

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, BOMBAY
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO.47/2016.

Suraj s/o Sindhubai Tak, Age 23 -years,
Occ. Student, R/o c/o Sharad Pawar,
Bhilwada, Tq. Paithan, Dist. Aurangabad.

.. APPLICANT

VERSUS.

1. The State of Maharashtra,
through Secretary,
Co-Operative Department
Mantralaya, Mumbai -32.
2. The Commissioner,
Co-Operation & Registrar of
Co-Operative Societies
Maharashtra State, Pune.
3. The Divisional Commissioner,
Aurangabad, District Aurangabad.
4. Divisional Joint Registrar,
Co-Operative Societies,
Aurangabad Division, Aurangabad.
5. The Assistant Registrar,
Registrar of Co Operative
Societies, Paithan, Tq. Paithan,
District Aurangabad.

...RESPONDENTS

APPEARANCE : Shri RH Wagh, learned Counsel for the
applicant.

: Smt SK Ghate Deshmukh, learned Presenting
Officer for respondents-State.

CORAM: : Shri J. D. Kulkarni, Member (J)

DATE: : 08.09.2016.

JUDGMENT.
(Delivered on 08/09/2016.)

1. The applicant in this case is claiming direction to respondent no.4 to consider his case for appointment on compassionate ground in any class IV category post. He is also claiming that, the communication dated 3.1.2013 issued by Respondent no.4 to him rejecting his claim for compassionate appointment be quashed and set aside.

2. The applicant's mother Sindhubai Tak was serving as Junior Clerk with Respondents. She was posted in Respondent no.5's office. She was appointed in 1990 and died on 30.5.1999 while in service. The applicant was aged about 7 years at that time and therefore, he could not file any application for appointment on compassionate ground. He attained majority on 28.10.2010 and immediately thereafter he filed application on 11.12.2012 for appointment on compassionate ground on any class IV post. His application came to be rejected on the ground that, it was necessary to file application for compassionate ground within five years after the death of his mother and since the application was filed at late stage it can not be considered.

3. According to the applicant he was under disability since he was minor and on attaining the age of majority he filed application. He was not knowing the rules and regulations that the application is to be filed within particular period. He therefore, claimed that, his application shall be considered on merits and he be appointed on compassionate ground.

4. The Respondents no.1,2 and 4 in their reply affidavit stated that as per G.R. dated 11.9.1996 the application for compassionate ground is to be filed within one year from the date of attaining majority. The date of birth of the applicant is 29.12.1992 and therefore, he has attained the date of majority on 28.10.2010, but the applicant has filed said application on 11.12.2012 and there is delay of more than 13 months for filing such application and therefore, it was rightly rejected.

5. Heard Shri R.H. Wagh, learned Advocate for the applicant and Smt. SK Ghate Deshmukh, learned Presenting Officer for the Respondents. I have also perused the affidavit, affidavit in reply as well as various documents placed on record.

6. The only material point is to be considered is whether the claim of the applicant has been rejected illegally on technical ground vide communication dated 3.1.2013 by the Divisional Joint Registrar, Co-operative Societies i.e. Respondent no.4 ?

7. The learned Advocate for the applicant submits that, even though as per the earlier Govt. Resolutions it was necessary for the applicant to submit his claim within one year after attaining majority the applicant was not knowing the said provision. Immediately after attaining the majority on 28.10.2012 the application was moved on 11.12.2012.

8. Perusal of the impugned communication dated 3.1.2013 however, does not refer to the G.R. wherein there was a provision as regards the date of application by minor on attaining the age of majority. In the impugned communication it is stated that the application should have been filed within five years from the date of death of employee. As per earlier GR dated 22.10.1994 the representation for filing an application for compassionate appointment was five years from the date of death of employee. Said representation however has been reduced to one year by further G.R.

However, said G.R. may not be applicable to the applicant as admittedly at the time of death of his mother the applicant was under disability being minor and therefore, the cause of action for the applicant arose for applying to the post on compassionate ground only on attaining age of majority. This fact is not considered in the impugned communication dated 3.1.2013.

9. The learned Advocate for the applicant has invited my attention to G.R. dated 20.5.2015, which is placed on record at Exh.R-1 at paper book page nos.67 to 69 (both inclusive). As per said G.R. the Govt. in its administrative department at Mantralaya is authorized to condone delay for filing application for appointment on compassionate ground by legal heirs of the deceased employee up to two years and therefore, the head of the administrative department in Mantralaya can condone the delay up to three years from the date of attaining majority. In view of this it was necessary for the Respondent no.4 to refer the applicant's case to the head of the department as per said Govt. Resolution.

10. The Respondents in their reply affidavit have stated that, the powers of condonation of delay are vested inherently with the Govt.

and not with office of Respondent no.4 and therefore, the Respondent no.4 has submitted proposal to the office of Respondent no.2 vide letter dated 21.1.2015 as per Annexure R-1. The office of the Respondent no.2 has recommended for considering the proposal of the applicant for condonation of delay by mentioning reasons that the applicant was not aware about the terms and conditions laid down in the Govt. Resolutions. It is further stated that, the Respondent no.2 has asked for remarks of the Respondent no.4 on the said proposal and the said remarks are already submitted. The documents in this regard have also been placed on record at paper book page nos.65 to 79 (both inclusive).

11. The learned Presenting Officer submits that the father of the applicant is business man and he did not apply in the name of applicant immediately after the death of Sindhubai Tak who died in the year 1999 and the application is moved in 2012. He submits that the application for appointment on compassionate ground is not under a bonanza and it is not vested right.

12. From the aforesaid circumstances, it is clear that, though the applicant's claim was rejected by Respondent no.3 on the ground that there was delay in filing application by applicant, the Respondent no.4

did not consider the fact that applicant was minor and the competent authority is empowered to condone the delay and the said proposal for delay is pending with the Govt. In such circumstances, without going into the merits of the claim direction can be issued to the Respondent no.1 to consider the applicant's claim for condoning the delay in filing application for appointment on compassionate ground. In view thereof, the following order.

ORDER.

- i) The Original Application is partly allowed.
- ii) The Respondent no.1 is directed to take proper decision on the proposal forwarded by Respondent No.4 for condonation of delay in filing application for appointment on compassionate ground and also to consider the case of the applicant on merits as per the various Govt. Resolutions without being infructuous by any of the observations made in this O.A.
- iii) The requisite decision shall be taken within three months from the date of this order and it be intimated to the applicant by R.P.A.D.
- iv) No order as to costs.

MEMBER (J)

