

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.967 OF 2016

DISTRICT : SANGLI

Shri Aashutosh Subhash Kamble.)
Age : 30 Yrs, Residing at Ramkrishna)
Paramhansa Society, Plot No.148, Sangli,)
District : Sangli.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education & Research Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Directorate of Medical Education)
And Research, Through its Director,)
St. Georges Hospital Compound,)
• Fort, Mumbai.)
3. Dean, Padmabhushan Vasantdada)
Patil Government Hospital, Sangli.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 10.04.2017

JUDGMENT

1. The Applicant being a son of the late Smt. Anuradha Subhash Kamble who while working as Sister in Padmabhushan Vasantdada Patil Government Hospital, Sangli died in harness succumbing to cancer on 9.4.2008. The Applicant's move to get appointment on compassionate ground came to be rejected by an order of October, 2013 on the ground that the said deceased was working in the pay scale of Group 'B' Non-Gazetted and hence, under the relevant G.R, the Applicant could not get compassionate appointment. This order as indicated just now is being impugned herein.
2. The said deceased was working in the pay scale of Rs.5500-9000. It is an admitted position that, if ultimately, it was found that she fell in the category of Group 'B' Non-Gazetted or Gazetted or Group 'A', the Applicant would be disentitled to claim appointment on compassionate ground because appointment on such a basis could only be granted to the dependent of an employee who was working either in Group 'C' or in Group 'D' for which, relevant pay scale is also provided.



3. The Applicant was born on 2nd March, 1986 and he turned 18 on 2nd March, 2004 when his mother was alive.

4. At Exh. 'R-1' (Page 62 of the Paper Book (PB)), the pay scales relevant herefor are given in so far as the post of Sister was concerned. Unrevised pay scale was 5500-9000 while the revised pay scale was 9300-34800 with Grade Pay of 4300. The post carrying a pay scale of not less than Rs.9000 and not more than Rs.11500/- fell in Group 'B'. That apparently is the reason why according to the Respondents, the Applicant would not be entitled to seek appointment on compassionate ground because her deceased mother would be in Group 'B' Non-Gazetted post.

5. That stand of the Applicant is inaccurate. There is a direct Judgment on the point at issue rendered by 2nd Division Bench of this Tribunal which spoke through me in **OA 1093/2012 (Shri Abhijeet V. Mulik Vs. The District Collector, Kolhapur, dated 18.2.2015)**. There, the post held by the ascendant of the Applicant was different, but his pay scale was the same as that of the mother of the present Applicant viz. Rs.5500-9000. In Para 8 of that particular Judgment, the 2nd Bench relied upon a Judgment of the Hon'ble High Court. It will be most



advantageous to fully reproduce Paras 8 and 9 from **Abhijeet Mulik** (supra).

“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 Scale 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.

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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."

9. This Bench in deciding a fasciculus of six Original Applications being **O.A.Nos.971 of 2010 and 5 others (Mangesh and others Vs. In-charge Dy. Director, C.E & T and one another, dated 30.10.2014)** applied the ratio that can be culled out from the above passage and granted relief to those Applicants who were so similarly placed as the Applicant in **Dinesh** (supra). The same ratio has, therefore, to be applied hereto on account of total fact similarity and on parity of reasoning. An order in line with the final order of our High Court in **Dinesh** will have to be made."

6. The above findings of this Tribunal based on the Judgment of the Hon'ble Bombay High Court would be fully applicable to the present matter and nothing more needs to be said or done thereabout.

7. **Abhijeet Mulik** (supra) was challenged by the State by way of **Writ Petition No.12445 of 2015 (The State of Maharashtra Vs. Abhijeet V. Mulik, dated 26th July, 2016)**. Their Lordships were pleased to hold that this Tribunal had directed the State to consider the claim of the Applicant in that matter on compassionate ground and did not specifically direct the actual appointment. However, the observations in Para 3 of Their Lordships need to be fully reproduced which are a clear pointer to the fact that the State was directed to consider the case favourably. Para 3 reads as follows :

“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.”

(emphasis supplied)

8. Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) relied upon a Judgment of this Tribunal at its Nagpur Bench in **OA 300/2014 (Mrunhal J. Rajpati Vs. The State of Maharashtra and 2 others, dated 28th August, 2015)**. In that particular matter, it appears that the fact that the ascendant of the Applicant was serving in Group ‘B’ was a given fact. She was working as Staff Nurse. More importantly, the judgment in **Mulik’s** matter confirmed by the Hon’ble High Court was not there before the Nagpur Bench and in my view, the facts in **Mulik’s** matter are closer and more apposite when compared with the fact such as they were in **Mrunhal Rajpati** (supra). Further, in that particular matter, the Hon’ble Bench in Para 5 took note of several facts which were personal to their Applicant on which ground also, the present OA is distinguishable. I would, therefore, conclude by holding that I must follow **Abhijeet Mulik’s** case which was confirmed by the Division Bench of the Hon’ble Bombay High Court which I do hereby do. It is made quite clear that once the matter is sent back to the Respondents to consider the matter, their approach should be to give an



impartial and objective treatment to the matter rather than adopting an unnecessarily rigid and obstructive attitude. The word, "consider" is being used as an expression of etiquette. If, there is no real impediment in the way of the success of the Applicant, then going by the phraseology 'consider', the Respondents shall not adopt an approach which would be suggestive of pointless rigidity and nitpicking.

9. The order herein impugned stand hereby quashed and set aside. The matter is remitted to the 3rd Respondent to reconsider the case of the Applicant in the light of the above observations, based on the Judgments hereinabove referred to and decide the matter as early as possible and in any case, within three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
10.04.2017

Mumbai
 Date : 10.04.2017
 Dictation taken by :
 S.K. Wamanse.