नियुक्ती मिळण्यापूर्वीच वयोधिक्यामुळे वगळली जात असल्याने सदर वयोमर्यादेत वाढ करण्याचा प्रस्ताव शासनाच्या विचाराधीन होता. याबाबतच्या प्रस्तावावर सर्वकष विचार करून अनुकंपा नियुक्तीच्या प्रचलित योजनेमधील नियुक्तीसाठी असलेल्या कमाल वयोमर्यादेची व टंकलेखन परीक्षा उत्तीर्ण होण्यासंबंधातील सद्य:स्थितीत अस्तित्वात असलेल्या तरतूदी अधिक्रमित करून खालीलप्रमाणे सुधारित तरतूदी लागू करण्याचा निर्णय शासनाने घेतला आहे.

शासन निर्णय :-

१) शासकीय कर्मचा-यांच्या पात्र कुटुंबियांना अनुकंपा नियुक्ती देण्यासाठी या आधी असलेल्या ४० वर्षे या कमाल वयोमर्यादेत वाढ करण्यात येत असून ती आता वयाची ४५ वर्षे इतकी राहील.

२) अनुकंपा तत्वावर लिपीक-टंकलेखक पदावर नियुक्ती देण्यात आलेल्या उमेदवारांना टंकलेखनाचे विहित वेगमर्यादेचे शासकीय वाणिज्य प्रमाणपत्र प्राप्त करून घेण्यासाठी सध्या असलेली २ वर्षे ही मुदत कमी करून ती आता नियुक्तीच्या दिनांकापासून ०६ महिने इतकी करण्यात येत आहे.

३) हे आदेश दि. ६.१०.२०१० पासून लागू राहतील."

9. Learned Presenting Officer for the respondents submits that the applicant's name has been deleted from the wait list prior to issuance of the G.R. dated 6.12.2010, since she attained the age of 40 years and, therefore, there was no question of extending benefit of G.R. dated 6.12.2010 to the applicant.

10. In this regard, it is material to note that in paragraph No. 3 of the Original Application, the applicant has stated that she came to know in month of November, 2012 that her name was deleted from the list of candidates to be appointed on compassionate ground on the ground that she has competed 40 years of age and, therefore, she requested the respondent authorities to continue her name in view of the G.R. dated 6.12.2010. If this fact is admitted as true then the name of the applicant must be in wait list till 2012. She has further stated in paragraph No. 6 of the Original Application, that in the year 2010-2011 & 2011-2012 her name was in the wait list at Sr. No. 17. If it is so, admittedly her name was not deleted till 2012. These specific averments are not denied by the

respondents. The respondents have not specifically stated the date on which the applicant's name has been deleted from the wait list. On the contrary, in paragraph No. 7 of the affidavit in reply, it is admitted that the applicant's name was in the wait list of the year 2010-2011 & 2011-2012. If so is the fact, then admittedly on the date of the issuance of the G.R. dated 6.12.2010 the name of the applicant must have been in the wait list of the candidates to be appointed on compassionate ground.

11. The applicant has filed affidavit stating that her name was in the list till 2012. Even, thereafter on 3.8.2014 and 27.10.2014 she has applied to the respondent authorities for appointment on compassionate ground and also intimated that she was not given any intimation regarding deletion of her name. I do not find any reason to disbelieve the pleadings in this regard, as the same have not been specifically denied by the respondent authorities. The respondents have also not specifically stated as to on what exact date the name of the applicant was deleted from the list of the candidates to

be appointed on compassionate ground. The unfortunate widow is being run from pillar to post for her legitimate right. Admittedly, all the candidates on the wait list, prior to her, have been given appointment on compassionate ground.

12. In view of the circumstances as referred to above and particularly considering the fact that the respondent authorities are not coming with clean hands to state as to exactly on what date the name of the applicant has been deleted from wait list, I am of the opinion that the evidence on record is sufficient to show that the applicant's name was very much there on the wait list till 2012. In such circumstances, the G.R. dated 6.10.2012 should have been made applicable to the applicant.

13. Learned Presenting Officer for the respondents submits that the applicant has crossed the age of 40 years at present and, therefore, there is no question of appointing her on compassionate ground. It is material to note that the applicant has rightly applied within a period of one year from the date of death of her husband for

appointment on compassionate ground. Her name was very much there on the wait list and all the candidates on wait list prior to her have been appointed. In such circumstances, denial of the appointment to the applicant will cause great injustice on the applicant particularly considering the fact that the applicant is claiming appointment on compassionate ground in Class-III or Class-IV post to which she was entitled as per her qualification. Her name was recorded in the wait list. Considering all these aspects the respondent authorities may consider the case of the applicant as a special case. In view thereof, I pass the following order: -

O R D E R

(i) The present Original Application is allowed.

(ii) The respondents are directed to consider the name of the applicant for appointment on compassionate ground in Nanded District and to appoint her in Class-III or Class-IV posts to which she may be entitled as per her qualification and merits.

(iii) The necessary decision shall be taken within a period of three months from the date of this order and shall be communicated same to the applicant in writing.

(iv) There shall be no order as to costs.

VICE CHAIRMAN (J)

T.A.NO.15-2013(SB)-HDD-2017-
compassionate appointment