

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 899 OF 2023
(Subject:- Compassionate Appointment)**

DISTRICT:- Ahmednagar

Sachin S/o Rohidas Waghmare,)
Age: 37 years, Occu: Nil,)
R/o Ruhichatishi,)
Tq. & Dist. Ahmednagar.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Principal Secretary,)
Health Department, G.T. Hospital,)
10th Floor, B-Wing,)
New Mantralaya, Mumbai 400 001.)
- 2. The District Collector,**)
Aurangabad Road,)
Ahmednagar 411 001.)
- 3. The District Malaria Officer,**)
Old Civil Hospital, Telikhund,)
Chithale Road, Ahmednagar 411001)...**RESPONDENTS**

APPEARANCE : Shri A.V. Thombre, learned counsel
holding for Shri S.S. Thombre, learned
counsel for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : Shri A.N. Karmarkar, Member (J)

RESERVED ON : 02.12.2024.

PRONOUNCED ON : 06.12.2024.

ORDER

This application is filed for directing the respondent No.2 to issue appointment order in favour of the applicant on compassionate ground.

2. Late Rohidas Maruti Waghmare- the father of the applicant was working with the respondent No.3 as Health Assistant in Primary Health Centre, Pimpalgaon Pissa, Tq. Shrigonda, Dist. Ahmednagar. He died on 14.06.2019 in harness, leaving behind the present applicant- Sachin Waghmare, widow-Pushpa Waghmare, another son-Sandip Waghmare and daughter- Swati Ramesh Shinde. The applicant's brother is residing separately from family since 2012. The applicant filed application dated 28.06.2019 for getting appointment on compassionate ground. On 30.03.2020 he has again filed application with the necessary documents in compliance with letter of respondent No.3. The respondent No.3 forwarded the proposal of this applicant to respondent No.2. In response to the letter of respondent No.2 dated 08.09.2020, the respondent No.3 forwarded the proposal on 19.11.2020. On 08.03.2021, respondent No.3

requested the respondent No.2 to include the name of this applicant in the list of compassionate appointment.

3. Subsequently on 18.06.2021, some queries were raised by the office of respondent No.2. In that connection, the respondent No.3 submitted the detailed explanation on 05.10.2021. The respondent No.2 has called upon the applicant for hearing on 29.11.2021. No decision has been taken by the office of respondent No.2 in respect of the claim of the applicant. On 02.01.2023, the respondent No.2 sent letter to the respondent No.1 stating that the brother of the applicant is in Government service and the claim of the applicant cannot be accepted. The said decision was not communicated to the applicant. He collected the information under Right to Information Act on 11.04.2023. He received information about his proposal and learnt about the rejection of his proposal.

4. The applicant has raised ground that the respondents should have considered that the applicant is only earning member of the family. Secondly they should have considered the fact that the applicant's brother is living separately since 2012 and he is not supporting financially to

the family of the applicant. Explanation of the applicant against the queries of respondents was not considered. According to the applicant one of the similarly situated person namely Dadasaheb Trimbak Jagtap, whose case was identical, was granted an appointment by the Chief Executive Officer, Zilla Parishad, Ahmednagar.

5. The respondent No.2 has filed affidavit in reply. The respondent No.2 has called attention of the respondent No.3 on Government Circulars dated 04.10.1997 and 22.08.2005 issued by the General Administration Department so as to follow direction in it. The directions were also given to the concerned department that they shall forward application after scrutiny and necessary compliance and they were directed to resubmit the proposal.

The respondent No.3 has issued communication dated 08.03.2021 to respondent No.2 along with heirship certificate issued by the Court of Civil Judge, Senior Division, Ahmednagar and other documents. This respondent No.2 issued letter dated 18.06.2021 calling upon the respondent No.3 to submit explanation on certain queries. Then this respondent has given opportunity of being heard to this

applicant on 29.11.2021. The applicant has submitted application dated 18.05.2022 for accepting his claim. This respondent forwarded proposal to the General Administration Department, Mumbai intimating that initially the applicant has shown three legal heirs in the certificate issued by the Tahsildar and as per the heirship certificate issued by the court of Civil Judge Senior Division, Ahmednagar, there were four legal heirs. The explanation on this point was not satisfactory. Even in the consent letter and affidavits, there is no mention about the fourth heir. Even it is mentioned in the affidavit of the applicant that no heir of deceased is working in Government service. However, in the explanation submitted by the respondent No.3 it has been submitted that one of the heir of the deceased i.e. elder son is in Government service. The applicant has misguided the Government and the appointing authority has not taken cognizance on it. The three members committee constituted by the respondent No.3 has only carried out enquiry in respect of financial condition of the applicant. Actually the said committee was expecting to carry out enquiry regarding financial condition of the family of the deceased employee and his all legal heirs.

6. According to this respondent the appointment on compassionate ground is not heirship right as held by the Hon'ble Supreme Court. This respondent has also pointed out in the material forwarded to the Secretary, G.A.D. that one of the son of the deceased is in Government service. The widow is getting pension and daughter of deceased employee is married and the applicant is highly educated, who is competent to carry out his livelihood. Considering these facts inclusion of the name of the applicant in District Level Common Compassionate List will be against policy. This respondent has also submitted that the case of Dadasaheb Trimbak Jagatap referred to by the applicant is altogether different.

7. I have heard Shri A.V. Thombre, learned counsel holding for Shri S.S. Thombre, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

8. Learned counsel for the applicant has submitted that the applicant is eligible for the claim as per G.R. dated 26.10.1994 and 21.09.2017. He has also submitted that initially the proposal of the applicant was forwarded by the

respondent No.3 for compassionate appointment. He has invited my attention to page No. 78 of this paper book to show that the brother of the applicant is residing separately. It is also submitted that only the name of mother and sister of the applicant is recorded in the ration card.

9. Learned Presenting Officer has submitted that after recommendation of the name of applicant, the respondent No.2 has given opportunity of hearing to the present applicant on 29.11.2021. According to him, as per the certificate issued by the Tahsildar, there are three legal heirs of the deceased including the applicant, his mother and sister. However, it is noticed as per the succession certificate issued by the Court of Civil Judge, Senior Division, Ahmednagar, that the deceased had four heirs. It is also submitted that the consent letter, which was initially filed on behalf of the applicant does not show the reference of the brother of the applicant, who is in Government service. This fact is also not mentioned in the affidavit. So the claim of the applicant can be said to be false. Elder brother of the applicant is in Government service and the mother of the applicant is getting family pension. The applicant cannot be said to be entitled for the relief claimed.

10. So far the object and concept of the compassionate appointment is concerned, it would be appropriate to refer the judgment of the Hon'ble Supreme Court in a case of the **State of West Bengal Vs. Debabrata Tiwari & Ors. reported in [2023] 2 S.C.R. 611.** The Hon'ble Supreme Court has held in paragraph No. 7.2 as under:-

“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

- i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.*
- ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*
- iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.*
- iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*
- v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the*

age, dependency and marital status of its members, together with the income from any other source.

11. It is also well settled that the compassionate appointment is a concession and not a right. Considering the object of the compassionate appointment, it is expected from the applicant to come with a clean hand before the Tribunal.

12. It is not disputed that the applicant's father Rohidas Waghmare died on 14.06.2019 while he was in service. This applicant has forwarded application to respondent No.3 for getting compassionate appointment. Subsequently, in response to the letter of respondent No.3, this applicant has forwarded necessary documents with letter dated 30.03.2020 (Annexure 'A-2' collectively). While mentioning the details of the family members in clause No.4 of schedule "B" (page No.45), this applicant has mentioned the name of applicant himself, his mother and sister. The applicant has mentioned in his affidavit (page No. 47), that he himself, his mother and sister are the only heirs of deceased Government servant viz. Rohidas Waghmare. In another affidavit dated 02.03.2020 (page No. 50), he has mentioned that none of the heir of the deceased is in Government and Semi-Government services. Same fact is mentioned in the

affidavit of the mother and sister of this applicant in their affidavit (page No. 53). The applicant has also placed on record the heirship certificate obtained from the Tahsildar, wherein only three heirs of the deceased are shown.

13. It appears from the document (page No.67) that the respondent No.3 has intimated the respondent No.2 that the applicant is called upon to obtain heirship certificate from the Court and it be filed along with ration card. The applicant has also placed on record the succession certificate issued by the Court of Civil Judge, Senior Division, Ahmednagar, the copy of application claiming said certificate, order thereon and reply of the brother of the applicant (page Nos. 69 to 80). It is clear from these documents that one Sandip Waghmare, who is brother of the applicant is in Government service and he is residing in Government quarters at Ahmednagar. It appears that the said application under Section 372 of Indian Succession Act was filed by the applicant on 12.09.2021, wherein he has shown his brother as party respondent. The applicant has not disclosed that his brother is also one of the heirs of the deceased in his affidavit dated 02.03.2020 and that he is in Government service.

14. On the contrary, he has mentioned in the same affidavit that none of the heir of the deceased is in Government service. It is apparent that the applicant has tried to conceal this material fact. When the applicant is seeking Government service on compassionate ground he should have mentioned this fact at the earliest availability of possibility. It would be difficult to accept that there are bona-fide on the part of the applicant.

15. Learned counsel for the applicant has referred clause No. 7 (B) of the G.R. dated 26.10.1994. It seems that the concerned authority has to take into consideration the economic condition of the family of the deceased. So there may not be scope for misuse of such type of claims. Similar type of provision is appearing in the G.R. dated 21.09.2017 in clause No. 5 (E).

16. Learned counsel for the applicant has invited my attention to paragraph No.2 of the order below exhibit -1 in Civil Enquiry Application No. 129/2020 filed by the applicant under Section 372 of Indian Succession Act. According to him, it is already mentioned in it that the respondent therein-Sandip is son of the deceased who is in service and he is

residing separately since 2012. If the applicant is knowing this fact then he should have mentioned it at initial stage when he has forwarded the application to respondent No.3. He has not mentioned the same for the reason best known to him. The possibility cannot be ruled out that the applicant has avoided to mention this fact with an ulterior motive.

When the applicant has given opportunity of hearing he has stated that the brother Sandip is residing separately since 2012. He has also stated that when he has filed application for the first time on 28.06.2019, he had submitted copy of ration card, wherein the name of brother –Sandip and his wife are removed. The applicant has made out case subsequently that his brother is residing separately since 2012 from his family. The copy of ration card which was filed at initial stage (page No. 26) shows that the name of the wife of brother of the applicant was inserted in the ration card on 04.12.2014. This fact also falsifies the case of the applicant that the brother –Sandip is residing separately from their family since 2012.

17. The applicant has stated during hearing before the respondent No.2 that his brother Sandip is serving in Zilla

Parisahd and he is not maintaining the applicant or his mother and sister. Even this contention would not be sufficient in absence of satisfactory material on record. While filing reply to the application filed by the applicant under Section 372 of Indian Succession Act, the brother of the applicant has contended about his no objection for issuance of certificate in the name of he himself, this applicant and his mother and sister. The said application was filed so as to get service benefits pertaining to the death cum-retirement gratuity, general provident fund, family pension, difference of 7th pay commission etc. which amounting to Rs. 27,65,188/-. The copy of statement of mother of the applicant recorded by the Superintendent of respondent No.3 dated 23.09.2021 shows that the mother of the applicant has nowhere stated that her son –Sandip is not taking their care. So it would be difficult to accept the contention of the applicant that the brother Sandip was not taking care of the family of deceased.

18. Considering the order in Civil Enquiry Application No. 129/2020 passed by the Court of Civil Judge, Senior Division, Ahmednagar, it can be said that wife of the deceased is getting family pension. The amount of family pension is

shown to the tune of Rs. 27,258/- in the Succession Certificate issued by the Court. The brother of the applicant is already in Government service. It also appears from the record that the sister of the applicant is married. The applicant is also having education of BA LLB. Considering these facts, it cannot be said that conclusions of respondent No.2 in impugned order/communication dated 02.01.2023 (page No. 98) are improper. During hearing before the respondent No.2 the applicant has stated about expenses of more than 6 lacks due to the illness of deceased. The copy of succession certificate issued by the Court of Civil Judge, Senior Division, Ahmednagar in Civil Enquiry Application No. 129/2020 shows it is pertaining to medical reimbursement bill, to the tune of Rs.6,09,130/-.

19. There is nothing on record in support of contention of the applicant during hearing before the respondent No.2 that the deceased had obtained a loan. It is well settled that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. It is apparent that the applicant's mother is getting family

pension. The applicant's brother is in service. There is no satisfactory material to show that the brother of the applicant was not taking care of his mother. The applicant is having good qualification. It is already discussed that the applicant has tried to conceal material fact while forwarding the application initially after the death of his father that his brother Sandip is also one of the son of deceased who is in service.

20. It is already discussed that the possibility cannot be ruled out that the applicant has filed this application with an ulterior motive by concealing the material facts. In my opinion, no case is made out by the applicant for appointment on compassionate ground in place of his father.

21. According to learned counsel for the applicant one Dadasaheb Trimbak Jagtap, whose case was identical, was granted an appointment by the Chief Executive Officer, Zilla Parishad, Ahmednagar and its papers are placed on record. However, the case is from different department. The appointment order (page No. 119) issued by Joint Secretary, State Government shows that the said case of Dadasaheb Trimbak Jagtap was considered as special case.

22. For the reasons stated above, the Original Application deserves to be dismissed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) No order as to costs.

MEMBER (J)

Place:-Aurangabad

Date : 06.12.2024

SAS O.A. 899/2023 Compassionate Appointment