

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO. 1820 OF 2018

The State of Maharashtra
Versus
Abhijeet Vishwas Mulik

...Petitioner

...Respondent

Mr. O. M. Kulkarni – AAGP for State – Petitioner.
Mr. Manoj Patil for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 10 APRIL 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 18th February 2015 made by the MAT in Original Application No. 1093 of 202 instituted by the respondent.

4] Mr. Kulkarni, the learned AAGP for the petitioner submits that since, the father of the respondent had been promoted on 20th June 2011 to the post of Naib Tahsildar (Group 'B' post), in terms of GR dated 28th March 2001, the respondent, was not entitled to benefit of compassionate appointment. He points out that in terms of the GR dated 28th March 2001, the dependents of only Group 'C' and 'D' employees are eligible to be considered for compassionate appointment. He submits that since the MAT, has not at all considered this aspect in the proper perspective, the impugned judgment and order warrants interference.

5] Mr. Manoj Patil, the learned counsel for the respondent submits that the respondent's father was promoted on purely *ad hoc* basis for three months. He submits that substantive appointment of the respondent's father, at the time of his demise, hardly six months after the date of such *ad hoc* promotion, continued to be in Group 'C'. Therefore, Mr. Patil submits that the respondent, was entitled for compassionate appointment. He submits that this issue is no longer *res integra*. The Division Bench of this Court

(Aurangabad Bench) in the case of ***Dinesh vs. The State of Maharashtra [Writ Petition No. 5440 of 2009 decided on 5th February 2010]***, has already held that such *ad hoc* and temporary promotions do not entitle the promotee to claim status as Group 'B' employee. Mr. Patil submits that the MAT, has considered all these aspects and there is absolutely no jurisdictional error in the view taken by the MAT. For all these reasons, Mr. Patil submits that this petition may be dismissed with costs.

6] The rival contentions now fall for our determination.

7] From the record, it is clear that the respondent's father, who substantively held a Group 'C' post, was promoted purely on temporary basis for three months vide order dated 20th June 2011 to a Group 'B' post i.e. Naib Tahsildar. The promotion orders specifically states that the same was purely on temporary basis for three months. The MAT, in paragraph 3 has prescribed conditions subject to which such temporary promotion had been given. The conditions, *inter alia* stipulated that such promotion was mere *ad hoc* and entailed automatic termination after

period of three months; and that the promotion was subject to the approval of the Maharashtra Public Service Commission (MPSC). The MAT has noted that it was not even the case of the State that MPSC's approval was either sought, or if was sought, the same was given. In these circumstances, the MAT, was quite right in holding that the father of the respondent was not a Group 'B' employee and therefore, in terms of the GR dated 28th March 2001, there was no bar to the consideration of the case of the respondent for appointment on compassionate basis.

8] In this case, hardly within six months from the date of such temporary and *ad hoc* promotion, the respondent's father died on 19th December 2001. In such circumstances, there was no question of denying the respondent consideration of compassionate appointment by invoking the GR dated 28th March 2001. There is absolutely no error in the view taken by the MAT.

9] The MAT, has also placed reliance upon the *Dinesh* (supra) and decisions in ***Original Application No. 971 of 2010 and 5 others (Mangesh & Ors. vs. In-charge Dy.***

Director, C.E. & T & Anr., decided on 30th October 2014), in which, the view, similar to that in *Dinesh* (supra) was taken by the MAT. Again, this is an additional reason for not interfering with the order of the MAT.

10] For the aforesaid reasons, we see no merit in the present petition. The Rule is therefore discharged with no order as to costs.

11] The petitioner to comply with the impugned judgment and order dated 18th February 2015 as expeditiously possible and in any case, within a period of three months from today.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA