

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO.236/2014 (D.B.)**

Sudhakar son of Rajaram Gawai,  
Aged about 38 years,  
Occupation at present Nil,  
resident of Rithad, Tahsil Risod,  
District Washim.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai - 400 032.
  
- 2) The Collector,  
Washim, Kata Road, Washim,  
Tahsil and District Washim.

**Respondents.**

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Shri A.D.Dangore, Ld. Counsel for the applicant.  
Shri S.A.Sainis, Ld. P.O. for the respondents.

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**Coram:-** Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &  
Hon'ble Shri Nitin Gadre, Member (A).

**Dated:-** 29<sup>th</sup> October, 2024.

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**JUDGMENT**

**Judgment is reserved on 25<sup>th</sup> October, 2024.**

**Judgment is pronounced on 29<sup>th</sup> October, 2024.**

**Per : Member (A).**

Heard Shri A.D.Dangore, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The applicant has filed this application on 6.3.2014. The father of the applicant was working with the Revenue Department at Tahsil Office, Washim on the post of Peon in Class-IV (Class-D) post and retired from the service on 30.06.1998 on superannuation. The Government of Maharashtra had floated a scheme by G.R. dated 14.04.1981 and provided that a Class-IV employee can after his superannuation recommend name of his / her legal heir to whom a post from such a Class-IV category can be provided and he/she would be accordingly accommodated on the same post. The father of the applicant retired on 30.06.1998 when the scheme was in force and the applicant made number of applications to get a job. The applicant has claimed that even though he was not given an appointment some other persons were appointed under the scheme. The respondent no.2 informed the applicant on 05.03.2013 that he cannot be absorbed under the scheme since the same has been cancelled. The reliefs claimed by the applicant are as follows:

*(a) That, this Hon'ble Tribunal may kindly be pleased to quash and set aside the order/ communication dated 05.03.2013 (Annexure-A-8) issued by the respondent no.2-Collector, Washim and further direct the respondent no.2-Collector, Washim to provide and absorb*

*the applicant in any Class-IV post under the scheme (Annexure-A-2) or under any other scheme in the State Government Department;*

*(ii) To grant any other suitable relief to which the applicant is found entitled under the facts and circumstances of the present case and in the interest of justice.*

*(iii) To allow the application with cost;*

*10. Interim relief.*

*In view of the facts and circumstances, mentioned above, the applicant prays for the following interim relief -*

*(i) Pending hearing and decision on this application by appropriate interim order/relief be pleased to restrain the respondent no.2- Collector, Washim from filling any Class-IV post under him as per the aforesaid scheme contemplated under Government Resolution dated 14.04.1981 so as to protect the interest of the applicant;*

3. The respondent no.2 has submitted his reply dated 28.11.2014 on 14.01.2015. He has tried to explain why the applicant cannot be given a job, as follows:

*3. It is submitted that the office of this respondent no.2 maintained a regular for making appointment from among son/daughter from Class-IV category. Accordingly the name of applicant has been taken on the register maintained by office of this respondent no.2 i.e. Collector, Washim. The name of applicant is at Sr.No.19 in the said waiting list. It is further submitted that vide Government circular dated 14/04/1981 the condition of recommendation of the names for absorbing the son/daughter of retired Class-IV employee from employment office has been cancelled. The said Government circular 14/04/1981 is annexed by applicant as Annexure-A-2.*

4. *It is further submitted that as per the Government letter dated 9/12/1986 annexed herewith as Annexure-R-1. It is made clear by the government that it is not necessary or compulsory to absorb son/daughter of retired Class-IV employee as per Government Circular dated 14/04/1981. It is further clarified that the condition for absorbing son/daughter of retired fourth class employees in employment through employment office has been cancelled. Further it is submitted that there is no compulsion from the Govt. also to absorb the candidates.*

5. *It is mandatory as per the Government Resolution dated 19/11/2003 of G.A.D. to advertise the vacant post of Class-IV and therefore all the vacant post have been filled by publishing advertisement. The said Government Resolution dated 19/11/2003 is annexed herewith Annexure-R-2 for kind perusal of Hon'ble Tribunal.*

4. The applicant has filed a rejoinder on 16.02.2015. The material portion is as follows:

*That vide communication dated 26.09.2005 the respondent no.2-Collector, Washim had informed to the applicant that the waiting list is maintained by the respondent no.2-Office and whenever there will be vacancy the claim of applicant would be considered. Hereto annexed and marked as Annexure A-13 is the copy of communication issued by respondent no.2 to the applicant. As such it was incumbent on the part of respondent no.2 to consider the claim of applicant along with the other candidate in the year 2007 itself.*

5. *Further the respondent no.2 relied upon the Government Resolution dated 19.11.2003 by which the respondents has taken a stand that all the appointment should be made by calling advertisement. In this context it is submitted that if this was the position from 2003 onwards then how the respondent no.2 has issued*

*appointment order dated 10.09.2007 and 01.12.2007 to Shri Dehspande and Shri Rathod in the year 2007. Therefore the contentions raised in this behalf is contrary to the act done by the respondent no.1 and more particularly when the applicant is at Serial No.19 and was eligible right from beginning to be considered and appointed as against the Class-IV employees scheme and therefore the claim of applicant needs to be considered prior to the claim of Shri Rathod who stand at Serial No.20. Thus, the applicant is entitled for issuance of appointment order as claimed in the original application, forthwith.*

5. The applicant has filed an additional affidavit dated 24.11.2015. In this, he has claimed that the appointment order to him can be issued since vacancies are available with the respondents.

6. In another additional Affidavit submitted on 16.8.2019, the applicant has stated that no advertisement is required for appointment on compassionate ground and 2 persons were appointed in the year 2007 without any advertisement. The material portion of this affidavit is as follows:

*2. It is submitted that the State of Maharashtra has also issued Government Resolution dated 09.01.2003, wherein the claim of the candidates for considering the compassionate appointment is given and the clause 3.2 deals with the consideration of claim by the appointing authority while considering the claim of the wards of retired class-IV employees including others like legal heirs of freedom fighter, project affected persons etc. Thus, it is clear that the State of Maharashtra time to time has given reservation for the aforesaid candidates for considering the compassionate appointment of the*

*employee. Copy of Govt. Resolution dated 9.1.2003 is annexed as Document No.3.*

*Thus it is crystal clear that there was no advertisement while issuing appointment orders in favour of Prashant Deshpande and Anil Rathod on 10.09.2007 and 01.12.2007 respectively and their candidature was considered as per the seniority list maintained by the respondent no.2-office, which is already annexed by the applicant with the original application at page no.28.*

7. The main argument of the learned Council for the applicant is that the 14.04.1981 Circular is still in force and since two persons were appointed in the year 2007 based on this Circular, the applicant should also be considered for giving an appointment. The learned P.O. argued that the 14.04.1981 Government Circular is regarding exemption in the procedure about getting a recommendation from the Employment Exchange Department. The scheme of compassionate ground is not applicable to a son/daughter of the retired employee.

8. The relevant Government orders are listed below:

Government had issued a Circular on 14.4.1981. These instructions are in the form of a Circular and not of a Government Resolution or Rules framed in this regard. The requirement of getting recommendation from the Employment Exchange Department has been relaxed for the children of retired Class-IV employees, vide this

Circular. The Government vide letter dated 09.12.1986 written to the Collector, Bhandara has made it is clear that the 14.04.1981 Circular does not mean that it is compulsory for the Government to give job to the child of a retired Class-IV employee. In the G.R. dated 19.11.2003, the Government has given directions as follows:

मा. सर्वोच्च न्यायालयाच्या उपरोक्त सूचनांनुसार असे आदेश देण्यात येत आहेत की, शासकीय / निम शासकीय कार्यालये, महामंडळे, सहकारी संस्था, स्वायत्त संस्था, सार्वजनिक उपक्रम इ. च्या अधिपत्याखालील सर्व कार्यालयामधील रिक्त पदे भरताना (महाराष्ट्र लोकसेवा आयोगाच्या कक्षेत येणारी पदे वगळून) रोजगार व स्वयंरोजगार मार्गदर्शन केंद्राकडून (सेवायोजन कार्यालये) ज्येष्ठतेनुसार यादी प्राप्त करून घेण्यात यावी. त्याचबरोबर रिक्त पदांबाबतची जाहिरात सर्व प्रसार माध्यमांतून (वर्तमानपत्रातील माहितीद्वारे, दूरदर्शन, रेडिओ, नोटीस बोर्ड इ.) प्रसिध्दी देऊन अर्ज मागविण्यात यावेत व वरील दोन्ही प्रकारे प्राप्त होणा-या याद्यांमधून / अर्जांमधून पात्र उमेदवारांची विहित पद्धतीनुसार निवड करण्यात यावी.

There is another G.R. dated 09.01.2003. The relevant portion of the G.R. is as follows:

"३.२ सर्वसाधारणपणे शासकीय विभाग अथवा कार्यालयामधील मंजूर पदांपैकी कोणतेही पद कोणत्याही कारणास्तव ६ महिन्यांपेक्षा अधिक कालावधीसाठी भरण्यात आलेले नाही, म्हणजेच रिक्त राहिले तर असे पद आपोआपच व्यपगत ठरेल. तथापि, अनुसूचित जाती, अनुसूचित जमाती, इतर मागासवर्ग आणि विमुक्त जाती व भटक्या जमाती, महिला आणि शारिरिकदृष्ट्या अपंग व्यक्ती या सामाजिक घटकांना जे घटनादत्त, कायदेशीर अथवा प्रशासकीय आरक्षण आहे त्या आरक्षणानुसार तत्संबंधीची आरक्षित पदे कोणत्याही कारणास्तव ६ महिन्यांपेक्षा अधिक कालावधीसाठी रिक्त राहिली तरी व्यपगत होणार नाहीत.

अशा प्रकारच्या आरक्षण पदांपैकी ९० टक्के पदे प्रधान सचिव (व्यय) व प्रधान सचिव (प्र.सूर.वं का.), सामान्य प्रशासन विभाग तसेच उच्चस्तरीय सचिव समितीच्या पूर्व मान्यतेशिवाय शासकीय विभाग आणि कार्यालये यांना भरता येतील. अशा प्रकारची सर्व आरक्षणाची रिक्त पदे भरताना संबंधित शासकीय विभाग अथवा कार्यालयाच्या नियुक्ती अधिकाऱ्याने स्वातंत्र सैनिकांचे वारस, सन १९९१ चे कार्यमुक्त जनगणना कर्मचारी, अंशकालीन कर्मचारी, सेवानिवृत्त चतुर्थश्रेणी कर्मचाऱ्यांचे वारस, अनुकंपा तत्वावरील नियुक्ती करावयाचे उमेदवार, प्रकल्पग्रस्त उमेदवार या प्रवर्गामधील घटनादत्त आरक्षण असलेल्या उमेदवारांचासुद्धा नियुक्तीसाठी विचार करावा.”

9. It is clear from the Circular dated 14.04.1981, that the condition of getting recommendation from the Employment Exchange Department has been relaxed for the children of Class-IV retired employees. This Circular doesn't have any mention that the children become eligible for Direct Recruitment and these recruitments are to be done under the compassionate ground recruitment scheme where the process of giving an open advertisement, conducting a competitive exam etc. is not to be followed. Neither, the G.Rs. regarding the compassionate ground recruitment scheme have any mention about eligibility of the children of retired employees. It seems that only a limited relief of granting exemption of recommendation from the Employment Exchange is given by this 1981 Circular. Hence, without any specific policy declaration by the Government, this relaxation cannot be interpreted that the scheme of compassionate ground recruitment



was extended or a Direct Recruitment without following any competitive process has been made available for the children of retired Class IV employees by this 14.04.1981 Circular. But, it is also evident that a few direct appointments were given to the children of retired Class-IV employees in the past based on the 1981 Circular. The Hon'ble High Court in its order dated 13.03.2015, given in Writ Petition 11408 of 2014 with others, had directed the Government not to make any further appointments based on this 1981 Circular. The applicant has filed another Judgment dated 25.09.2018 by the Hon'ble High Court in the same W.P.No. 11408 of 2014 with others. The relevant part of the Judgment is as follows:

*(b) We make it clear that the issue of legality and validity of the appointments of the petitioners remains expressly kept open which will have to be considered by the State Government while passing the orders on show cause notices;*

The General Administration Department had written to the applicant on 18.11.2020 that the Government will be taking appropriate action in consultation with Law and Judiciary Department, in view of this Judgment dated 25.09.2018. The State Government is expected to examine validity and legality of the appointments done under the 14.04.1981 Circular. If these appointments were not valid or legal, then the remaining candidates

including the applicant will have no right to ask for appointments under this Circular just because some other persons were appointed in the past. If the Government concludes that the appointments made based on the 14.4.1981 Circular are legal and valid, then the remaining eligible candidates who had applied during the period when the Circular was valid, but were not appointed, will have to be considered for giving appointments based on their seniority or suitable criteria fixed in this regard. We therefore pass the following order:-

### **ORDER**

1. The O.A. is partly allowed.
2. The Respondent No.1, should clarify the legality and validity of appointments made under the 14.04.1981 Circular within three months from the date of this order.
3. The Respondent No.2 should consider application by the applicant for appointment on compassionate ground on its own merit and in accordance with the policy and clarification given by the respondent no.1 as per para 2 of this operative order within four months from the date of this order. The applicant should be informed about this decision forthright.

4. No order as to costs.

**(Nitin Gadre)**  
**Member(A)**

**(Justice M.G.Giratkar)**  
**Vice Chairman**

Dated – 29/10/2024  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.  
Court Name : Court of Hon'ble Vice Chairman  
& Hon'ble Member (A).  
Judgment signed on : 29/10/2024.  
and pronounced on