

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 186 OF 2023

DISTRICT :- AURANGABAD

Anand s/o Indrasen Dhale,)
Age: 48 years, Oee: Nil.)
R/o. Plot no. 72, Galli No. 12,)
Jaibhavani Nagar, Mukundwadi Railway Station,) **APPLICANT**
Aurangabad.)..

V E R S U S

- 01. The State of Maharashtra**)
through the Secretary,)
Medical Education and)
Research, Gokuldas Tejpal)
Hospital Campus, 9th floor,)
Mumbai-400 001.)
- 02. The Director, Medical Education**)
and Research, St. Georges Hospital)
Compound, Mumbai 400 001)
- 03. The Dean,**)
Government Medical College)
and Hospital, Aurangabad.)
- 04. The Medical Superintendent,**)
Government Medical College)
and Hospital, Aurangabad.).. **RESPONDENTS**

APPEARANCE : Shri A.D. Sugdare, learned counsel
for the applicant.
: Shri V.G. Pingle, learned Presenting
Officer for the respondent authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

**RESERVED ON : 23.08.2024
PRONOUNCED ON : 10.09.2024**

ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri A.D. Sugdare, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent authorities.

2. Aggrieved by the order dated 12.12.2018 issued by respondent no. 04, whereby the said respondent has discontinued the applicant from the services w.e.f. 01.01.2019 by removing his name from the waiting list maintained of the candidates held eligible for the appointment on compassionate ground for the reason that he crossed the age-limit of 45 years.

3. Mother of the applicant was working with the office of respondent no. 03 on Group-D post. She died on 23.02.2012 while on duty. The applicant applied for compassionate appointment in place of his mother. Accordingly his name was included in the list of eligible candidates to be given the appointment on compassionate ground. On 29.08.2013 respondent no. 03 appointed the applicant on Class-IV post temporarily for the period of 29 days on compassionate ground. Thereafter appointments were given to the applicant on temporary basis from time to time till the year 2018. Last such appointment was given to the applicant for the period between

03.12.2018 to 31.12.2018 for the period of 29 days. However, during the said period his name was deleted from the list of the candidates, eligible to be appointed on compassionate ground. In the circumstances, the impugned order came to be passed, whereby respondent no. 04 directed not to continue the services of the applicant w.e.f. 01.01.2019 and not to take the applicant on duty after 31.12.2018. Aggrieved by the said order the applicant has approached this Tribunal by filing the present Original Application.

4. It is the contention of the applicant that the action so taken by the respondent no. 03 is contrary to the provisions of law and the object behind making appointments on compassionate ground. It is the further contention of the applicant that he was appointed on compassionate ground may be on temporary basis before he attains the age of 45 years and, as such, on that ground his name should not have been deleted from the waiting list.

5. The contentions raised in the Original Application and prayers made therein are opposed by the respondents. Respondent nos. 01 to 04 have filed their joint affidavit in reply. It is the contention of the respondents that as per the G.R. dated 06.12.2010 the age limit prescribed for appointments on

compassionate ground is 45 years. It is the further contention of the respondents that on 11.06.2017 the applicant completed age of 45 years and therefore as per the provisions under the aforesaid G.R., the applicant has lost his eligibility for appointment on compassionate ground. It is the contention of the respondents that the action taken by them is strictly as per the provisions under the G.R. dated 06.12.2010. Respondents have referred to the subsequent G.R. dated 21.09.2017 also, which according to respondents, provides that if the person named in the waiting list does not get appointment till the age of 45 years then his name is to be removed from the waiting list. Respondents have, therefore, prayed for dismissal of the Original Application.

6. Shri A.D. Sugdare, learned counsel appearing for the applicant submitted that the order passed by the respondents is arbitrary exercise of power by them. Learned counsel submitted that once the appointment was issued in favour of the applicant before he attained the age of 45 years, there was no impediment for the respondents to continue the applicant in service. Relying on the judgment of principal Bench of this Tribunal at Mumbai in the case of **Smt. Ujwala K. Anvekar & Anr. Vs. The State of Maharashtra & Ors., O.A. No. 1022/2021** dated

13.07.2022, the learned counsel for the applicant submitted that the G.R. dated 21.09.2017 will not come in the way of the applicant. The learned counsel, therefore, prayed for allowing the Original Application.

7. The learned Presenting Officer reiterated the contentions taken in the affidavit in reply in his argument. Referring to the G.Rs. dated 06.12.2010 and 21.09.2017 the learned P.O. submitted that the respondents have not committed any error in discontinuing the applicant on his attaining the age of 45 years. He, therefore, prayed for dismissal of the Original Application.

8. We have duly considered the submissions made on behalf of the applicant, as well as, the respondent authorities. Eligibility of the applicant for his appointment on compassionate ground is not disputed by the respondents. It is also not in dispute that after demise of his mother, who was a Government servant and died while in service, the name of the applicant was included in the waiting list of the candidates held eligible for their appointments on compassionate ground. It is further not in dispute that the name of the applicant was included in the waiting list in the year 2013 and temporary appointment on compassionate ground was issued by

respondent no. 3 in favour of the applicant firstly on 23.08.2013 and in the subsequent period the respondents had time to time issued the appointment orders in favour of the applicants on the same basis i.e. temporarily for 29 days. Four such orders are placed on record by the applicant. As per the contention of the respondents the applicant attained the age of 45 years in the year 2018 and hence, his name was removed from the waiting list being age barred for to be appointed on compassionate ground.

9. The question arises when not only the applicant but almost 26 such candidates were appointed on 24.09.2014 on temporary basis as Class-IV employees which leads to an inference that the services of that number of employees were required, why the respondents did not take the effective steps for making regular appointments on such Class-IV posts. It is the matter of record that temporary appointments for 29 days continued till end of 2018 i.e. for the period of about 05 years. Within such long duration if the respondents did not provide a regular appointment on compassionate ground to the applicant till he attains the age of 45 years, it certainly cannot be said to be a fault of the applicant.

10. It further appears to us that once the appointment of the candidate was made on compassionate ground, may be on ad hoc basis and for limited period of 29 days, the provision made under G.R. dated 21.09.2017 shall not come in the way of the applicant. We deem it appropriate to reproduce hereinbelow the relevant clause No. 11 of the said G.R. which reads thus,

“११. अनुकंपा नियुक्तीसाठी वयोमर्यादा :-

अ) किमान वयोमर्यादा - १८ वर्ष (शासन निर्णय, ११.०९.१९९६).

आ) कमाल वयोमर्यादा - वयाच्या ४५ वर्षांपर्यंतच्याच उमेदवारांना अनुकंपा नियुक्ती अनुज्ञेय असेल. त्यामुळे प्रतिक्षा सूचीतील उमेदवारांना वयाच्या ४५ वर्षांपर्यंत नियुक्ती न मिळाल्यास त्यांची नावे वयाची ४५ वर्ष पूर्ण होताच आवश्यक ती नोंद घेऊन प्रतिक्षासूचीतून काढून टाकण्यात यावीत. (शासन निणाय, २२.०८.२००५ व दि. ६.१२.२०१०)”

11. On perusal of the aforesaid clause it is evident that the respondents have misinterpreted the provision under the said clause. It prescribes that if any candidate who is eligible to be appointed on compassionate ground if does not get the appointment till he attains the age of 45 years, his name is to be removed from the waiting list. In the instant matter, the applicant was appointed firstly in the year 2013 and thereafter till the year 2018 on compassionate ground. At the relevant time, the applicant definitely had not attained the age of 45 years. When the appointments were issued in favour of the applicant on compassionate ground before he attained the age

of 45 years, there was no reason for removing the name of applicant from the list of eligible candidates.

12. In the case of **The District Collector Nashik & Anr. Vs. Shekhar Bajirao Patil, W.P. No. 5936/2021 decided on 05.09.2022**, similar issue was raised before the Hon'ble Division Bench of the Bombay High Court. In the said matter widow of the deceased Government servant was on the waiting list but she attained the age of 45 years and therefore, her name was deleted from the waiting list. The Hon'ble Division Bench while deciding the aforesaid order has observed thus:-

*“2. We cannot understand this approach. If the Government will not look after the impoverished families of its own employees, then who will? This argument that Shekhar is disadvantaged by his mother's name being deleted from the waiting list cannot withstand scrutiny. We do not know if the Government expects that once a name is on a waiting list the person on the waiting list will cease to age. The reasoning seems to be that if a person as a result of a biological inevitability achieves a certain age, then the wait list cut off will apply. The simplest way to deny someone compassionate appointment is, therefore, to put them on a waiting list and do nothing except await the passage of time and then to simply delete their names as age-barred. **This cannot possibly be any government's approach.**”*

13. We also deem it appropriate to reproduce herein below some of the observations made by the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Chandrakant s/o Shantaram Bhoi Vs. The State of Maharashtra & Ors., Writ Petition No. 3342/2018** decided on

27.10.2021. In the said matter, the Hon'ble Division Bench has referred to and relied upon observations made in its earlier judgment in the case of **Smt. Yogita Shivsing Nikam Vs. The State of Maharashtra and Others, Writ Petition No. 4219/2018** in para 06 thereof, which read thus:-

"6. In view of the above, we deem it apposite to reproduce paragraph Nos.28 to 31 of the Judgment delivered in [Smt. Yogita Shivsing Nikam](#) (supra), hereunder :

"28. To say the least, we are shocked by the stand taken by the State Government, which is not only against logic and reason, but is in complete contradiction to the law crystallized by this Court in numerous judgments. It is unconscionable for the State to canvass such grounds virtually rendering the bereaved family to starvation. We find that the State has consistently ensured that not a single Government Resolution, pertaining to ban on recruitment, stay on filling in vacant posts and prohibition on appointments until the staffing pattern of the non teaching posts is formalized, would apply to appointments made on compassionate grounds. This Court has also consistently taken a view that compassionate appointment would be an exception to the mandatory rule of following specific selection procedure for recruitment on vacant posts or on newly created posts.

29. We have noticed the agony caused to litigants in such cases. We, therefore, find it appropriate at this stage to record that after the delivery of this judgment, if any case refusing approval to a compassionate appointment which is otherwise legally sustainable satisfying the eligibility criteria, comes to this Court, we would be issuing directions recommending strict disciplinary action against the Education Officer and we would not hesitate to initiate contempt of Court proceedings against persons responsible, since they are interpreting the Government Resolutions in the most inappropriate manner, despite the crystalised position of law. Because of such acts of the Education Officers, widows and eligible candidates are compelled to rush to this Court after having suffered mental and physical agony of a personal loss of a sole bread earner and also spend on litigation which is costly

these days. We would also impose heavy costs to be recovered from the salaries of such Education Officers for the pain caused to such petitioners. We find it appropriate to record that if the Education Officer notices that a particular Management is attempting to defeat the rights of an eligible candidate for compassionate appointment, the Education officer would be at liberty to initiate appropriate action against such Management.

30. In view of the above, these petitions are allowed. The impugned orders stand quashed and set aside. Approvals stand granted to these petitioners from the dates of their joining duties on compassionate basis, with all monetary benefits accruing to their posts. Formal approval orders shall be issued by the concerned Education Officers, before 30.09.2021.

31. The Education Officer (Secondary), Zilla Parishad, Jalgaon and the Education Officer (Secondary), Zilla Parishad, Nanded shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) each, as costs, from their salary bank account in this Court, on or before 30.09.2021 and these two petitioners namely Smt. Yogita and Mr. Sachin, shall be entitled to withdraw the said amount subject to proper identification, without conditions. In the event, any of these two Education Officers has retired, the said amount shall be recovered from his pension. Compliance of this order shall be reported to this Court upto 15.10.2021, by the respective Chief Executive Officer, Zilla Parishad."

14. In view of the observations made by the Hon'ble High Court in the aforesaid judgments, the order dated 12.12.2018 issued by the respondent no. 04 cannot be sustained and deserves to be quashed and set aside. The impugned order is contrary to the provisions made for compassionate appointment and is issued in utter disregard of the object behind making such provision by the Government. The Original Application, therefore, deserves to be allowed. Hence the following order:-

ORDER

- (i) The Original Application is allowed in terms of prayer clauses B and C thereof, which read thus:-

“(B) By order or directions by this Hon’ble Tribunal the impugned order dated 12.12.2018 issued by the respondent no. 4 be quashed and set aside.

“(C) By order or directions by this Hon’ble tribunal the respondent no. 3 may be directed to consider claim of the applicant for regular appointment on Group-D post on compassionate grounds.”

- (ii) There shall be no order as to costs.

MEMBER (A)**VICE CHAIRMAN****Place : Aurangabad****Date : 10.09.2024**

O.A.NO.186-2023 COMPASSIONATE APPOINTMENT