

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 113/2024(D.B.)**

Rajesh S/o Vaikunthrao Vedi,
A/o : 51 yrs Occ.: Awaal Karkoon,
R/o. Plot No. 11, Near Durga Mandir,
Tulsi Nagar, Nagpur- 440002.

Applicant.

Versus

1. State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32.
2. State of Maharashtra,
Through its Secretary,
General Administrative Department,
Mantralaya, Mumbai - 32.
3. The Divisional Commissioner,
Nagpur Division, Nagpur.
4. The Collector,
Dist. Nagpur.

Respondents.

Shri G.N.Khanzode, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated:- 06th August, 2024.

JUDGMENT

Heard Shri G.N.Khanzode, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the Respondents.

2. The learned P.O. has filed reply of respondent no.3 and 4. It is taken on record. Copy is supplied to the learned counsel for the applicant. The O.A. is already admitted for final hearing.

3. The Case of the applicant in short is as under-

The applicant was appointed as a Junior Clerk on 28.06.1991 in the office of Tahsil Bhiwapur. The applicant was appointed on compassionate ground. The applicant was not appointed on the reserved post category. Therefore, there is no necessity for the applicant to produce Caste Validity Certificate. The respondents have issued order dated 28.01.2020 directing the respondents to place the applicant on supernumerary post because the applicant not produced the Caste Validity Certificate.

4. The applicant made representation on 17.03.2020 stating that he was appointed on compassionate ground therefore there was

no necessity to produce Caste Validity Certificate. The respondents have not considered the representation made by the applicant. Therefore, applicant approached to this Tribunal for the following reliefs-

- i. Quash and set-aside the impugned order dated 03/12/2023 and 28/01/2020 issued by the Respondent no. 4 appointing the applicant on temporary basis for period of 11 months against Supernumerary post, being arbitrary unreasonable and illegal.*
- ii. Be further pleased to declare and hold that the grievance of the applicant is squarely covered by the decision of the Respondent No.2 dated 07/04/2021 in the Original Applications nos. 128 to 131 of 2020 filed by similarly placed applicants before this Hon'ble Tribunal.*
- iii. Be further please to quash and set-aside the condition vide clause 1(b) and (c) incorporated in the G.R. dated 21.12.2019 issued by Respondent No. 2 being un-constitutional and illegal.*
- iv. By way of ad-interim relief stay the effect and operation of order dated 28/01/2020 issued by Respondent No. 4 being against the legal position and unreasonable, during pendency of the present application to meet the ends of justice.*
- v. Be further pleased to direct respondent no. 1 & 4 to release the annual increment of the applicant and grant time bound promotion as per G.R. dated 14/12/2022 as has been granted to the similarly placed employees in the state.*
- vi. Any other relief as this Hon'ble court deems fit under the facts and circumstances of the case.*

5. The respondents have filed reply and supported the impugned order.

6. Heard learned counsel for the applicant. As per his submission, the proposal was made by the Collector, Chandrapur in respect of some of the employees who were appointed on compassionate ground and Freedom Fighter Category. They were kept on the supernumerary post because of non-production of Caste Validity Certificate. The proposal of the Collector, Chandrapur was accepted by the Government on 07.04.2021. The Government has taken decision that Shri R.B.Sorter, Shri T.N.Chandekar, Ms.S.R.Khadilkar and Shri P.B.Dhakate were appointed on compassionate ground / Freedom Fighter Category. They were not appointed in a reserved category. Therefore, the Government has accepted proposal made by the Collector stating that they should not be kept on supernumerary post.

7. The learned counsel for the applicant has submitted that the applicant is a similarly situated employee and therefore the respondents should have taken the same decision. In support of his submission pointed out the decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Arvind Kumar Shrivastav and Others (2015) 1 SCC 347 decided on 17.10.2014.**

The learned counsel for the applicant has pointed out the Government Resolution / Circular dated 28.02.2017. It is reproduced below-

CIRCULAR

1. The Hon'ble Maharashtra Administrative Tribunal, Mumbai, vide order dated 14.12.2016 in O.A. Nos. 59, 61 and 90 of 2016, has expressed displeasure over rejection of the claim of the applicants therein, for grant of Time Bound Promotion on the ground that the applicants had declined to accept temporary promotions, though in similar matters Hon'ble Tribunal has allowed the OAs and order of the Tribunal has attained finality.

2. The Hon'ble Tribunal, in Para 8 of aforesaid Judgment, has observed as under:-

"If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply."

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. The Hon'ble Supreme Court in the case of State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347 has laid down similar principle, thus:

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved

by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently".

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court.

5. The aforesaid directions be also brought to the notice of the offices under the administrative control of the departments."

8. The learned counsel for the applicant has pointed out the decision of the Hon'ble High Court, Bench at Aurangabad in the case of **Mangal Manohar Salunke @ Mangal Balbhim Jagde Vs. State of Maharashtra and Others decided on 23.07.2020** and the Judgment of this Tribunal in O.A.No.171/2020 decided on 13.03.2024.

9. There is no dispute that the applicant was appointed on compassionate ground. The State Government has taken decision in respect of similarly situated employees that who were appointed on compassionate ground need not to produce any Caste Validity Certificate and they should not be kept on supernumerary post. The Government should have acted by taking similar decision in respect

of applicant in view of the Government Circular / G.R. dated 28.02.2017.

10. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Mangal Manohar Salunke @ Mangal Balbhim Jagde Vs. State of Maharashtra and Others** has held in para 4 as under-

4. It is not in dispute that upon death of the husband of the petitioner, the petitioner has been appointed on compassionate ground. This Court has consistently held that a person appointed on compassionate ground upon death of an employee, is not required to submit the validation certificate.

11. This Tribunal in O.A.No.171/2020 has held that the person who is appointed on compassionate ground need not to produce the Caste Validity Certificate because he was not appointed in a reserved category in a regular appointment. The Hon'ble Bombay High Court in the above cited Judgment has held that there is no need to produce any Caste Validity Certificate to the employees who are appointed on compassionate ground.

12. The applicant was appointed on 20.06.1991 on compassionate ground. Appointment order is at page 23. It shows that applicant was appointed on compassionate ground. Confirmation order is at page 25, the name of applicant is at Sr.No.104 and it shows that services of the applicant are now confirmed.

13. The applicant was appointed as per order dated 20.06.1991 on compassionate ground. Therefore, in view of the above cited Judgment, the applicant was not required to produce any Caste Validity Certificate. The respondents have wrongly taken decision as per order dated 20.01.2020 to keep applicant on supernumerary post. Hence, the impugned order dated 20.01.2020 to keep the applicant on supernumerary post is liable to be quashed and set aside. Therefore, we pass the following order –

ORDER

1. The O.A. is allowed.
2. The impugned order dated 28.01.2020 is hereby quashed and set aside.
3. The respondents are directed to pay all the consequential benefits to the applicant within a period of six months from the date of receipt of this order.
4. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 06/08/2024.
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 : 06/08/2024.
and pronounced on
