

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 251 OF 2023

(Subject:- Compassionate Appointment)

DISTRICT:-AURANGABAD

Ashok s/o Bhagwan Shejwal,)
Age: 44 years, Occ. Labour and Driver,)
R/o House No. 34-2-221,)
Opposite Dr. Babasaheb Ambedkar Statue,)
Budha Nagar, Jawahar Colony,)
Aurangabad, Tq. and Dist. Aurangabad.) **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary to the)
Government of Maharashtra in)
Irrigation Department,)
Mantralaya, Fort, Mumbai-32.)
- 2. The Superintendent Engineer,**)
Mechanical Department Nanded,)
Tq. and Dist. Nanded.)
- 3. The Deputy Superintendent Engineer)**
Mechanical Department Nanded,)
Tq. and Dist. Nanded.)
- 4. The Executive Engineer,**)
Mechanical Department No.2,)
Aurangabad, Add- Garkheda Parisar)
Aurangabad. Tq. and Dist. Aurangabad)
- 5. The Collector, Aurangabad.**)
Collector Office, Aurangabad.) **RESPONDENTS**

APPEARANCE : Shri Shaikh Mazhar A. Jahagirdar,
learned counsel for the applicant.
:
Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 27.06.2024.

PRONOUNCED ON : 24.07.2024.

ORDER

Heard Shri Shaikh Mazhar A. Jahagirdar, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking direction to the respondents to appoint the applicant as a permanent Driver or Security Guard (पहारेकरी) or any other 4th class post which is available in the department as compassionate ground or as special case or 3 years extension may be given to the applicant as he is age barred.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The father of the applicant namely Bhagwan Rambhau Shejwal was a Security Guard (पहारेकरी) in the Irrigation

Mechanical Department Aurangabad No.2 at Garkheda Parisar, Aurangabad and on 10.01.2008, he expired on duty.

(ii) The applicant further contends that after the death of the father on 16.08.2008 the applicant has submitted an application for Government job in the Irrigation Mechanical Department on compassionate ground and the other legal heirs i.e. mother, brother and sister given No Objection in this regard. Thus the name of the applicant came to be included in the waiting list for appointment as a 4th Class/Driver.

(iii) It is the further case of the applicant that though the applicant from 2008 to till date several times have approached and visited the office of the respondents by way of filing application and oral request for appointment on compassionate ground but there is no outcome. There is a age limit of 45 years. Even after crossing the age of 44 years the applicant has again approached to respondent No.2 and submitted an application dated 01.08.2022 for appointment as a special case on compassionate ground and it was rejected on the ground that the name of the applicant is at Sr. No. 5 in the waiting list. The said letter is dated 12.10.2022. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant is poor person and there is no independent source of income in the family. The applicant is trying to get the appointment on compassionate ground since the year 2008. Furthermore due to outbreak of pandemic Covid-19 for more than 3 years, there was no recruitment and as a result of which, though the applicant's name was included at Sr. No. 5 in the waiting list, he could not be appointed under that pretext and thereafter, the department has deleted the name of the applicant abruptly solely for the reason that the applicant has crossed the age of 45 years.

5. Learned counsel for the applicant submits that the period from 15.03.2020 to 03.10.2021 and subsequently till 28.02.2022 has been excluded by the Hon'ble Apex Court from counting the limitation in terms of order passed in **Suo Motu Writ Petition (C) No. 3 of 2020**. Therefore, the deletion of the name of the applicant is illegal and liable to be quashed and set aside.

6. Learned counsel for the applicant submits that in the identical facts of the case this Tribunal in **Original Application No. 44 of 2020** in a case of **Asha wd/o.**

Sandesh Gaikwad Vs. the State of Maharashtra & Ors.

by order dated 27.11.2021 considering the various grounds including the outbreak of Covid-19 pandemic so also declaration of lockdown has allowed the Original Application directing the respondents to consider the claim of the applicant therein for appointment on compassionate ground from the requisite vacant posts or even by creating supernumerary posts by taking into consideration the seniority in the waiting list.

7. Learned counsel for the applicant has further replied upon the case of **Vikas Ramchandra Pradhan Vs. the State of Maharashtra & Ors. (O.A.No. 35 of 2022)** to substantiate his contentions.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 5 submits that as per the compassionate appointment waiting list of candidates the name of the applicant is appeared at Sr. No.5 and near about four candidates are remained to be appointed which are above the name of the applicant. Thus by violating the rights of those four employees, the appointment could not be given to the applicant. The respondent authorities have acted as per the guidelines issued by the Government from

time to time by issuing the various G.Rs. in respect of appointment on compassionate ground. Learned P.O. submits that there is no provision to extend the age limit as well as to consider as special case for appointment on compassionate ground. Learned Presenting Officer submits that there is no substance in this Original Application and the same is liable to be dismissed.

9. In the affidavit in rejoinder the learned counsel for the applicant submits that there is age limit of 45 years for compassionate appointment. Therefore, the applicant has several times approached the respondents for appointment but there is no proper response from the respondents. Learned counsel for the applicant submits that in the office of respondent Nos.2 and 5, Class-IV posts are available and the same is evident from the letters dated 27.09.2023 and 20.10.2023 respectively marked as Annexure -1.

10. Learned Presenting Officer on the basis of affidavit in sur-rejoinder to the rejoinder filed by the applicant submits that the applicant has already crossed the age limit of 45 years as on 18.01.2023. By letter dated 06.07.2023 it was conveyed to the applicant by the respondent No.2. Therefore,

assuming now there are vacant posts in the office of respondent Nos. 2 and 5, the applicant cannot be claim the said post as he has already age barred now.

11. Learned P.O. submits that the applicant has requested to waive the three years period of Covid-19 pandemic for the purpose of appointment to the applicant on compassionate ground and extend the age limit for that purpose. However there is no such Government Resolution/guidelines available for the purpose of extend the age limit of such persons like the applicant.

12. Learned Presenting Office submits that the applicant was at Sr. No. 163 in the year 2008 and in the year 2023 he is at Sr. No. 5 in the waiting list. But unfortunately the applicant is age barred on 18.01.2023. Therefore, his name was excluded from the waiting list on 06.07.2023.

13. It is not disputed that the name of the applicant was taken for the first time in the waiting list maintained by the respondents for appointment on compassion ground in the year 2008. It is also a fact that the applicant was not given the appointment till the date of 18.01.2023 and thereafter, by letter dated 06.07.2023 he was informed that

he has crossed the age of 45 years and his name has been deleted.

14. The respondent authorities have not tendered any justifiable reasons for not appointing the applicant on compassionate ground from the year 2008 till the year 2023.

15. In terms of Class No. 11 (A) of Government Resolution dated 21.09.2017, the name of the enlisted candidates will be removed from the waiting list maintained for appointment on compassionate ground, on completion of age of 45 years.

16. In a case of **Latikabai Uttam MahajanVs. the State of Maharashtra & Ors.** in **Writ Petition No. 12897 15 O.A.NO. 35/2022 of 2023** in paragraph No. 14, the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad has made the following observation:-

“14. Considering the above legal position, since the Central Government Scheme has been adopted by the State of Maharashtra, and as clause 11(aa) clearly runs counter to clause 7(B), we conclude that Clause 11(aa) under Annexure 'A' of the Government Resolution dated 21/09/2017, would not be applicable to cases wherein the candidate has applied for compassionate appointment within limitation and was eligible when the application was tendered. Subsequently, if such candidate crosses 45 years of age only because of the pendency of the application or awaiting a vacancy,

his/her name cannot be automatically deleted from the list in which he/she has been included. We are fortified in our above conclusion by Clause 7(B) (a) Note (I) and (II), read with the order of the Hon'ble Supreme Court in Govinda Janardan Gaikwad (supra).

17. In view of observation made by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad, if such candidate crosses 45 years of age only because of pendency of the application or awaiting a vacancy, his/her name cannot be automatically deleted from the waiting list.

18. In a case of **Smt. Sushma Gosain and Ors. Vs. Union of India** reported **in AIR 1989 SC 1976** relied upon by the learned counsel for the applicant, the Hon'ble Apex Court in paragraph Nos. 9 and 10 has made the following observations:-

- "9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.
10. In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent No.2 to appoint Sushma Gosain-appellant No.1 in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi

itself. The appointment shall be made within three weeks from today.”

19. At present as per the information submitted by the respondent authorities by letter dated 06.05.2024 to the learned P.O. as directed by this Tribunal it appears that as on 31.12.2021, the candidates at Sr. No. 1 to 3 in the waiting list of compassionate appointment have been given the appointment on compassionate ground and the name of candidate No.4 has been deleted from the waiting list.

20. In my considered opinion, the applicant is not at fault when due to outbreak of Covid-19 pandemic the recruitment process was stopped.

21. Learned counsel for the applicant has placed his reliance in a case of **Asha wd/o. Sandesh Gaikwad Vs. the State of Maharashtra & Ors.** in **Original Application No. 44 of 2020** wherein in the identical facts of the case this Tribunal has taken a similar view by considering various grounds including the outbreak of Covid-19 pandemic and directed the respondents to consider the claim of the applicant therein for appointment on compassionate ground from the requisite vacant post or even by creating

supernumerary posts by taking into consideration the seniority of the applicant in the waiting list.

22. In the case of **State of Maharashtra & Ors. Vs. Asha Sandesh Gaikwad** in **Writ Petition No. 7918 of 2022** relied upon by learned P.O., the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the facts of the said case has modified the order passed by this Tribunal to the limited extent that there is no need to create a supernumerary post and further directed that the case of the respondent (Original Applicant) be considered against the available vacant post and the cannot be rejected on the ground of non-availability of vacant post.

23. In view of discussion as above and in terms of ratio laid down by the Hon'ble High Court and Hon'ble Supreme Court, this Original Application deserves to be allowed. Hence, I proceed to pass the following order:-

ORDER

- (A) The Original Application is hereby allowed.
- (B) The letter/communication 12.10.2022 issued by respondent No.4 is hereby quashed and set aside.

- (C) The respondents are hereby directed to consider the claim of the applicant for appointment on compassionate ground as per his seniority in the waiting list and appoint the applicant on compassionate ground as a Driver or Security Guard (पहारेकरी) or on any Class-IV post, if available, as expeditiously as possible preferably within the period of three months from the date of this order.
- (D) In the circumstances there shall be no order as to costs.
- (E) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 24.07.2024

SAS O.A. 251/2023(S.B.) Compassionate Appointment.