IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 1020 OF 2017

DISTRICT : SOLAPUR

Shri Faizan Shakir Chisty)
Occ : Nil, R/o: Plot no 84,)
Markandey Nagar, Kumtha Naka,)
Solapur.)...**Applicant**

Versus

District Collector, Solapur,)
Siddheshwar Peth, Solapur.)...**Respondent**

Shri M.B Kadam, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent.

CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 12.12.2017
PRONOUNCED ON : 19.12.2017

O R D E R

1. Heard Shri M.B Kadam, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent.

2. Learned advocate for the applicant prays for final disposal of Original Application furtherance to the notice issued by this Tribunal.

3. Learned P.O has prayed for time.

4. Learned P.O was asked to state as to the purpose for which time is required.

5. Learned P.O states as follows:-

(a) Time is necessary for filing affidavit in reply.

6. Learned P.O was called to state as to whether facts of the case are disputed or disputable. Learned P.O answered in the negative.

7. Learned P.O was called to state as to the reasons as to why affidavit is to be filed when the facts are not disputed. Learned P.O answers stating that the affidavit is to be filed only to record the opposition.

8. In the background that facts are not disputed the cognizance of the State even by oral submission can be taken.

9. Hence, Original Application is taken up for final hearing.

10. The facts which are borne on record and not disputed are as follows:-

(i) Applicant is the son of Shri S.S Sayyad.

(ii) Applicant's father Shri S.S Sayyad was in Government service and was granted 'ad hoc 'promotion until receipt of candidate from M.P.S.C.

11. The conditions contained in the appointment order read as follows:-

> "१. ही तद्र्थ पदोन्नती पदोन्नती ११ महिने अथवा महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवारांच्या अधिसंख्य पदांचा कालावधी संपेपर्यंत अथवा संबंधितांची निवृत्ती यापैकी अगोदर घडेल तोपर्यंत निव्वळ तात्पुरत्या स्वरूपाची राहील.
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> २. पदोन्नत कर्मचा-याने विहित नमुन्यातील बंधपत्र सादर करणे बंधनकारक आहे.
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> ३. सदर पदोन्नती मा.उच्च न्यायालय, मुंबई येथील रिट पिटीशन क्र.८४५२/२००४ तसेच महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांच्या क्र.८५३/२०१२ व ८५४/२०१२ च्या निर्णयाच्या अधीन राहून देण्यांत येत आहे व सदर याचिकेत होणारा निर्णय पदोन्नत अधिका-यांवर बंधनकारक राहील.
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> ४. सदर पदोन्नती नियमीत निवडसूचीस महाराष्ट्र लोकसेवा आयोगाच्या अंतिम मान्यतेच्या अधिन राहून देण्यात येत आहे.
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> ५. प्रस्तुत आदेशान्वये देण्यात आलेली पदोन्नती नाकारल्यास व कालबध्द पदोन्नतीचा फायदा यापुर्वी दिला असल्यास या आदेशाच्या दिनांकापासून कालबध्द पदोन्नतीस असे कर्मचारी पात्र राहणार नाही. तसचे त्या अनुषंगाने मिळणारे फायदे राहणार नाहीत."
> (Quoted from pages 13 & 14, Exh. 'C')

12. Applicant's father Shri S.S Sayyad, died on 28.1.2016 while in Government service.

13. On the date of death, applicant's father was serving substantively as Awal Karkoon and on promotional post of Naib Tahsildar on ad hoc basis. The post substantively held by the applicant's father is Group-C.

14. Applicant submitted application in prescribed form for appointment on compassionate grounds.

15. Eligibility of applicant's candidature is not disputed. However, the appointment has been refused by letter dated

16.4.2016, Exh. 'A', page 11, by assigning reasons, text whereof reads as follows:-

> "श्री. एस.एस.सय्यद, हे निवासी नायब तहसिलदार मंगळवेढा या पदावर कार्यतर असताना मयत झालेले आहेत. नायब तहसिलदार हे पद गट ब संवर्गात येत असल्याने तुम्हास अनुकंपा तत्वावर नोकरी देता येणार नाही. सबब आपला उक्त दिनांकाचा अर्ज काढणेत आलेला आहे."
> (Quoted from page 11, Exh. 'A')

16. Applicant relies on the judgment of this Tribunal decided on 18.7.2017 in O.A 1008/2016 (Shri Abhijeet V. Mulik Vs. District Collector, Kolhapur).

17. Though the learned P.O opposed relief, learned P.O is not able to state as to why the ratio laid down in the judgment of this Tribunal in O.A no 1008/2016 based on earlier judgments of Hon'ble High Court and this Tribunal should be disregarded.

18. Learned P.O was called to state as to whether judgment in O.A no 1008/2016 and the judgment recorded in that judgment were acquiesced or challenged.

19. Learned P.O states that the judgment of Hon'ble High Court referred to and relied upon in the judgment delivered in O.A no 1008/2016 was challenged before the Hon'ble Supreme Court. and the challenge has failed.

20. Now the limited question which arises for consideration is as to whether applicant is eligible for appointment despite the fact that applicant's father was serving as Resident Naib Tahsildar.

21. On the basis of admitted facts which have been summarized in foregoing paragraphs, which apart from admission are supported by documentary evidence reveals as follows:-

(i) Applicant's father substantively held the post of Awal Karkoon which is a Group-C post.

(ii) He was appointed on purely ad hoc basis and in local vacancy, awaiting receipt of candidates from M.P.S.C.

(iii) Applicant's father was serving as Naib Tahsildar on purely ad hoc and temporary promotion.

22. The foregoing revelations from record conclusively prove that applicant is eligible for appointment on compassionate grounds.

23. In the result, Original Application is allowed with costs in terms of para 10(a) which reads as follows:-

> "10(a). That this Hon'ble Tribunal be pleased to quash and set aside the order dated 16.4.2016 and further direct the Respondents to give appointment in the post of Class-3 Clerk/Talathi on compassionate ground."

24. The order be complied within two months from today.

Sd/-

(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 19.12.2017
Dictation taken by : A.K. Nair.

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