

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 801 OF 2018

DIST. : BEED

Vikas Baburao Kamble,)
Age. 34 years, Occ. Nil,)
R/o Kranti Nagar, Tq. Ambajogai,)
Dist. Beed.)-- **APPLICANT**

V E R S U S

- (1) The State of Maharashtra,)
Through Secretary,)
Department of Medical Education &)
Medicine Department (Research),)
Mantralaya, Mumbai – 400 032.)
- (2) The Assistant Director (Medical),)
Directorate of Medicine,)
Govt. Dental College & Hospital,)
Fourth floor, Sent Jeorjus Hospital)
Campus, P. Dimelo Road,)
Fort, Mumbai – 400 001.)
- (3) The Dean,)
Swami Ramanand Tirth Government)
Medical Hospital, Ambajogai,)
Dist. Beed.)- **RESPONDENTS**

APPEARANCE :- Shri S.P. Salgar, learned Advocate for the
applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**

DATE : **21.05.2021**

ORDER

1. This Original Application is filed by the applicant seeking directions to the respondent no. 3 to give him appointment on Class-IV post i.e. Safai Kamgar on compassionate ground pursuant to the Government Circular dated 26.2.2014 & G.R. dated 11.3.2016 by setting aside the impugned communication dated 11.9.2018 (Annex. H page 48 of paper book) issued by the respondent no. 3 refusing to appointment the applicant on compassionate ground on the said post.

2. It is the contention of the applicant that his father namely Shri Baburao Rangnath Kamble was appointed as Safai Kamgar with the respondent no. 3 as per the appointment order dated 5.3.1979. Father of the applicant retired after attaining the age of superannuation on 31.1.2015. At that time as per the provisions of the G.R. dated 10.11.2015 (Annex. A page 20 of paper book) the relative of the retired Safai Kamgar was entitled to seek appointment on the post of Safai Kamgar, who makes an application therefor within the period of one year from such retirement or death of the Government Class-IV employee. Accordingly, the applicant made an application for such appointment on 1.1.2016 (Annex. B page 28 of paper book). The respondent no. 3 ought to have considered the said application

within the period of 30 days from the date of its receipt, however, the respondent no. 3 failed to do that. The applicant filed several reminders dated 8.9.2016, 2.5.2017 & 16.5.2017 (Annex. C pages 29 to 31 of paper book) in that regard. The respondent no. 3, however, did not consider the said application of the applicant. Meanwhile, the respondent no. 1 i.e. the State Government modified and cancelled the G.R. dated 10.11.2015 and issued fresh G.R. dated 11.3.2016 giving further guidelines for such appointments (Annex. F collectively page 41 of paper book). Thereafter as per the said guidelines, the applicant filed further representations dated 19.12.2017 3.9.2018 & 23.8.2018 (Annex. G pages 45 to 47 of paper book), however, the respondent no. 3 failed to take necessary steps in that regard.

3. Frustrated by the said inaction of the respondent no. 3, the applicant made another representation to the respondent no. 3 stating that, if no decision in his case is taken, he would go on hunger strike. Thereafter the respondent no. 3 with mala-fide intention and motive issued the impugned communication dated 11.9.2018 (Annex. H page 48 of paper book) stating that the G.R. dated 11.3.2016 is not applicable to the case of the applicant and therefore the applicant is not entitled for seeking appointment as Safai Kamgar on compassionate ground.

4. In fact, a Committee was appointed by the respondent no. 3 for considering the appointment of candidates on compassionate ground as per the recommendations of Lad Page Committee. As per the report of the said Committee dated 27.7.2016 (Annex. I page 51 of paper book), names of total 8 candidates including the name of the applicant were recommended, however, the respondent no. 3 issued appointment orders in favour of other 7 candidates, but no appointment order was issued to the applicant.

5. It is further stated by the applicant that earlier as per the communication dated 19.5.2017 (Annex. D page 32 of paper book) the respondent no. 3 informed the applicant that he is seeking guidance of the respondent no. 2 i.e. the Assistant Director (Medical), Directorate of Medicine, Mumbai as to the appointments on compassionate grounds. The said respondent no. 2 by communication dated 15.9.2017 opined that the legal heirs fulfilling the requirements of Government Notification dated 16.2.2014 are entitled for such appointment on compassionate ground and the respondent no. 3 in his own powers can make such appointment. Despite that, the respondent no. 3 by the impugned communication dated 11.9.2018 (Annex. H page 48 of paper book) refused to give appointment to the applicant stating that the applicant's father retired on superannuation on

31.1.2015 i.e. before issuance of G.R. dated 11.3.2016 and there is no mention in the said G.R. that the provisions of the said G.R. are applicable retrospectively. The said impugned communication dated 11.9.2018 is contrary to the provisions of the Government Circular dated 26.2.2014 and G.R. date 11.3.2016 and also in contravention with the opinion / guidance received by the respondent no. 3 from the respondent no. 2 in that regard.

6. Affidavit in reply on behalf of respondent no. 3 is filed by Dr. Rajesh Sahebrao Ovhal, Assistant Professor (Microbiology) working in the office of the respondent no. 3 i.e. the Dean, S.R.T.R. Rural Medical College & Hospital, Ambajogai, Dist. Beed. The said affidavit in reply is at page 58 of paper book. The respondents thereby have justified the impugned communication dated 11.9.2018 issued by the respondent no. 3 reiterating that G.R. dated 11.3.2016 relied upon by the applicant is having prospective effect as there is no specific mention therein that the said G.R. is applicable retrospectively. It is further stated by the respondents that similarly situated person viz. Shri Shyam S. Thorat filed complaint before the Hon'ble Lokayukta, Maharashtra State regarding the recruitment under Lad Page Committee on the basis of G.R. dated 11.3.2016. In view of that, said matter was referred to the Department of Social Justice & Special Assistance

and decision thereon is pending. In view of the same, it is the contention of the respondents that the claim of the applicant is not maintainable and is liable to be dismissed.

7. Rejoinder affidavit (page 70 of paper book) is filed by the applicant denying the contentions of the respondents raised in the affidavit in reply. Along with the said rejoinder affidavit the applicant has placed on record the documents showing the appointments given to other similarly situated candidates in existence of earlier G.R. dated 10.11.2015 and the present G.R. dated 11.3.2016. He has sought to demonstrate that the respondent no. 3 with ulterior motive or with reasons best known to him singled out the claim of the applicant and did not give appointment to the applicant though he deserves for it.

8. Further sur-rejoinder and short affidavit are filed on behalf of the respondent no. 3 reiterating the contentions raised in the affidavit in reply.

9. I have heard the arguments advanced by Shri S.P. Salgar, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

10. Learned Advocate for the applicant in order to support the claim of the applicant invited my attention to the provisions of

G.Rs. dated 10.11.2015, 11.3.2016 and the Government Circular dated 26.2.2014. He submitted that the application dated 1.1.2016 made by the applicant for appointment on compassionate ground as per the original report of the Lad Page Committee, the G.R. dated 10.11.2015 and Government Circular dated 26.2.2014 is made within the prescribed limitation period of one year. At the time of making the said application dated 1.1.2016, the G.R. dated 10.11.2015 was in force and the applicant was entitled for such appointment. By the time the applicant filed the present O.A., the said G.R. dated 10.11.2015 was cancelled by the Government and in its place present G.R. dated 11.3.2016 has been issued by the Government. In fact, G.R. dated 11.3.2016 is a modification of earlier G.R. dated 10.11.2015 cleaning away some shortfalls in the earlier G.R. dated 10.11.2015 and, as such, it is more beneficial. In view of the same, it is his contention that the applicant is entitled for appointment on compassionate ground in terms of both the G.Rs. i.e. G.R. dated 10.11.2015 & 11.3.2016.

11. While going through both the G.Rs. dated 10.11.2015 and 11.3.2016 learned Advocate for the applicant thrusts upon the language of the following clauses :-

(1) Clause No. 18 of G.R. dated 10.11.2015 (Page 25 of O.A.)

“१८. सफाई कामगार/कर्मचारी म्हणून सेवानिवृत्त झालेल्या किंवा होणाऱ्या अथवा स्वेच्छा सेवानिवृत्ती घेणाऱ्या किंवा सेवेत असताना निधन पावलेल्या अनुसूचित जातीमधील इतर समाजाच्या सफाई कर्मचाऱ्यांच्या वारसास किंवा नातेवाईकास सुध्दा सदर वारसा पध्दतीने नियुक्ती योजनेचा लाभ देण्यात येईल.”

“(2) Clause 3(3) of G.R. dated 11.3.2016 (Page 42 of O.A.)

३. लाड समितीच्या शिफारशी नुसार सफाई कामगारांच्या वारसांना शासकीय / निमशासकीय सेवेत देण्यात येणाऱ्या नियुक्ती संदर्भात पुनर्विचार करून संदर्भीय दिनांक १०.११.२०१५ रोजीचा शासन निर्णय रद्द करून सुधारीत निर्णय खालीलप्रमाणे घेण्यात येत आहे:-
- (३) सफाई कर्मचारी म्हणून सेवानिवृत्त झालेल्या किंवा होणाऱ्या अथवा स्वेच्छानिवृत्ती घेणाऱ्या किंवा सेवेत असताना निधन पावलेल्या अनुसूचित जातीमधील इतर सफाई कर्मचाऱ्यांच्या वारस किंवा नातेवाईक यांस सदर योजनेचा लाभ देण्यात यावा.”

12. Learned Advocate for the applicant further submitted that the applicant has also fulfilled the conditions laid down in Government Circular dated 26.2.2014 namely that the nomination of the applicant for appointment on compassionate ground as stated in clause (1) of the said Circular and that he has submitted an application within one year from the date of retirement of his father on superannuation as provided in clause 4 of the said Circular.

13. Learned Advocate for the applicant also invited my attention to communication dated 19.5.2017 (Annex. D page 32 of paper book) whereby the respondent no. 3 communicated to the

applicant that he is seeking guidance from the respondent no. 2 about such appointment. He further invited my attention to the communication dated 15.9.2017 (page 33 of paper book) whereby the respondent no. 2 communicated to the respondent no. 3 that the relative / legal heir of the retired or deceased Government Class-IV employee complying with the Government Circular dated 26.2.2014 would be entitled for such appointment in terms of G.R. bearing No. सफाई-२०१५/प्र.क.२६८/महामंडळे, दि. २६ मार्च, २०१६. (in fact, date of issuance of said G.R. is 11.3.2016, however, inadvertently the respondent no. 3 refers date of said G.R. as 26.3.2016). In the said communication it is stated that the relative / legal heir of the employee retired or died before issuance of the G.R. dated 11.3.2016 would also be entitled for benefits of this G.R. In view of the same, the learned Advocate for the applicant submitted that the impugned communication dated 11.9.2018 (Annex. H page 48 of paper book) refusing appointment to the applicant on compassionate ground is totally misconceived and liable to be quashed and set aside.

14. As regards the applicability of the G.R. dated 11.3.2016 and 10.11.2015, the learned Advocate for the applicant has placed reliance on the order dated 18.4.2019 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ**

petition No. 9666/2018 (Suresh Bajrang Sonawane Vs. the State of Maharashtra & Ors.). He also placed reliance on the order dated 12.3.2018 passed by the Division Bench of this Tribunal at Mumbai in **Original Application No. 986/2017 (Sandeep Bapu Pol Vs. the Director, Health Services, Maharashtra State & Ors.)**.

15. Per contra, learned Presenting Officer submitted that reading of provisions of the G.R. dated 11.3.2016 would show that there is no specific mention that it is applicable retrospectively. In view of the same the respondents have rightly rejected the claim of the applicant. He further submitted that opinion of Department of Social Justice & Special Assistance is still awaited as regards applicability of the said G.R. retrospectively or not.

16. The facts of the case and the submissions of both the parties as discussed hereinabove would show that the fate of this litigation is dependent upon the applicability of G.R. dated 10.11.2015, which was in existence when the applicant made application on 1.1.2016 for appointment on compassionate ground on the Class-IV post of Safai Kamgar and also of G.R. dated 11.3.2016, which is issued by the Government modifying and replacing earlier G.R. dated 10.11.2015. Admittedly, both these G.Rs. are based on earlier benefit scheme of appointment of

candidates on compassionate ground propagated due to Lad Page Committee report. Moreover, Government Circular dated 26.2.2014 also required due consideration for deciding this matter as it lays down the eligibility to claim appointment on compassionate ground.

17. In the case in hand, the applicant's father belonging to S.C. category was initially appointed as a Safai Kamgar as per appointment order dated 5.3.1979 and he retired from the said post on 31.1.2015 on attaining the age of superannuation. The applicant made an application for appointment on compassionate ground in terms of the then Government Circular dated 26.2.2014 and G.R. dated 10.11.2015. Perusal of his application dated 1.1.2016 (Annex. B page 28 of paper book) would show that the applicant was nominated by his father Shri Baburao Rangnath Kamble, who retired from the post of Safai Kamgar on 31.1.2015. Further the said application was made by the applicant within the prescribed period of one year from the date of retirement of his father. Hence, requirements as laid down in Government Circular dated 26.2.2014 are fulfilled by the applicant.

18. It is a fact that present O.A. is filed by the applicant on 12.10.2018. When the applicant made an application on 1.1.2016 for appointment on compassionate ground on the post of Class-IV,

G.R. dated 10.11.2015 was purportedly applicable to the case of the applicant. Thereafter G.R. dated 11.3.2016 came to be passed in view of the case law of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in **writ petition No. 6155/2014 (Shri Nitin Ganesh Chandraliya & Ors. Vs. the State of Maharashtra & Ors.)**, thereby earlier G.R. dated 10.11.2015 was reviewed and it was cancelled and replaced by G.R. dated 11.3.2016. The terms and conditions as mentioned in Government Circular dated 26.2.2014 were kept intact. Upon perusal of both the G.Rs. dated 10.11.2015 and 11.3.2016 it is evident that the case of the applicant is covered by clause 18 of G.R. dated 10.11.2015 and clause 3(3) of G.R. dated 11.3.2016. Both these clauses are identical and are replaced hereinabove.

19. By the impugned order dated 11.9.2018 (Annex. H page 48 of paper book) the claim of the applicant is denied by the respondent no. 3 stating that G.R. dated 11.3.2016 is not applicable to the case of the applicant as his father retired on superannuation before issuance of said G.R. dated 11.3.2016 i.e. on 31.1.2015. Even in legal submissions the learned P.O. on behalf of the respondents submitted that there is no specific mention in the said G.R. dated 11.3.2016 that it is applicable retrospectively. He further stated that legal opinion of the

Department of Social Justice & Special Assistance on the issue of applicability is awaited.

20. On factual aspect in this matter it is pertinent to note that by letter dated 19.5.2016 (Annex. D page 32 of paper book) the respondent no. 3 communicated to the applicant that he was seeking opinion from the respondent no. 2 about the applicability of the G.R. dated 11.3.2016 in the case of the applicant. Written opinion of respondent no. 2 is on record by way of communication dated 15.9.2017 (page 33 of paper book) and it says that the case of the applicant is covered as per the provisions of G.R. dated 11.3.2016, if requirements as laid down in Government Circular dated 26.2.2014 are fulfilled. The applicant has placed on record the list of similarly situated candidates appointed since 2015 under the said scheme. The said document is dated 28.8.2019 (pages 77 & 78 of paper book). The said document is obtained by the applicant under the provisions of Right to Information Act and it is not disputed.

21. As stated above, learned Advocate for the applicant has placed reliance on the decision dated 12.3.2018 of the Hon'ble Division Bench of this Tribunal at Mumbai in **Original Application No. 986/2017 (Sandeep Babu Pol Vs. the Director, Health Services, Maharashtra State & Ors.)**. Hon'ble Division

Bench of this Tribunal at Mumbai had an occasion to interpret the applicability of the G.R. dated 10.11.2015 in question. In para 9 of the said decision this Tribunal observed as under :-

“9. We, therefore, find that the rejection impugned is not in conformity with the true spirit of the scheme. The scheme nowhere lays down or prescribes the prohibition and exclusion of the benefit to dependants of deceased employee who died prior to the declaration of Government decision dated 10.11.2015.”

22. Learned Advocate for the applicant has also placed reliance on the order dated 18.4.2019 passed by the Hon’ble Division Bench of Hon’ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ petition No. 9666/2018 (Suresh Bajrang Sonawane Vs. the State of Maharashtra & Ors.)**. In the said case, G.Rs. dated 10.11.2015 and 11.3.2016 were under consideration of the Hon’ble High Court. In that regard in para 4 Hon’ble High Court observed as under :-

“4. The Government Resolutions dt. 11.3.2016 and 10.11.2015 is a beneficial policy introduced by the Government. The preface to the Government Resolution itself states that, though Lad/Page Committee recommendations are of 40 years back, it is necessary to continue the same and the people from SC community were also entitled for the benefit of Lad/Page Committee recommendations.”

Hence, the said case of the petitioner in writ petition No. 9666/2018 was sent to the Government for consideration in accordance with G.R. dated 11.3.2016.

23. In view of above, it is a fact that there is no specific mention either in G.R. dated 10.11.2015 and 11.3.2016 that it would be applicable retrospectively but there is mention about continuation of recommendations of Lad/Page Committee report. Even the plain reading of clause 18 of G.R. dated 10.11.2015 and clause 3(3) of G.R. dated 11.3.2016 would not suggest that the said scheme would be applicable to the relative / legal heirs of the deceased or retired Government Class-IV employees, who has died or has retired. In view of the same, in my considered opinion, the impugned communication dated 11.9.2018 (Annex. H page 48 of paper book) issued by the respondent no. 3 denying appointment on compassionate ground to the applicant as per the Government Circular dated 26.2.2014 and G.R. dated 11.3.2016 is not in accordance with law. The respondents have failed to consider the real purport of the said beneficial scheme as laid down in G.R. dated 11.3.2016 and earlier G.Rs. issued by the Government of Maharashtra and even it is discriminatory to that of other appointments. The ratio laid down in above both the case laws i.e. in the order of the Division Bench of this Tribunal at Mumbai in **Original Application No. 986/2017 (Sandeep Babu Pol Vs. the Director, Health Services, Maharashtra State & Ors.)** and in the order dated 18.4.2019 passed by Hon'ble High Court in **writ petition No. 9666/2018 (Suresh Bajrang Sonawane Vs.**

the State of Maharashtra & Ors.) would be squarely applicable in the present case as facts of this case and facts of above referred both the cases are similar in nature.

24. In view of discussion in foregoing paragraphs, I proceed to pass the following order :-

ORDER

- (i) Original Application No. 801/2018 is allowed and disposed of.
- (ii) The impugned communication dated 11.9.2018 (Annex. H page 48 of paper book) issued by the respondent no. 3 refusing to appointment the applicant on compassionate ground on the post of Class-IV is quashed and set aside.
- (iii) The respondent no. 3 is directed to appoint the applicant on Class-IV post of Safai Kamgar by implementation of scheme from appointing candidates in furtherance to Government Circular dated 26.2.2014 and G.R. dated 11.3.2016 issued by the Government, within the period of 2 months from the date of this order.

There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad

Date : 21.05.2021