

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 39/2021(S.B.)

Mohammad Parvez Raza
Mohammad Akram Qureshi,
Aged about 20 years, Occ. Nil,
R/o. Shahid Abdul Hamid Chowk,
Behind Mohan Tailor, Ghutkala Talav,
Chandrapur, Tah. and District Chandrapur.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
2. Chief Conservator of Forests,
Chandrapur Forest Range,
Van Bhavan, Civil Lines, Nagpur Road,
Chandrapur, Tah. and District Chandrapur.
3. Deputy Director (Buffer),
T.A.T.R., Rambag Van Vasahat,
Mul Road, Chandrapur,
Tah. and District Chandrapur.

Respondents

Shri G.N.Khanzode, Ld. Counsel for the applicants.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 16th October, 2023.

JUDGMENT

Heard Shri G.N.Khanzode, learned counsel for the applicants and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. The applicant has filed this O.A. for direction to the respondents to appoint him on compassionate ground.

3. Case of the applicant in short is as under-

The mother of applicant namely Shahnaz was working on Class-III post in the establishment of respondents. She was working as Accountant in the office of respondent no.3. The applicant's mother died in the Hospital due to Kidney failure on 12.01.2018.

4. The applicant has applied for appointment on compassionate ground on 26.09.2018. His application was forwarded to the respondent no.2 by respondent no.3. Respondent no.2 rejected the claim of the applicant on the ground that his father is/was in service. Therefore, compassionate appointment cannot be granted in view of the G.R. dated 26.10.1994. Appeal was filed before the respondent no.2 i.e. Chief Conservator of Forests. The said appeal

was dismissed by order dated 10.02.2020 on the ground that husband of deceased namely Mohammad Akram Abdul Rashid Kureshi was also a Government servant and he is getting pension after retirement. Hence, appointment on compassionate ground cannot be given to the applicant. Therefore, the applicant approached to this Tribunal for the following reliefs-

a) quash and set aside the impugned order of 10/2/2020 passed by the respondent no.2 in appeal arising out of the order dated 31/1/2019 passed by respondent no.3, rejecting the claim of the applicant for grant of employment on compassionate ground, the same being arbitrary, unreasonable and illegal;

b) be further pleased to declare and hold that the applicant is entitled for the appointment on compassionate ground in view of the Government Resolution dated 26/10/1994 and the subsequent Government Resolution issued by the respondent no.1 for grant of such appointment.

5. The respondents 1 and 3 have filed their reply. It is submitted that appointment on compassionate ground is to be given to the dependents of the deceased employee whose financial

condition is not good and to support the dependents in such financial situation, the appointment can be granted to the dependents on compassionate ground.

6. It is submitted that the applicant's father and mother both were in service. They were having well financial condition. Father of applicant was in service. Now, he is retired and getting the pension. Hence, appointment on compassionate ground cannot be given to the applicant.

7. During the course of submission learned counsel for the applicant has submitted that affidavits are filed on record which show that the applicant was residing with his mother. He was dependent of the deceased. Therefore, he is entitled for appointment on compassionate ground.

8. The learned P.O. has pointed out the decision of this Tribunal in O.A.No.1132/2019 and the Judgment of Hon'ble Supreme Court. The learned P.O. has submitted that there is no evidence to show that the applicant was residing with his mother only. There is no evidence to show that deceased was not residing with her husband. Except the affidavit nothing is on record to show that husband and wife (deceased) were residing separate. It is therefore clear that deceased wife and her husband were residing together.

They were in Government service. They were having well financial condition. In view of such situation appointment on compassionate ground cannot be granted to the applicant.

9. The G.R. of 1994 is very clear. Clause 7(b) of the G.R. is reproduced below.

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा, या योजनेच्या मागील भूमिका लक्षात घेऊन जो कर्मचारी मृत झाला त्याच्या कुटुंबियांना तात्काळ उद्भवणा-या आर्थिक पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखाद्या कुटुंबात मृत कर्मचा-याचा नातेवाईक पुर्वीच सेवेत असेल, तथापि तो त्याच्या कुटुंबातील अन्य सदस्यांचा आधार घेत नसेल तर अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हलाखीची आहे किंवा कसे हे ठरवितांना नियुक्ती अधिका-याने अत्याधिक दक्षता घ्यावी, जेणेकरूनन सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करीत नाही या नावाखाली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.

या संदर्भात नियुक्ती अधिका-याने मिळणा-या निवृत्ती वेतनाची रक्कम कुटुंबातील व्यक्तींची संख्या, त्याची मालमत्ता दायित्व, गंभीर आजारामुळे किंवा अपघातामुळे मृत झाला असल्यास त्यासाठी करण्यात आलेला वैद्यकीय खर्च कुटुंबातील मिळवत्या व्यक्ती इत्यादी बाबी विचारात घेणे अपेक्षित आहे.

उपरोक्त ४ (क) व्यतिरिक्त कोणत्याही अटी शिथिल करण्याची शक्ती शासनाकडे राहणार नाही.

10. This Tribunal in **OA.No. 1132/2019 (Smt. Kavita Sanjay Gongade -Vs-State of Maharashtra & 2 others)** has held as under-

"11) In so far as G.R. dated 23.08.1996 is concerned, it is only in case where son of deceased is not alive and no other family member is eligible for appointment on compassionate ground, in that event only, the widow of deceased son is entitled for appointment of compassionate ground. Whereas in the present case, Tangubai died on 20.09.2008 leaving behind two sons viz. Sanjay and Santosh and one married daughter. Admittedly, Santosh got regular appointment in District Court on 17.10.2008. Therefore, it cannot be said that the family is in distress so as to ask for appointment on compassionate ground. The appointment order was issued to the Applicant mistakenly which was later rectified. Indeed, in appointment order of the Applicant (Page No.53 of P.B.), it is made clear that the appointment would be purely temporary and it can be terminated at any time even without notice.

12. At this juncture, it would be apposite to refer the Judgments of Hon'ble Supreme Court, which have complete bearing over the present matter.

11. The Hon'ble Supreme Court in the case of ***(Sail Vs. Madhusudan Das (page Nos. 46 in O.A. 770/2018)***, has held under-

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore, viz. That the death of the sole bread winner of the family must be established. It is meant to provide for a minimum relief When such contentions are raised, the constitutional philosophy of equality behind making such a scheme is taken into consideration. Articles 14 and 16 of the constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a department of a deceased employee is an exception to the said rule. It is a concession, not a right."

12. ***In (2008) 8 CC 475 (General Manager, State Bank of India & Ors. Vs. Anju Jain), the Hon'ble Supreme Court has observed as under ;-***

"It has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the

Constitution. As per the settled law, when any appointment is to be made in Government or Semi- government or in public office, cases of all eligible candidates are be considered alike. The State or its Instrumentality waking any appointment to public office. cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.

13. The Hon'ble Supreme Court in the case of ***Union of India & Anr. Vs. Shashank Goswami & Anr. (2012) 11 SCC 307***, has held under-

"It has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld up the touchstone

of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who was served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."

14. ***In the matter of (2010) 11 SCC 661 (State bank of India & Anr. Vs. Raj Kumar), the Hon'ble Supreme Court has observed as under :-***

"The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

15. In view of the Judgment of the Hon'ble Supreme Court and specific provision made in the G.R. of 1994 appointment on compassionate ground cannot be granted to the applicant. The father

and mother of applicant both were working on Class-III post. It can be presumed that they are having good financial position. Nothing is on record to show that the applicant was residing with his mother only. There is nothing on record to show that husband and wife (deceased) were residing separate. Hence, the applicant is not entitled for appointment on compassionate ground. Therefore, the following order is passed-

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 16/10/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 16/10/2023.
Uploaded on : 25/10/2023.