

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1008 OF 2016

DISTRICT : KOLHAPUR

Shri Abhijeet Vishwas Mulik,)
Age 34 years, Occ. Nil, R/o 1449, B-Ward,)
Sangar Lane, Mangalwar Peth, Kolhapur)..Applicant

Versus

The District Collector,)
Nagala Park, Kolhapur 416003)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri R.B. Malik, Member (J)

DATE : 18th July, 2017

J U D G M E N T

1. This Original Application (OA) is the second round of litigation questioning the order dated 19.8.2016 (Exhibit A page 22 of the paper book (PB) whereby the request of the Applicant for appointment on compassionate ground was turned down. The ground was that the deceased father of the applicant who died in harness held the post of Naib Tahsildar (NT) which was a group B non-gazetted post while the heir of only the deceased group C or group D employee was eligible for being considered for appointment on compassionate ground. For that reliance

was placed on GAD GR dated 28.3.2001 read with a clarificatory instrument to the GR of 2.7.2002 dated 27.5.2016. The first round of litigation was by way of **OA No.1093 of 2012 (Abhijeet Vishwas Mulik Vs. District Collector, Kolhapur)** decided by the 2nd Division Bench of this Tribunal which spoke through me on 18.2.2015 (1st OA hereinafter). The said order was confirmed by a division bench of the Hon'ble High Court in **The State of Maharashtra Vs. Shri Abhijeet V. Mulik dated 27.6.2016 (W.P. No.12445 of 2015)**.

2. The principal issue is as to whether the disability attached to the group B employee who dies in harness would also apply to the one who was promoted on temporary basis for three months at the expiry of which period the reversion back would result.

3. I have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

4. The Late Shri Vishwas Mulik was the father of the applicant. He was working as Awal Karkun (AK). He died in harness on 19.12.2011. The applicant having been born on 16.1.1982 was just a little less than 19 years of age then. By an order (in Marathi) dated 22.6.2011 the Commissioner of Pune Division issued orders of temporary promotion to the post of NT. That order was relevant even for the first OA inter partes. A few paragraphs from that judgment can, therefore, be reproduced herein below for facility.

"2. The Applicant was born on 16.1.1982. His father Shri V.G. Mulik was till a few months before his death working in a Group 'C' post in the cadre of Awal Karkun and Mandaladhikari (Circle Officer). By a notification (adhisuchana) issued by the Commissioner of Pune Division on 20.6.2011, the late Shri V.G.



Mulik along with seventeen other colleagues from the cadre of Awal Karkun and Mandaladhikari were promoted purely on temporary basis for three months. The said instrument is at Exh.'C' (Page 14 of the paper book). It was prefaced by the fact that the powers to give promotion to the cadre of Naib Tahasildar to 182 employees from amongst those found eligible for promotion were delegated to the Commissioner of Pune Division by the Government. Powers to give postings to them were also similarly delegated to the said authority. This must, therefore, mean that the number of eligible candidates for the promotion was more than 182. The delegation of power to the Commissioner of Pune was restricted to 182 candidates. But even that was subject to the terms and conditions therein set out.

3. The terms and conditions *inter-alia* were that the said promotions were purely temporary in nature. The 2nd stipulation is not germane hereto. The 3rd condition was that a bond (Bandhapatra) in prescribed proforma was compulsory to be furnished. The 4th condition was that the said promotion was merely ad-hoc in nature and will get terminated automatically (APOAAP) after a period of three months from the said order. The 5th condition was that even that promotion was subject to the outcome of the pending Writ Petition No.8452 of 2004, which outcome will be binding on the promotees under the said order. The 6th and the last condition was that the said promotion was subject to the approval of Maharashtra Public Service Commission (MPSC).

4. It is nobody's case that the said promotion was given as per the recommendation of MPSC or even with its approval. In fact, from the record, it is not possible to even find if the MPSC approval was even sought. This is relevant when one considers Respondent's case that the post of Naib Tahsildar was a gazetted post. We must make it clear that we are herein only concerned with that post in the context of the present facts and not generally. The promotion herein was given by the Pune Commissioner upon delegation of power by the Government.

5. The father of the Applicant died on 19.12.2011. The Applicant moved for being appointed on compassionate ground on 26.3.2012. In response thereto vide a communication dated 29.3.2012 (Exh. 'A', Page 12 of the paper book), his request was turned down. That order is under challenge herein."

5. Thereafter, in the 1st OA in para 7 the following was held:



"7. The discussion in Paras 3 to 5 herein would make it clear that the promotion of the late Shri V.G. Mulik as Naib Tahasildar was only and only for three months i.e. till 21.09.2011. Therefore, one can safely presume in the absence of any evidence that it went by efflux of time. Even if it was held that it was extended, then in the present context, the onus lay on the Respondent to prove it. That has not been done. But assuming they did it, the fact remains that the said order only granted temporary promotion on its plain language and by the very nature of things a permanent promotion, a Gazetted post could not have been given by a delegate of State Power, without at least a concurrence from MPSC. On this count alone, it can safely be held that the deceased father of the Applicant held a Group 'C' post and not Group 'B'."

6. The relevant issue was then discussed from pay scale point of view and guidance was taken from a judgment of a division bench of the Hon'ble Bombay High Court which was affirmed by the Hon'ble Supreme Court. Facility demands the reproduction of para 8 from the judgment in the 1st OA.

"8. Now, let us examine the matter from the angle of pay scale in order to determine if on that anvil, the post of Naib Tahasildar would befall Group 'C' or Group 'B'. The fact as such is not disputed that the pay scales shown in Exh. 'E' (Page 19 of the paper book) for the post of Naib Tahasildar is 5500-9000. That is of Group 'C' post. In that regard, we may usefully rely on an unreported judgment of a Division Bench of the Aurangabad Bench of our High Court in **Writ Petition No.5440 of 2009 (Dinesh Vs. The State of Maharashtra, dated 5.2.2010)**. It was confirmed in **Spl. Leave to appeal CC 16998/2011, dated 3.11.2011 (State of Maharashtra and others Vs. Dinesh) by the Hon'ble Supreme Court**. The copies of the two judgments are there on record. The issue involved therein was the same as in this O.A. though the posts held by the deceased employees were different. Their Lordship of our High Court in Para 5 referred to the G.R. dated 02.07.2002. A passage from that Paragraph needs to be reproduced.

"In so far as Group-C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group-C category. As aforesaid, it is not in dispute that the Pay Scale of late Smt. T.D. Sonawane was Rs.5500-9000/-. The



natural meaning to be assigned to the above Clauses, in our opinion, is that if the Pay Scale is between Rs.4400/- up to Rs.9000/-, such cases would be covered by Group-C category, whereas if the Pay Scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group-B category. If any other interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the Pay Sale of Rs.9000/- will be covered in Group-B category as well as Group-C category since Pay Scale of Rs.9000/- is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is covered in Group-B category, cannot be sustained. That stand will have to be stated to be rejected since admittedly the Pay Scale of the petitioner's predecessor was Rs.5500-9000."

7. I think it was quite clear from the above discussion especially the above quotes that the father of the applicant was not holding the regular promotional post and the post that he held on regular basis when he met his maker was of AK. That would be the post relevant in considering the issue of compassionate appointment. But as I shall be presently pointing out the respondents in making the order now impugned have meandered into irrelevance.

8. The State challenged the order on the 1st OA unsuccessfully. The order dated 26.7.2016 of the Hon'ble High Court is at Exhibit G page 43 of the PB. Let me reproduce the entire order.

"P. C.

1] The petitioner-State challenges the order dated 18 February 2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai made in Original Application No. 1093 of 2012. By the impugned judgment and order, the MAT has directed the following:

"10. We allow the Original Application and direct the Respondent to consider the claim of the Applicant for appointment on compassionate ground as per the extant Scheme or Regulations and Government Resolutions, subject to other eligibility. No order as to costs."



2] From the aforesaid, it is quite clear that the MAT has directed the petitioner - State to only "*consider*" the claim of the respondent for appointment on compassionate ground as per the extant Scheme or Regulations and Government Resolutions, subject to other eligibility requirements. The MAT has not directed the petitioner-State to actually appoint the respondent, but to only consider the case of the respondent for compassionate appointment, in accordance with law and as per Scheme, Regulations and Government Resolutions as may be applicable.

3] We see no reason to interfere with such a direction. Ultimately, there is no dispute that the respondent's father has died in harness and therefore, the respondent was at least entitled to consideration of his application for compassionate appointment in accordance with law. Accordingly, there is no case made out to interfere with the impugned judgment and order. Therefore, we dismiss the petition. However, we direct the competent authority to consider the case of the respondent favourably in accordance with Rules, Regulations, Scheme and Government Resolutions as may be applicable, as expeditiously as possible and in any case within a period of six weeks from today.

4] There shall, however, be no order as to costs.

5] All concerned to act on the basis of authenticated copy of this order.

[M. S. SONAK, J.]

[V. M. KANADE, J.]

9. Quite pertinently the Hon'ble High Court directed the respondents herein "to consider the case of the respondent favourably in accordance with the Rules, Regulations, Scheme and Government Resolutions as may be applicable.....".

10. In the above background, I may now turn to the order which is impugned herein. It is in Marathi and is little longish one. The facts hereinabove set out are mentioned therein including the date of the death of the father of the applicant. It is further mentioned as to how the 1st OA was brought and a part of the order of this Tribunal is reproduced below.



It is mentioned that the father of the applicant was Group B employee and then the judgment of the Hon'ble High Court hereinabove quoted is also quoted therein. According to this particular document the Hon'ble High Court had only directed that the case of the applicant should be considered and not that he should be appointed. Now pausing here I find that the respondents have indulged in picking and choosing from the judicial orders above referred to. For example they have not read the order of this Tribunal in full and also the order of the Hon'ble High Court. I have already quoted above the order of the Hon'ble High Court especially the word 'favourably'. No doubt, it was open to the concerned authority to consider the case of the applicant but that had to be strictly in compliance with the judicial orders more particularly of the Hon'ble High Court. The reference to the various instruments that have been mentioned in the order of the Hon'ble High Court was necessary. Going further the order is woefully silent about the fact that the appointment of the said deceased as NT was purely temporary which aspect of the matter has been discussed at the outset. The whole order proceeds on the basis as if that was regular promotion and that in my opinion is a major flaw in the said impugned order. Even if the extensions were given as mentioned in the 1st OA, the elementary fact that he was not holding a regular post would not get altered. The burden of song is the fact that he was holding the post of NT and the order proceeds on the basis as if he was holding a permanent post. As far as the pay scales are concerned, if the order of this Tribunal in the first OA was there before the concerned authority it does not appear to be so because the judgment of the Hon'ble Bombay High Court in Dinesh (supra) was quite clear of which para 8 has been reproduced in para 6 hereinabove.

11. It is, therefore, very clear that the pronounced slant one way is quite apparent in the impugned order and both on the issue of the temporary nature of the appointment and the pay scale it falters and fails.



12. Quite pertinently except the two points discussed above, no other point was mentioned in the impugned order and, therefore, I am very clearly of the opinion that as far as any other segment was concerned, there was nothing wrong with the case of the applicant and I will have to proceed on that basis.

13. Shri Bandiwadekar, Ld. Advocate for the applicant relied on **OA No.967 of 2016 (Shri Aashutosh Subhash Kamble Vs. The State of Maharashtra & 2 Others, dated 10.4.2017)** which was again a case of compassionate appointment in which the 1st OA (of this very applicant) was referred to quite extensively.

14. As far as the 2016 clarificatory GR is concerned, it was heavily relied upon by the respondents (27.5.2016) which pertains to the pay scale aspect of the mater. Now, in the first place the present facts are pre 2016 and Dinesh (supra) rendered by our Hon'ble High Court was confirmed by the Hon'ble Supreme Court and that would be the governing authority. Further as far as clarificatory circulars are concerned, there is a judgment cited by Shri Bandiwadekar, Ld. Advocate in **Writ Petition No.5494 of 2000 (The State of Maharashtra and Others Vs. Shri Uttam Vishnu Pawar, dated 20.10.2000)**. It was held by Their Lordships that the clarifications issued to the instruments contrary to the GR would be almost non est. Therefore, if in the main GR and the judgment of the Hon'ble High Court and Hon'ble Supreme Court a certain result was produced then by clarificatory circular that result cannot be altered.

15. The Ld. PO relied upon OA No.18 of 2016 **(Shri Ravindra Dhondiram Suryawanshi Versus The State of Maharashtra & 2 Others,**



dated 18.11.2016 (Coram: Vice-Chairman). There the post was different and the governing rules were also different.

16. It is clear from the above discussion that the impugned order did not follow the directions of the Hon'ble High Court in the writ petition which was carried from the judgment on the first OA. And except for the points on which unsustainable reasonings are given as far as the other aspects are concerned there is no pitfall in the case of the applicant. I would, therefore, conclude by holding that this OA must succeed. Inasmuch as the impugned order fails on the anvil of the legal scrutiny and to repeat there was no other flaw in the case of the applicant necessary directions may straight away be given now. The applicant had applied for the compassionate appointment on 26.3.2012 and in my opinion directions be straight way be given to include his name in the waiting list for appropriate posting as on that date and if he has already become entitled to be given an appointment so be it.

17. The orders herein impugned stand hereby quashed and set aside. The applicant is held entitled to be appointed on compassionate grounds. The respondent is directed to include his name in the waiting list as it existed on 26.3.2012 and then process it accordingly. If he has become entitled to being appointed already then he be appointed. The compliance in any case within four weeks from today.

18. The OA is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)
18.7.2017

Dictation taken by: S.G. Jawalkar.