

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12212 OF 2017

The State of Maharashtra and ors.	...Petitioners
Versus	
Aashutosh S. Kamble	...Respondent

Mr. O.M. Kulkarni, AAGP for the State / Petitioners.

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

DATE : 16th APRIL 2018.

ORAL JUDGMENT:

1] Heard Mr. Kulkarni, learned counsel for the petitioners.

2] The challenge in this petition is to the judgment and order dated 10th April 2017 in O.A No. 967 of 2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai instituted by the respondent.

3] Mr. Kulkarni, learned AAGP for the petitioners- State, submits that the MAT has exceeded its jurisdiction in directing the State to consider the case of the respondent

for compassionate appointment on account of demise of his mother Anuradha S. Kamble, who died in harness. He submits that the respondent's mother Anuradha was a Group-B employee and in terms of Government Resolutions (G.Rs) dated 28th March 2001 and 2nd July 2002, scheme of compassionate appointment is applicable only to dependent family members of Group - C and Group -D employees. Mr. Kulkarni submits that since the respondent's mother Anuradha was a Group - B employee, the respondent was not at all eligible to the benefits of compassionate appointment. On this ground, Mr. Kulkarni submits that the impugned judgment and order is liable to be set aside.

4] The MAT has quite correctly held that the issue involved in the present case was in no longer *res integra*. In this regard, the MAT has relied upon its judgment and order dated 18th February 2015 in O.A. No. 1093 of 2012 (**Abhijeet V. Mulik vs. The District Collector, Kolhapur**). The MAT has noted that in case of *Abhijeet Mulik (supra)*, the MAT has relied upon the judgment and order dated 5th February 2010 of the Division Bench of this

court at Aurangabad Bench (*Coram: A.M. Khanwilkar, as His Lordship then was and S.S. Shinde, JJ*) in Writ Petition No. 5440 of 2009 (***Dinesh S. Sonawane vs. The State of Maharashtra and ors.***). The special leave petition CC No. 16998 of 2011 questioning the judgment and order dated 5th February 2010 in *Dinesh Sonawane (supra)* was dismissed by the Hon'ble Supreme Court on 3rd November 2011. Since, the MAT, in the present case, has merely followed its earlier decision in *Abhijeet V. Mulik (supra)* as well as the decision of the Division Bench of this court in *Dinesh (supra)*, we are unable to agree with the contention of Mr. Kulkarni that the MAT, in the present case, has exceeded its jurisdiction.

5] Incidentally, it is necessary to note that by judgment and order dated 10th April 2018, this Bench dismissed Writ Petition (St) No. 1820 of 2018 challenging the judgment and order dated 18th February 2015 in *Abhijeet V. Mulik (supra)*.

6] In the present case, there is no dispute that the respondent's mother Anuradha was working as a Sister

(Nurse) in Padmabhushan Vasantdada Patil Government Hospital, Sangli in the pay scale of Rs.5500-9000. In case of *Abhijeet V. Mulik (supra)* and *Dinesh (supra)* as well, the concerned Government employee on account of whose demise the claim for compassionate appointment came to be made were also drawing salary of Rs.5500-9000.

7] In such circumstances, the Division Bench of this court (Aurangabad Bench) rejected the contention based upon GR dated 2nd July 2002 at paragraph 5 and held as follows:

"In so far as Group-C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group-C category. As aforesaid, it is not in dispute that the Pay Scale of late Smt. T.D. Sonawane was Rs.5500-9000/-. The natural meaning to be assigned to the above Clauses, in our opinion, is that if the Pay Scale is between Rs.4400/- up to Rs.9000/-, such cases would be covered by Group-C category, whereas if the Pay Scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group-B category. If any other interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the Pay Sale of Rs.9000/- will be covered in Group - B category as well as Group-C category since Pay Scale of Rs.9000/- is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is covered in Group-B category, cannot be sustained. That stand will have to be stated to be

rejected since admittedly the Pay Scale of the petitioner's predecessor was Rs.5500-9000.”

8] Relying upon *Dinesh (supra)*, the MAT has not only decided *Abhijeet Mulik (supra)* but also a batch of six O.A.s, being O.A. No. 971 of 2010 and five others to which, the State of Maharashtra, was a party. The decision in these matters do not appear to have been challenged by the State.

9] The petitioners- State cannot pick and choose the matters, in which, it will challenge virtually identical decisions of the MAT. In any case, the challenge having once failed in *Dinesh (supra)*, it is neither legal nor appropriate that the petitioners – State repeatedly raise the very same challenge in some similar, but selected matters.

10] For all the aforesaid reasons, we dismiss this petition. Since no notice was issued to the respondent or in any case, since, the respondent has not appeared, we refrain from imposing any costs upon the petitioners – State.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)