

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 606/2023 (S.B.)

Pradip S/o Narayan Balak,
Aged about 33 years,
Occ. Labour,
R/o Jamb, Post Chondhi,
Tah. Patur, District Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Water Resources,
Mantralaya, Mumbai – 400 032.
- 2) The Sub Divisional Officer,
Irrigation Sub Division No. 1, Akola,
Tah. & Dist. Akola.
- 3) The Executive Engineer,
Akola Irrigation Department,
Akola, Tah. & Dist. Akola.
- 4) Superintending Engineer,
Akola Irrigation Circle,
Akola, Tah. & Dist. Akola.

Respondents

Shri A.M.Tirukh, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondent no. 1.

Shri T.M.Zaheer, Id. counsel for the respondents 2 to 4.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated :- 26.04.2024.

JUDGEMENT

Heard Shri A.M.Tirukh, ld. counsel for the applicant, Shri M.I.Khan, ld. P.O. for the respondent no. 1 and Shri T.M.Zaheer, ld. counsel for the respondents 2 to 4.

2. The case of the applicant in short is as under:-

The father of the applicant was Class-IV employee with respondent no. 4. He died while working on the said post on 22.11.1998. The applicant became major on 11.01.2008. The applicant filed application for service on compassionate ground on 24.03.2009.

3. In view of G.R. dated 11.09.1996 and 20.05.2015, the department should inform the family of the deceased employee within 15 days from the death about the procedure of compassionate appointment and also to inform the family that such application can be filed within one year after attaining the majority of the legal heir, if such legal heir willing to be appointed on compassionate appointment is minor at the time of death of deceased employee. The respondents have never informed the family of applicant about the procedure of compassionate appointment at any point of time after the death of father of applicant. The applicant again requested on 29.03.2022 to provide appointment on compassionate ground. The respondent no. 4 forwarded the said proposal on 14.07.2022 to the respondent no. 1 and requested respondent no. 1 to condone the delay of 2 months and 13 days in filing

the application for appointment on compassionate ground. Respondent no. 1 issued communication on 20.03.2023 to the respondent no. 4 and informed the delay in filing the application for appointment on compassionate ground by the applicant is rejected. It is submitted that respondent no. 1 has failed to consider that after the death of father of applicant, the respondent nos. 2 to 4 not informed the family of applicant about the procedure of compassionate appointment and, therefore, the delay is caused due to the failure of respondent nos. 2 to 4.

4. The ld. counsel for the applicant has prayed to quashed and set aside the impugned communication dated 20.03.2023 (A-1) issued by the respondent no. 1 to the respondent no. 4 and also direct the respondents to grant appointment to the applicant on the compassionate ground.

5. The O.A. is strongly opposed by respondent nos. 2 to 4 by filing reply. It is submitted that as per the G.R. of 2017; the time limit is one year from the death of the employee for appointment on compassionate ground but applicant has not applied within one year after the attaining age of majority. The applicant was silent for a long period and in the year 2022 he moved application, therefore, long delay of 13 years cannot be condoned. Hence, O.A. is liable to be dismissed.

6. During the course of submission, ld. counsel for the applicant has pointed out Government G.R. dated 20.05.2015 and submits that as

per this G.R. power is vested to the Government to condone the delay upto three years after the attaining the age of majority of legal heir. The ld. counsel for the applicant has submitted that it was the duty of the respondents to inform the family members of the applicant about the procedure for appointment on compassionate ground. He has pointed out Government G.R. dated 20.05.2015. The ld. counsel for the applicant has submitted that application was submitted by the applicant on 24.03.2009. The letter/communication dated 05.04.2022 shows that concerned Clerk filed the said application without notice to the higher authority. Thereafter, the proposal was made by the Assistant Superintending Engineer, Akola on 14.07.2022 to the respondent no. 1 requesting to condone the delay as per Government G.R. dated 20.05.2015.

7. Ld. counsel for the applicant has pointed out the judgment of the Tribunal in O.A. No. 797/2019 and submitted that applicant was not at fault. It is for the respondents to inform about the procedure of appointment on compassionate ground, therefore, delay is liable to be condoned and direct the respondents to appoint the applicant on compassionate ground.

8. During the course of submission, ld. P.O. submits that now applicant is major in the year 2008. Now after 13 years, there is no any provision to appoint the applicant on compassionate ground, therefore, it

is liable to be dismissed. Ld. counsel for the respondent no. 4 submits that it is a huge delay on the part of applicant i.e. applicant approached first to the respondents in the year 2009 for appointment on compassionate ground, thereafter, the applicant remained silent for 13 years, and after 13 years the applicant again applied in the year 2022 which shows that the family of the applicant is not in need of any financial assistant. Hence, the Original Application is liable to be dismissed.

9. From the perusal of the documents, there is no dispute that applicant moved application for appointment on compassionate ground on 24.03.2009. The applicant became major on 11.01.2008. There is nothing on record to show that the respondent authority had informed the family members of the applicant about the procedure for appointment on compassionate ground. Clause 'B' of G.R. dated 20.05.2015 is also very clear which is reproduced below:-

ब) शासन निर्णय, सामान्य प्रशासन विभाग, दि. २३.०८.१९९६ मध्ये नमूद केल्यानुसार आस्थापना अधिका-यांने अनुकंपा तत्वावर नियुक्तीच्या योजनेची माहिती शासकीय कर्मचा-यांच्या मृत्यूनंतर १५ दिवसानंतर किंवा कुटुंब निवृत्तीवेतनाची कागदपत्रे पाठविताना शासकीय कर्मचा-यांच्या कुटुंबियांना त्वरीत उपलब्ध करून देणे आवश्यक आहे तसेच दिवंगत शासकीय कर्मचा-यांचा पात्र वारसदार सज्जान नसेल तर तो सज्जान झाल्यानंतर एक वर्षाच्या आत अनुकंपा तत्वावर नियुक्तीसाठी अर्ज करू शकेल मात्र तो सज्जान झाल्यावर त्याने असा अर्ज करणे अपेक्षित आहे हे देखील कुटुंब निवृत्तीवेतन धारकाला कुटुंब निवृत्तीवेतनविषयक कागदपत्रांची पूर्तता करतेवेळी लेखी कळविणे संबंधित आस्थापना अधिका-यांवर बंधनकारक राहील.

10. From the documents filed on record, it appears that the superior authority of the deceased employee was not aware about the application made by the applicant. The concerned Clerk accepted the application for appointment on compassionate ground and filed it without notice to the superior authority. Nothing on record to show that whether any action is taken against the said Clerk for such a conduct of dereliction/duty. It is very clear from the G.R. that it is for the authority to condone the delay. The para 'D' of the G.R. is reproduced below:-

ड) अनुकंपा तत्वावर नियुक्तीसाठी पात्र वारसदाराला अर्ज सादर करण्यास २ वर्षांपर्यंतचा विलंब क्षमापित करण्याबाबत:-

शासकीय कर्मचा-यांच्या मृत्यूनंतर १ वर्षाच्या आत अनुकंपा नियुक्तीसाठी पात्र वारसदाराने अर्ज सादर करणे आवश्यक आहे. तथापि १ वर्षानंतर २ वर्षे इतक्या कालावधीपर्यंत (मृत्यूच्या दिनांकापासून ३ वर्षांपर्यंत) अर्ज सादर करण्यास विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधीत मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात येत आहेत.

दिवंगत शासकीय कर्मचा-यांच्या अज्ञान उमेदवाराच्या बाबतीत तो उमेदवार सज्जान झाल्यावर त्याला अनुकंपा नियुक्तीसाठी अर्ज सादर करण्यास १ वर्षापेक्षा अधिक २ वर्षांपर्यंत (सज्जान झाल्याच्या दिनांकापासून ३ वर्षांपर्यंत) इतका विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधीत मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात येत आहेत.

11. There is no dispute that time limit for filing the application for appointment on compassionate ground is one year. But as per G.R. dated 20.05.2015, the respondent no. 1 can condone the delay upto three years. There was delay of 2 months and 13 days. The applicant has made

application on 24.03.2009 i.e. there is a delay of 2 months and 13 days. The respondents authority i.e. Assistant Superintending Engineer, Akola (Irrigation) Circle sent proposal on 14.07.2022 to respondent no. 1 and requested to condone the delay, but the proposal is not considered by the respondent no. 1 and rejected the same.

12. Ld. Counsel for the applicant has pointed out decision of this Tribunal in O.A. No. 797/2019. Para No. 5 of the judgment is reproduced below:-

5. The learned counsel for the applicant has pointed out the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in the case of Roshan Vitthal Kale & Ano. Vs. State of Maharashtra & Ors., 2021 (2) Mh.L.J.,236. The Hon'ble Bombay High Court has held that it was the duty of the department itself to explain the scheme of appointment on compassionate ground to the dependents of the deceased. If there was any delay, then that delay shall be condoned.

This Tribunal has held that it is duty of the respondents to explain the scheme of appointment on compassionate ground to the dependents of the deceased. Therefore, delay shall be condoned.

In view of the judgment of Hon'ble Bombay High Court in **Roshan Vitthal Kale & Another Vs. State of Mah. & Ors., 2021 (2) Mh.L.J., 236** delay is to be condoned. In the said judgment Hon'ble High Court held that it is the duty of the respondents department to inform the family members of the deceased about the procedure in respect of appointment on compassionate appointment. There is no dispute that respondent authority has never informed the family members about the procedure of appointment on compassionate ground. There is a delay of

only 2 months and 13 days for application on appointment on compassionate ground. The Clause 'D' of the G.R. dated 20.05.2015 is clear. As per this G.R. respondent no. 1 can condone the delay upto 3 years. There was delay of 2 months and 13 days only therefore, it was to be condoned by the respondent no. 1. Respondents 2 to 4 are responsible for not informing the family members of the deceased about the procedure as laid down in the G.R. dated 20.05.2015. Hence, the order:-

ORDER

- A. The O.A is allowed.
- B. The impugned communication dated 20.03.2023 (A-1) and 27.04.2023 (A-9) are hereby quashed and set aside.
- C. The respondents are directed to condone the delay of 2 months and 13 days for filing the application for appointment on compassionate ground.
- D. The respondents are further directed to provide the employment on compassionate ground as per law.
- E. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 26/04/2024.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 26/04/2024.
and pronounced on

Uploaded on : 02/05/2024.