

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 508 OF 2024

DISTRICT:- NANDED

Deelip s/o Shivhar Karamunge,)
Age:- 24 years, Occu.:- Education,)
R/o: Shankar Nagari, Bhagatsingh)
Chauk, Asarjan, Nanded,)
Tq. & Dist. Nanded.)... **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Accounting and Treasury Department,)
Mantralaya, Mumbai-32.)
- 2. The State of Maharashtra,**)
Through its Secretary,)
Agricultural Department,)
Mantralaya, Mumbai-32.)
- 3. The State of Maharashtra,**)
Through its Secretary,)
General Administration Department,)
Mantralaya, Mumbai-32.)
- 4. The Sub-Divisional Agricultural Officer,**)
Dhanegaon, Nanded,)
Tq. & Dist. Nanded.)...**RESPONDENTS**

APPEARANCE : Shri Vaibhav B. Dhage, learned counsel
for the applicant.

: Shri A.P. Basarkar, learned Presenting
Officer for the respondent authorities.

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

DATE : **14.10.2024.**

ORDER

Heard Shri Vaibhav B. Dhage, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking quashing and setting aside the impugned communication issued by the respondent Nos. 1 and 4 dated 22.12.2021 and 15.12.2021 respectively. The applicant is also seeking declaration that the applicant is entitled for appointment on compassionate ground in place of his deceased father. The applicant is also seeking declaration that the condition (B) of the G.R. dated 27.09.2021 is not applicable to the case of the applicant and the applicant is entitled to extend the benefit of compassionate appointment scheme.

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

(i) The father of the applicant was working as a Junior Clerk in the office of respondent No.1. By order dated 27.06.2018 the father of the applicant came to be promoted

on Class-II post in the office of respondent No.2 and during the course of his employment the father of the applicant died on 20.09.2018 due to heart attack. He survived by wife, two sons and two daughters. The applicant on 11.03.2019 has submitted the detailed application along with all the necessary documents to respondent No.1 for appointment on compassionate ground. By communication dated 04.07.2019 the respondent No.1 informed to the applicant that at the time of death of his father he was holding the Class-II post and in terms of the G.R. dated 21.09.2017 he is not entitled for appointment on compassionate ground. The applicant further contends that by another G.R. dated 27.09.2021 the compassionate appointment is made applicable to the eligible family members of Class-I and Class-II employees, however, the respondent authorities have rejected the application submitted by the applicant by communications dated 22.12.2021 and 15.12.2021 respectively. Hence, this Original Application.

4. Learned counsel for the applicant submits that the father of the applicant was working as a Assistant Accounts Officer and by order dated 27.06.2018 the father of the applicant came to be promoted temporarily as Accounts

Officer. Learned counsel for the applicant submits that though the G.R. dated 27.09.2021 cannot be made applicable retrospectively, however, there is no bar as such in terms of G.R. dated 21.09.2017 to appoint the applicant on compassionate ground since the father of the applicant came to be promoted on temporary basis and not by way of regular promotion. Learned counsel for the applicant submits that clause 2 (a) of the said G.R. dated 21.09.2017 is squarely applicable to the case of the applicant for the reason that due to temporary promotion order it shall be presumed that the father of the applicant died while holding the substantive post of Assistant Accounts Officer, Class-III and not the post of Accounts Officer, Class-II.

5. Learned counsel for the applicant has placed his reliance in case of **Shri Nikhil Maruti Gosarade Vs. the District Collector, Sangli & Ors. (Writ Petition No. 1071/2019)** reported in **2021 (4) ALL MR 718** wherein the Division Bench of Hon'ble High Court of Bombay in the identical facts of the case extended the benefits of compassionate appointment to the petitioner therein. The

ratio laid down by the Hon'ble High Court of Bombay is squarely applicable to the case of the applicant.

6. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.1 submits that in terms of the G.R. dated 21.09.2017 the compassionate appointment will be applicable only to the eligible dependent family members of Group 'C' and Group 'D' cadre Government officers/employees who died while in Government service. Learned P.O. submits that by order dated 27.06.2018 the father of the applicant came to be promoted from the post of Assistant Accounts Officer to the post of Accounts Officer which is Group 'B' post and in view of aforesaid G.R. dated 21.09.2017 the applicant is not eligible for appointment on compassionate ground as at the time of death the father of the applicant was holding the post of Group-'B'.

7. Learned Presenting Officer submits that so far as the eligibility of G.R. dated 27.09.2021 is concerned, the said G.R. cannot be made applicable retrospectively and learned counsel for the applicant has also not disputed the same. The father of the applicant died in the year 2018 and said G.R. dated 27.09.2021 is applicable w.e.f. 01.01.2020.

Learned Presenting Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

8. It is true that the G.R. dated 21.09.2017 can be made applicable for giving compassionate appointment to the eligible dependent family members of Group 'C' and Group 'D' cadre Government employees who died while in Government service. In the instant case, however, on careful perusal of the promotion order dated 27.06.2018 (Exh. 'A', page No. 53 of the Misc. Application), it appears that the applicant along with 126 other employees came to be promoted temporarily purely on ad-hoc basis from the post of Assistant Accounts Officer to the post of Accounts Officer subject to outcome of the pending SLP No. 28306/2017 and it is specifically explained at the bottom of the order that since the said promotion orders are purely temporarily in nature, such a temporary promoted officers will not get any seniority and continuity on the promotional post. Under these circumstances it cannot be said that the father of the applicant came to be promoted and as such at the time of his death he was holding the Group 'B' post.

9. In a case **Shri Nikhil Maruti Gosarade Vs. the District Collector, Sangli & Ors.** (supra) replied upon by learned counsel for the applicant in the identical facts of the case in paragraph Nos. 22 and 23 the Division Bench of Hon'ble High Court of Bombay has made the following observations:-

*"22. Now coming to the tribunal's order, in our opinion, the tribunal ought to have followed the decision of the tribunal in the case of **Abhijeet Vishwas Mulik** (supra) which was a case exactly similar to the present case. This more particularly when the Division Bench of this Court in its judgment in **Abhijeet Vishwas Mulik** (supra) referring to a decision of Aurangabad Bench of this Court in **Dinesh s/o Shamrao Sonawane Versus The State of Maharashtra in Writ Petition No.5440 of 2009 dated 5 February, 2010**, had held that an ad-hoc and temporary promotion does not entitle the promotee to claim status as Group 'B' employee. This Court held that the original applicant's late father, in the said case, who had substantively held a Group 'C' post, was promoted purely on temporary basis for three months to a Group 'B' post of Naib Tahasildar, which was seen from the promotional order, as appropriately recognized by the tribunal. It was observed that the very wording of the ad-hoc promotional order, itself was clear that it entailed automatic termination after a certain period and it was subject to the approval of the Maharashtra Public Service Commission. This Court had also held that the tribunal was right in holding that the father of the original applicant therein (respondent in the said proceedings), was not a Group 'B' employee in terms of the Government Resolution dated 28 March 2001 and hence, there was no bar to the consideration of the case of the said respondent for appointment on compassionate basis. As observed above, in our opinion, the petitioner was identically placed as in the case of **Abhijeet Vishwas Mulik** (supra).*

23. As a result of the above discussion, we are sure that this is a case of gross injustice meted out to the petitioner firstly at the hands of the Divisional Commissioner on two occasions, and thereafter his fate before the tribunal, was no different. In cases of compassionate appointment, not only the authorities but also the tribunal is required to be more careful, sensitive and live to the human considerations and adopt a cautious approach before denying benefit under the compassionate appointment, provisions. The tribunal, in the present

case, has grossly erred in confirming the decision of respondent no.3, that the petitioner was not entitled to maintain his application for compassionate appointment as his late father belonged to the Group category of Government Servants, merely on the basis of ad-hoc promotional order.”

10. In paragraph No. 23 as aforesaid the Division Bench has specifically observed that in cases of compassionate appointment, not only the authorities but also the tribunal is required to be more careful, sensitive and live to the human considerations and adopt a cautious approach before denying benefit under the compassionate appointment, provisions.

11. In the facts of the present case and further considering the language used in the promotion order that the said would be subject to approval of Maharashtra Public Service Commission and outcome of the pending S.L.P. before the Hon'ble Supreme Court, it cannot be said that the father of the applicant was holding the Group 'B' post at the time of his death. In view of same there is no bar as such in terms of G.R. dated 21.09.2017 to appoint the applicant on compassionate ground. Thus the Original Application deserves to be allowed. Hence, the following order.

ORDER

- (i) The Original Application is hereby partly allowed.

- (ii) The communications issued by respondent Nos. 1 & 4 dated 22.12.2021 and 15.12.2021 respectively are hereby quashed and set aside.
- (iii) It is hereby declared that the applicant is entitled for appointment on compassionate ground. The respondent authorities shall enlist the name of the applicant in the waiting list of the eligible candidates maintained for compassionate appointment and the seniority of the applicant shall be reckoned from the date of filing of his application dated 07.03.2019 (received to the department on 11.03.2019).
- (iv) The applicant's claim to declare the condition (B) of G.R. dated 27.09.2021 as not applicable to the applicant stands rejected
- (v) In the circumstances there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 14.10.2024

SAS O.A. 508/2024 Compassionate Appointment.