

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1071 OF 2019

Shri. Nikhil Maruti Gosarade)
Age 31 years, Occ. Nil,)
R/o. 'Shri Datta Kripa Banglow',)
Near Maheshwari Garden Mangal)
Karyalaya, New M.S.E.B. Dhamani)
Road, Vishrambag, Sangli.) **..Petitioner**

Versus

1. The District Collector, Sangli,)
Rajwada Chowk, Sangli.)

2. The District Collector, Solapur)
Solapur, Tal.- Mangalweda,)
Dist. Solapur)

3. Division Commissioner)
(Revenue), Sadhu Vaswani Council)
Hall, Pune Camp Pune, Vidhan Bhavan)
(Marathi) M.G. Road, Pune.) **..Respondents**

.....

Mr.Abhijit Kulkarni i/b Mr. Sachin Hande for Petitioner.
Mr.Karan Thorat, AGP for State.

.....

CORAM :- SUNIL P. DESHMUKH &
G. S. KULKARNI, JJ.

Reserved on :- 5th MAY, 2021
Pronounced on :- 15th JUNE, 2021.

JUDGMENT: (Per G.S.Kulkarni, J.)

1. The moot question which arises for consideration in the present proceedings is as to whether the petitioner could maintain an application for appointment on compassionate ground, when his

deceased father was an ad-hoc promotee to a Group B post and whose promotion was never confirmed.

2. The assail as mounted in this petition is to the judgment and order dated 25 June, 2018 passed by the Maharashtra Administrative Tribunal (for short 'the tribunal'), whereby the petitioner's Original Application No. 70 of 2018 was rejected by the tribunal, confirming an order dated 13 November 2017 passed by respondent no.3-Divisional Commissioner (Revenue), rejecting the petitioner's application for compassionate appointment, on a post falling under Class-III.

3. We note the relevant facts :

In the year 1985, petitioner's father Maruti Ganpat Gosarade (for short '**late Maruti**') entered State Government service, as a Clerk in the Office of District Collector at Sangli. As stated before the tribunal, his entire service tenure was unblemished. By an order dated 11 June 2013, issued in favour of late Maruti, he was granted an ad-hoc promotion to the post of Election Naib Tahsildar (a Group B post) and was so posted at Mangalweda, District Solapur. On 7 December 2016, Maruti expired in harness, in an accident. A certificate was also issued by the Tehsil office, Mangalweda on 2 January, 2017, certifying

that *'late Maruti-Election Naib Tahsildar, expired while on duty'*.

4. Late Maruti left behind him, his legal heirs Smt.Shobha Maruti Gosarade, wife(widow), Mr.Nikhil Maruti Gosarade, son (petitioner) and Sou. Nivedita Sachin Rajmane, (married daughter). As a consequence of the sudden death of the sole breadwinner, late Maruti's family was left in a financial crisis, affecting their very livelihood. In an attempt to tide over such crisis, the petitioner being the only family member who could take up an employment, submitted an application dated 22 December, 2016 with the respondents for compassionate appointment on the post of "a Clerk" in the office of respondent no.2. Such application was made on 23 December, 2016. Another dated 28 December, 2016, was submitted by him in the office of respondent no. 3-Divisional Commissioner (Revenue Camp) at Pune. Such application for compassionate appointment was made by the petitioner without delay and/or immediately after the death of his late father Maruti. Respondent no. 3, however, by a communication dated 20 January, 2017, rejected the petitioner's application for compassionate appointment, recording that as his late father was promoted as 'Election Naib Tahsildar', which was on a Group 'B' post, as held by him at the time of his death, the petitioner was not eligible for compassionate appointment. The reason being, such appointment

cannot be made when the employees who belong to Group 'A' and 'B' die in harness.

5. The petitioner being aggrieved by such decision of respondent no. 3 approached the tribunal in Original Application no. 574 of 2017. The tribunal by an order dated 18 September 2017 disposed of the said proceedings, whereby it quashed respondent no.3's order dated 20 January, 2017, rejecting the petitioner's application for compassionate appointment and issued directions to the respondents to decide the case of the petitioner in the light of the decision of Division Bench of the tribunal in the case of **Shri Abhijeet Vishwas Mulik vs. The District Collector** dated 18 February, 2015 delivered in Original Application No. 1093 of 2012. The petitioner thereafter made further representations dated 6 October, 2017, 14 October, 2017 and 16 October, 2017 also enclosing therewith a copy of the tribunal's order.

6. By a fresh order dated 13 November, 2017 passed by respondent no.3, again petitioner's application for compassionate appointment came to be rejected primarily on the same ground, namely, that the petitioner's father at the time of his death was holding the post of Election Naib Tahsildar, which was a Group 'B' post, hence the petitioner was not eligible for appointment on compassionate ground.

7. Petitioner was of the firm opinion that it was not permissible for respondent no. 3 to reject the petitioner's application on the same ground on which his application for compassionate appointment was earlier rejected on 20 January, 2017. The petitioner hence filed a Contempt Petition before the tribunal, however, the same was permitted to be withdrawn to enable him to file a substantive original application before the tribunal, so as to challenge the fresh decision of respondent no.3 dated 13 November, 2017. The petitioner, accordingly, filed the original application in question, interalia, praying for setting aside of the said order dated 13 November, 2017 passed by respondent no. 3 rejecting the petitioner's application for compassionate appointment. He made a further prayer that a direction be issued to the respondents to grant appointment to the petitioner on a Class-III post of Clerk/Talati on compassionate ground.

8. Case before the tribunal:-

The petitioner contended that the reason for rejection of his application for compassionate appointment, namely that the petitioner's father was working on a Group 'B' post, was not only wholly erroneous and illegal but was also contrary to the record. He contended that his father late Maruti substantively belonged to a non-gazetted post in

Group 'C', as he was promoted as Election Naib Tahsildar purely on ad-hoc basis, which was ex-facie clear from the promotion order dated 11 June, 2013 issued to him. He contended that, as the promotion granted to his late father was not a regular promotion but a mere ad-hoc promotion, there was no vested right in the petitioner's father to regularly hold the said promotional post in the absence of a regular promotion order. The petitioner contended that also the ad-hoc promotion order dated 11 June 2013 issued to his late father, did not refer to any pay scale, in which, the salary could be drawn. He contended that the specific conditions as set out in the said promotion order, for the ad-hoc promotion to be regularised, never materialized. According to the petitioner, the cumulative effect of all such factors, necessarily is to the effect that the petitioner's father at the time of his death was holding a post and/or was an employee in the Group 'C' cadre. The petitioner hence contended that he was entitled to claim a compassionate appointment in the Group 'C' post. In the alternative, the petitioner also contended that the post of Naib Tahsildar was not a gazetted post as also seen from the promotion order. The petitioner also contended that as observed by the tribunal, the petitioner's case was fully covered by the decision of the tribunal in **Shri Abhijeet Vishwas Mulik** case which has been completely overlooked and/or given a go-by by respondent no.3 although there was a specific direction to

that effect in the earlier order passed by the tribunal on the petitioner's original application. Although there were other grounds of challenge, we need not detail them, having already set out the principal grounds, as asserted by the petitioner.

9. Respondent no.3 contested the original application by filing a reply affidavit of Dagadu Sukhdev Khumbar, working as Tahsildar (Revenue) in the office of Divisional Commissioner, Pune Division, Pune. As to how a Tahsildar could file an affidavit, when the decision was taken by respondent no.3 is another question, as at least from the record we do not find anything which precluded respondent no.3 to file an affidavit to justify his decision. Be that as it may, by the affidavit it was, inter alia, contended that the petitioner's father belonged to Group 'B' post of Naib Tahsildar, as the general promotion order dated 11 June 2013 for certain names (Sr.nos.1 to 32), (which included the petitioner's father at Serial No.7), specifically set out that such candidates were promoted on regular basis. It was contended that as per Government Resolution dated 13 November 1998 the post of Naib Tahsildar was declared as Group 'B' post. While dealing with the petitioner's contention that it was only an ad-hoc promotion, granted vide promotion order dated 11 June 2013 issued in favour of petitioner's late father, the respondent's case was that the petitioner's

late father was granted temporary/ad-hoc promotion for 11 months, as per the routine procedure, and for the reason that petitioner's father was not reverted back to the Group 'C' post after 11 months, it ought to be presumed that he was holding a Group B post. It was further contended that the petitioner's father also availed all benefits of a Group 'B' officer, w.e.f. 1 January 2010 (which is prior to the promotion of the petitioner's late father which was by an order dated 11 June 2013) namely that, a contribution of Rs.480/- per month was deducted towards the group insurance benefit, which was also availed by his family. On the petitioner's case that relief be granted to him relying on **Abhijeet Vishwas Mulik's** case(*supra*) as directed by the tribunal in its previous order, the reply was nothing short of accepting such plea of the petitioner. The peculiar reply was that although Abhijeet's case was similar to the petitioner's case, however in the said case, the tribunal's order was challenged before this Court in Writ Petition (St.) No. 1820 of 2018, and the directions of the High Court to comply with tribunal's order were accepted.

Tribunal's Order :-

10. Considering the rival contentions, the tribunal rejected the petitioner's original application. The fulcrum of the tribunal's reasoning being that the petitioner's late father was a Group 'B' officer for the

reasons, interalia, as set out in paragraphs 18 to 20, which read thus:

“18. Perusal of the record produced by the Respondent No.3 shows as under:

- (a) The deceased was considered during the meeting of the DPC on 10.09.2012. The Minutes of the Meeting identified 26 vacant posts and proposed names of Awal Karkun and Mandal Adhikari to the rank of Naib Tahasildar.
- (b) According to the same, the deceased was promoted on regular post and his name figures at Serial No.31.
- (c) He has been promoted and was drawing the salary in the new pay scale of Rs.9300-34800 with grade pay of Rs.4300/- from the date of his promotion till his expiry. His last basic salary was Rs.13989 + 4500/-. His total period in this particular pay scale was for more than four years on a continuous basis without any break till he expired. He has also been given the Group Insurance available to Group ‘B’ category.

19. Available record confirms that the deceased was working as Naib Tahasildar in the pay scale of Rs.9300-34800 with Rs.400/- as grade pay. He received the Group Insurance amount of Rs.4,80,000/-.

20. For the reasons above stated, it is clear that the deceased Government servant was Group ‘B’ officer. The G.R. dated 22nd August, 2005 states that the legal heirs of Group ‘C’ and Group ‘D’ are entitled for compassionate appointment. The prayer made by the applicant to consider him for the compassionate appointment is, therefore, rejected. The Original Application is dismissed, with no order as to costs.”

SUBMISSIONS

11. Mr.Kulkarni, learned counsel for the petitioner in assailing the impugned order would submit that the very foundation of the tribunal’s reasoning to hold that the petitioner’s late father was a Group B employee, is wholly contrary to the record, hence perverse. It is submitted that it was *ex-facie* clear from the promotion order dated 11 June 2013, as issued to the petitioner’s late father, that the promotion

granted to him to the post of Election Naib-Tehsildar was an ad-hoc promotion, as clause 4(1) of the promotion order recorded that the promotion was merely of a temporary nature, for 11 months or till the expiry of the period of supernumerary post of the candidates sponsored by the Maharashtra Public Service Commission or till the retirement of the concerned employee, whichever occurs earlier. It is submitted that the ad-hoc nature of the promotion was also clear from Clause 4(4) of the promotion order which recorded that the said promotion is being granted subject to the final approval of the Maharashtra Public Service Commission to the regular select list. According to Mr.Kulkarni, such clauses in the promotion order could not have been ignored by the tribunal to hold that the petitioner's late father was regularly promoted to record a finding that he was holding a post in Group 'B' at the time of his death. It is next submitted that the ad-hoc nature of the promotion order could also be clearly seen from the fact that it did not specify any pay scale. He submits that mere receipt of the salary in the pay scale of the said promotional post, could not have resulted into an automatic conferring of a regular promotion in the Group 'B' post. It is submitted that there was no order or any other material on record, which would show that the effect of the ad-hoc promotional order dated 11 June 2013, issued to the petitioner's late father, stood obliterated and/or substituted by a regular promotion order. It is next submitted that the

respondents reliance on the general promotion order (dated 11 June 2013) to contend that, as the petitioner's late father was placed at serial no.7, under the heading "regular promotion" he was regularly promoted, was also misconceived and contrary to the very document, inasmuch as in clause 4(1) and 4(4) of the said order itself provided that the promotion was purely on temporary basis for a period of 11 months or till the expiry of the period of supernumerary post of the candidates sponsored by the Maharashtra Public Service Commission or till the retirement of the concerned employee, whichever occurs earlier. It is submitted that identical conditions were incorporated in the individual ad-hoc promotion order dated 11 June 2013 issued to the petitioner's late father. Mr.Kulkarni would submit that in the absence of any regular promotion order issued to him, the petitioner's father although was granted an ad-hoc promotion to the Group B post, he continued to belong to the Group 'C' and not in Group 'B' post. He would hence submit that the petitioner was entitled to apply for a compassionate appointment in the Group 'C' post. As regards the judgment of the Division Bench of the tribunal in **Shri.Abhijeet Vishwas Mulik** (supra)'case was concerned, it is submitted that this Court had confirmed the judgment of the tribunal dated 18 February 2013 recorded in Original Application No.1093 of 2002, wherein the tribunal in identical facts had held that the father of the applicant therein, had

held a Group 'C' post, as his temporary promotion as Naib Tahasildar could not have been considered as a regular promotion in the Group 'B' cadre, and accordingly, had allowed the original application. It is his submission that the petitioner's case was squarely covered by the tribunal's said decision, hence the tribunal in its order passed on the petitioner's first original application, had directed respondent no.3 to decide the petitioner's application in the light of its decision in **Abhijeet Vishwas Mulik's** case. Mr.Kulkarni would urge that in view of the above position, this writ petition deserves to be allowed.

12. On the other hand, Mr.Thorat, learned AGP in supporting the impugned orders of the tribunal has primarily relied on the general promotional order dated 11 June 2013 to submit that such order indicated that the promotion of the petitioner's late father, to the post of Naib Tahasildar, was a regular promotion. It is his submission that in paragraph 18 of the impugned order (supra), the tribunal has correctly observed that a regular promotional exercise which was undertaken by the respondents to promote the petitioner's late father on the Group 'B' post of Naib Tahasildar. It is submitted that even the pay-scale which was drawn by the petitioner's late father, was of the promotional post, as also the group insurance facility came to be availed by him and the benefits of the same were granted to the petitioner's family. It is next

submitted that the petitioner's case cannot be compared with **Abhijeet Vishwas Mulik's** (supra) case, as in the said case only because this Court had confirmed the orders passed by the tribunal, holding that the deceased was granted ad-hoc promotion as Naib Tahasildar, the benefit was granted to the applicant therein. Mr.Thorat however would not dispute that there is no material to indicate that the ad-hoc promotion order dated 11 June 2013 issued to the petitioner's father was neither substituted nor was confirmed by issuance of a regular promotional order. He would also not dispute that clauses 4(1) and 4(4) of the said promotion order clearly provided that the promotion was purely on ad-hoc basis. He would also not dispute that even the general promotion order dated 11 June 2013 had also incorporated clauses at the bottom of the list without making exception to any names referred to in the list, to record that the promotions were purely ad-hoc basis. He would also not dispute that the wordings of clause 4(1) and 4(4) of the said general order indicating adhoc promotion, were identical to the one incorporated in the individual promotion order issued in favour of the petitioner's late father.

Reasons and Conclusion

13. Having heard learned counsel for the parties and having perused the record, we may, at the outset, observe that the petitioner's

father Maruti Gosarade died in harness on 7 December 2016 and immediately after his passing away, the petitioner made an application on 22 December 2016 for appointment on compassionate ground. Such application suffered its first rejection at the hands of respondent No.3 on 20 January 2017, on the ground that the petitioner's late father being a government servant in the Group 'B' category (Naib Tehsildar), the petitioner would not be eligible to apply for compassionate appointment, as an appointment on compassionate ground is permissible only of an eligible family member of a Group 'C' and 'D' employee who dies in harness. Such reason as set out in the said (first) rejection letter dated 20 January 2017 addressed to the petitioner by the Deputy Commissioner (Revenue) Pune Division, reads thus:-

“ As per information given by you by the letter under reference, Maruti Ganpati Gosrade expired on the date 07/12/2006 in accident, while working at Election Nayab Tahasildar, Mangalvedha, Dist. Solapur. It is requested to give appointment on compassionate ground to Shri. Nikhil Maruti Gosrade, by the letter under reference. **However, as per the Government Resolution No. 1004/M.No.51/2004/Eight, dated 22/08/2005, the appointment on compassionate ground is admissible only to the eligible family members of Group 'C' and 'D' employees only, who have expired during service. As Late Maruti Ganpati Gosrade was working as Election Nayab Tahasildar and as the Nayab Tahasildar cadre belongs to Group-B, your request can not be granted.**

(Signature Illigible)
(Sudhakar Telang)
Deputy Commissioner (Revenue)
Pune Division, Pune.

(emphasis supplied)

14. The petitioner being aggrieved by the above decision approached the tribunal by filing his first Original Application No.574 of 2017, which came to be allowed by the tribunal by an order dated 18 September 2017 by setting aside of the communication/decision dated 20 January 2017 (supra), with a further direction that a fresh decision be taken by respondent No.3 in the light of the tribunal's decision in the case **Shri. Abhijeet V. Mulik versus the Collector of Kolhapur**. The tribunal's order in the present facts has a significant relevance, requiring it to be noted. It reads thus:-

“ Heard Mr.M.B.Kadam, the learned Advocate for the Applicant and Ms.N.G.Gohad, the learned Presenting Officer for the Respondents.

This OA brought by the heirs and LRs of the deceased Naib Tahasildar can be disposed of here and now.

The Applicant is the son of the said deceased. The said deceased died on 7th December,2016. The reason why the request for enlisting his name came to be rejected was vide Exh.'F' (Page 26 of the Paper Book (PB)) and the ground was that he was a Group 'B' Officer (Non-gazetted) while the said entitlement is only to the heirs and LRs of Group 'C' and Group 'D' employees. **After some debate at the Bar where my attention was invited to a Judgment rendered by this Tribunal presided over by me in OA 1008/2016 (Shri.Abhijeet V. Mulik Vs. The District Collector, Kolhapur, dated 18th July,2017). Mr.Kadam, the learned Advocate for the Applicant told me that the facts therein and the facts herein are exactly similar. Now, as a matter of fact, the only ground on which the request was turned down has already been set out hereinabove.** I do not feel called upon to decide any other contentious issue and if need be, it is left open and the consequent right is there for the concerned party to agitate. **In my opinion, this OA can be disposed of with a direction to the Respondents to consider, if in the present set of facts, decision could be made relying upon Abhijeet Mulik (supra). The concerned authority is hereby directed to carefully peruse the Judgment and then take a decision without getting committed one way or the other.**

This OA is disposed of with a direction to the Respondents to decide the case of the Applicant under the guidance of OA 1008/2016 (Shri.Abhijeet V .Mulik Vs. The District Collector, Kolhapur, dated 18th July,2017) and in order to facilitate the said Respondent to proceed in the matter in accordance herewith Exh.'F' dated 20.1.2017 (Page 26 of the PB) stands quashed and set aside. Compliance within eight weeks from today and the Applicant be informed of its outcome within one

week thereafter. The OA is allowed in these terms with no order as to costs.”

15. Perusal of the above order of the tribunal clearly indicates that the tribunal noted that the only ground on which the request of the petitioner was turned down by respondent no.3, was on account of the fact that the petitioner's late father was a Group 'B' officer on the basis of the promotion order issued to him on 11 June 2013 which was in fact an order granting ad-hoc promotion. The petitioner had categorically contended that promotion of his late father was an ad-hoc promotion. He also contended that the tribunal had considered a similar case in deciding the application filed by **Abhijeet Vishwas Mulik** (supra), hence, his case was squarely covered by such decision. It is in these circumstances, the tribunal disposed of the original application with a direction to the respondent to consider such facts and that a decision be taken considering **Abhijeet Vishwas Mulik's** case (supra). The tribunal categorically directed the concerned authority to “carefully peruse” the judgment in **Abhijeet Vishwas Mulik's** case (supra) and take a decision and accordingly quashed the order impugned therein dated 20 January 2017 (supra).

16. The petitioner thereafter made a fresh representation as noted above, which too came to be rejected (second rejection) by the

impugned order dated 13 November 2017, issued by respondent no. 3-Divisional Commissioner, Pune Division, Pune surprisingly on identical reasons as contained in the first rejection, which in fact were set aside by the tribunal by its order passed on the petitioner's first original application. The said order reads thus:-

(Official translation from the photocopy of the Order typewritten in Marathi)

"RPAD

Exhibit – E
(36-37)

Read: 1) Letter bearing No. Rev./ Estt. - 3 / WS/ 31/2017, dated 20.01.2017 of this Office.

2) Decision dated 18.09.2017 given in the Original Application No. 574/ 2017 filed before the Hon'ble Maharashtra Administrative Tribunal.

3) Applications dated 06.10.2017, 14.10.2017 and 16.10.2017 made by Shri Nikhil Maruti Gosrade, residing at – New M.S.C.B. Dhamani Road, Dutt-Kripa Bungalow, Near Maheshwari Garden Mangal Krayalaya, Sangli.

Office of the Divisional Commissioner,
Pune Division, Vidhan Bhavan, Pune.
No. Rev. / Estt. – 3/S.R./ 18 Pune, Date:
13.11.2017

ORDER:

On the date 18.09.2017, the Hon'ble Tribunal has given following decision in the Original Application No. 574/2017 filed before the Maharashtra Administrative Tribunal by Shri. Nikhil Maruti Gosrade against the reply given by this office under the letter dated 20/01/2017, referred to at Sr. No. 1 in the preface.

The Original Application No. 1008/2016 has been allowed. The Hon'ble Tribunal has directed that the decision in the matter of the Applicant should be taken as per the instructions dated 18.07.2017 given in the matter viz. Shri. Abhijeet V. Mulik versus the Collector of Kolhapur mentioned therein and has cancelled the letter dated 20.1.2017 of this Office referred to at Sr. No. 1 in the Preface.

In pursuance of the said decision, on the dates 06.10.2017, 14.10.2017 and 16.10.2017, Shri. Nikhil Maruti Gosrade has made applications to this Office and has requested therein to take an action to give an appointment on compassionate basis as per the decision

given by the Hon'ble Maharashtra Administrative Tribunal.

While granting promotion to Late M.G. Gosrade in N.T. Cadre under this Office Order dated 11.06.2013, it has been mentioned therein that the said promotion shall be for the period of 11 months or till expiry of the period of most of the posts of the candidates sponsored by the Maharashtra Public Service Commission or till retirement of the persons concerned, whichever is earlier. M. G. Gosrade expired on the date 07.12.2016 and prior to that he was working on the post of Nayab Tahasildar.

As per the Government Resolution, Revenue and Forest Department No. RCT-1095/ M. No. 230/ E-7, dated 13/11/1998, it has been notified for giving the status as Gazetted Officer, Group 'B' to all the posts in Nayab Tahasildar Cadre. Therefore, prior to death, Late. Gosrade was the Gazetted Officer, Group 'B' in the Nayab Tahasildar Cadre.

By the Government Resolution Finance Department dated 2/8/2010, Changes have been made from the date 1/1/2010 in the rate of monthly Contribution of the State Government Employees Group Insurance Scheme and the benefits to be received therefrom. As per the said Government Resolution it has been fixed to recover the contribution of amount of Rs. 480 /- from the monthly salary of the Concerned officer from the date 01/01/2010 for Group 'B'. Accordingly, if the contributor in this Scheme dies while being in Government Service, the insurance amount to be paid to the family members has been fixed as Rs. 4,80,000/- and accordingly the insurance amount of Rs. 4,80,000/- has been paid to the heirs of Late Gosrade on the date 29/12/2016. Thus, he has been given the benefit to be received for the post of Nayab Tahasildar Gazetted Officer Group 'B'.

In the decision given on the date 18/9/2017 by the Hon'ble Tribunal in the matter of Original Application No. 574/2017, it has been mentioned that the decision in the matter of Shri. Nikhil Gosrade should be taken in pursuance of the instructions given in Original Application No. 1008/2016 (Shri Abhijit V. Mulik V/S The Collector, Kolhapur, dtd. 18/7/2017). However, the action of preferring an appeal before the Hon'ble High Court, against the decision given on the date 18/7/2017 by the Hon'ble Tribunal in the Original Application No. 1008/2016, is being taken by the Collector, Kolhapur.

As per the Government Resolution No. Comp. 1000/ M. No. 20/2000/Eight, dated 28/3/2001 and Government Resolution No. 1004/ M No. 51/2004/M. No. 51/2004/ Eight, dated 22/8/2005, of the General Administration Department, the appointment on Compassionate ground is admissible only to the eligible family members of Group 'C' and 'D' employees who died while being in service and as the deceased Gosrade, Nayab Tahasildar was the officer in Group 'B' Gazetted officer's cadre, Shri Nikhil Gosrade is not eligible for getting appointment on compassionate ground as his dependent. Hence, his request is being rejected.

Sd /- Signature illegible
Chandrakant Dalvi
Divisional Commissioner, Pune
Division Pune

To,

Nikhil Maruti Gosrade, R/at. New M. S. C. B. Dhamni Road, Datta Kripa Bungalow, Near Maheshwari Garden Mangal Karyalaya, Sangli.

Copy for information submitted to the Deputy Secretary, Government Revenue and Forest Department, E – 7, Mantralaya, Mumbai – 32.

Copy forwarded to the Collector, Solapur, for information.”

(emphasis supplied)

17. In rejecting the petitioner’s second original application, the tribunal accepted the respondents’ case that the petitioner’s late father was not an ad-hoc promotee to the post of Naib Tahasildar, which was a Group ‘B’ post. The reasons for such rejection are set out in paragraph 18 of the impugned judgment, which we have extracted above.

18. We are not persuaded to accept such finding as recorded by the tribunal in rejecting the petitioner’s original application, for more than one reason. The primary reason being that such finding of the tribunal, in our opinion, is totally contrary to the record. As rightly contended on behalf of the petitioner. The tribunal has wholly discarded the plain purport of the promotional order dated 11 June 2013, issued to the petitioner’s late father as also of the general promotional order of even date, both of which on their bare reading, were evident of the promotion of the petitioner’s late father, from the Group ‘C’ post to Group ‘B’ post, being purely ad-hoc. Such order recorded that the promotion was for a period of 11 months and or until expiry of the

period of supernumerary post of the candidates sponsored by the Maharashtra Public Service Commission or till the retirement of the concerned employee, whichever occurred earlier. Such position as reflected was writ large from clauses 4(1) and 4(4) of the promotional order, issued to the petitioner's father. The official translation of clauses 4(1) and 4(4) reads thus:-

"04. Terms and Conditions in respect of promotion.

1) This promotion list is merely of temporary nature. The promotion of the employees in the Ad-hoc promotion list shall be for 11 months or till the expiry of the period of supernumerary post of the candidates sponsored by the Maharashtra Public Service Commission or till the retirement of the concerned employee, whichever occurs earlier.

... ..

4) The said promotion is being given subject to the final approval of the Maharashtra Public Service Commission to the regular select list."

The above clauses identically appeared in the general promotion order dated 11 June 2013.

19. It is thus difficult to fathom, as to how, such specific clauses appearing in the said promotional order issued in favour of the petitioner's late father, as also contained in the general promotion order issued on 11 June 2013, could be discarded by the tribunal. To read the general promotion order dated 11 June 2013 conferring regular promotion to the petitioner's late father, also cannot be accepted for two reasons; firstly for the reason that it contained Clauses 4.1 and 4.4 which were applicable to all categories of candidates whose names

were specified in the said order which showed that the promotions made by such order were purely ad-hoc. Secondly, although such general promotion order was issued, however, a specific promotion order of the even date was issued in favour of the petitioner's late father, incorporating Clauses 4.1 and 4.4 (supra) which unequivocally indicated that the promotion as granted to the petitioner's late father was ad-hoc and not a regular promotion. Most significantly, it was this order of ad-hoc promotion which was acted upon for all material purposes as clear from the record. Thus, merely categorizing petitioner's late father under the heading 'regular promotion' in the second promotion order, was not sufficient to hold that he was regularly promoted. The general promotion order was required to be read in its entirety alongwith its clauses which indicated that the entire promotions as made therein by the said order, were ad-hoc. We also find that there is no material whatsoever on record, as also fairly conceded by the learned AGP that the ad-hoc promotional order (dated 11 June 2013) was never substituted, by issuance of a regular promotional order. It is also not in dispute that the name of petitioner's late father qua such promotion was never notified in any final list of regularly promoted candidates, which would show that in reality he was never substantively promoted to the Group 'B' post and was kept as an ad-hoc promotee. Merely providing a pay-scale of a higher post, without a

regular promotion, would not bring about a situation that the legal character of an ad-hoc promotion order would get transformed into a 'regular promotional order'. In other words, in the present case unless there was to be a conscious act or a decision in law, to regularly promote, by issuance of a regular promotion order in favour of petitioner's late father, by no stretch of imagination and/or by applying any standard, it could have been held that the ad-hoc promotion stood converted into a regular promotion. In regard to the emoluments, the law would require that if an employee is posted on a particular post even temporarily or ad-hoc, he would be entitled to draw the pay-scale and benefits of such post, till he continues to hold such post on the principle of equal pay for equal work. The petitioner's late father being paid the salary or the pay scale of Naib Tahasildar, could not have been any *indicia* of his regular promotion to the post of Naib Tahasildar in the absence of a regular promotional order issued in his favour. The tribunal has completely ignored these basic facets by inappropriately construing the ad-hoc promotional order as issued to petitioner's late father to be a regular promotion.

20. In our clear opinion, the tribunal's interpretation of the ad-hoc promotional order dated 11 June 2013 results in attributing a different meaning from what was actually provided by Clauses 4(1) and

4(4) of the said promotional order, amounting to a patent perversity. This is, thus, a case wherein, respondent no.3 for reasons best known to him completely misconstrued and misinterpreted the promotion order dated 11 June 2013, by reading it to be a regular promotion being granted to the petitioner's late father. The tribunal could not have mechanically and/or without applying its mind to the plain and clear meaning of the said clauses of the promotional order dated 11 June 2013, confirmed such decision of respondent no. 3. The judicial burden and responsibility on the tribunal was certainly rigorous and insurmountable, when the petitioner knocked its door complaining of brazen arbitrariness of respondent no.3.

21. There is yet another significant aspect of the matter, namely that in the earlier order passed by the tribunal, on the first original application filed by the petitioner, there was a clear direction to the respondents to consider the petitioner's case as per the decision in **Abhijeet Vishwas Mulik** case. The tribunal had also set aside the very reasoning as contained in the order/communication dated 20 January 2017 (supra) in rejecting the petitioner's application for compassionate appointment. In this regard, we may observe that the reasoning as set out in the penultimate paragraph of respondent no.3's order dated 13 November 2017, in no manner amounted to compliance of the said

directions of the tribunal, on the petitioner's first original application. This for the reason that respondent no.3 on the same reasoning as contained in the earlier order dated 20 January 2017, on completely irrelevant considerations as also without application of mind, and in total disregard to the tribunal order, for the second time rejected the petitioner's application. In our opinion, the tribunal was also too casual, in not interfering with the absolute mechanical and careless approach of respondent no.3, in issuing an order dated 13 November 2017. The impugned order passed by the tribunal could not have sustained such illegality of respondent no.3. We, thus, feel that the petitioner was not well advised to withdraw the contempt petition, as in our clear opinion, the order dated 13 November 2017 passed by the respondent no.3 certainly did not comply with the tribunal's direction and its clear and absolute mandate, namely that the petitioner's application be decided in the light of the observations of the Division Bench in **Abhijeet Vishwas Mulik** case, which was confirmed by the Division Bench of this Court. From a reading of the penultimate paragraph of respondent no.3's decision dated 13 November 2017, a glaring perversity and disrespect by respondent no.3 to the tribunal's order is apparent, which ought to have been severely deprecated by the tribunal. The reasons as set out by respondent no.3 in the impugned rejection of the petitioner's application, are certainly of a nature which would shock the conscience

of the Court, when respondent no.3 in the penultimate paragraph although acknowledges that the tribunal had directed that the petitioner's application be decided as per the directions in **Abhijit V. Mulik** case (supra), however, at the same time, he brushes aside the same, saying that it is being challenged before the High Court. In respondent no.3 saying so, in our opinion, there are two aspects which cannot be overlooked and/or are required to be judicially noticed. Firstly what is apparent is the patent disregard shown by respondent no.3 to the orders passed by the tribunal and secondly, a supposedly clever manner and/or a sharp practice adopted by respondent no. 3 to wriggle out of the order of the tribunal, on patently irrelevant or senseless reasoning. Such approach was least expected from a high official who stood at the level of Divisional Commissioner that too in handling a delicate issue, namely, of compassionate appointment. Such objectionable conduct on the part of the Divisional Commissioner amounted to playing with the livelihood of the petitioner's family. Such aspect has been completely overlooked by the tribunal in passing the impugned order. We in fact wonder whether we should reopen the contempt proceedings against respondent no. 3, when we have noticed that the conduct of respondent no. 3 prima facie amounted to be contumacious. We, however, leave the issue at this.

22. Now coming to the tribunal's order, in our opinion, the tribunal ought to have followed the decision of the tribunal in the case of **Abhijeet Vishwas Mulik** (supra) which was a case exactly similar to the present case. This more particularly when the Division Bench of this Court in its judgment in **Abhijeet Vishwas Mulik** (supra) referring to a decision of Aurangabad Bench of this Court in **Dinesh s/o Shamrao Sonawane Versus The State of Maharashtra** in Writ Petition No.5440 of **2009** dated 5 February, 2010, had held that an ad-hoc and temporary promotion does not entitle the promotee to claim status as Group 'B' employee. This Court held that the original applicant's late father, in the said case, who had substantively held a Group 'C' post, was promoted purely on temporary basis for three months to a Group 'B' post of Naib Tahasildar, which was seen from the promotional order, as appropriately recognized by the tribunal. It was observed that the very wording of the ad-hoc promotional order, itself was clear that it entailed automatic termination after a certain period and it was subject to the approval of the Maharashtra Public Service Commission. This Court had also held that the tribunal was right in holding that the father of the original applicant therein (respondent in the said proceedings), was not a Group 'B' employee in terms of the Government Resolution dated 28 March 2001 and hence, there was no bar to the consideration of the case of the said respondent for appointment on compassionate basis.

As observed above, in our opinion, the petitioner was identically placed as in the case of **Abhijeet Vishwas Mulik** (supra).

23. As a result of the above discussion, we are sure that this is a case of gross injustice meted out to the petitioner firstly at the hands of the Divisional Commissioner on two occasions, and thereafter his fate before the tribunal, was no different. In cases of compassionate appointment, not only the authorities but also the tribunal is required to be more careful, sensitive and live to the human considerations and adopt a cautious approach before denying benefit under the compassionate appointment, provisions. The tribunal, in the present case, has grossly erred in confirming the decision of respondent no.3, that the petitioner was not entitled to maintain his application for compassionate appointment as his late father belonged to the Group B category of Government Servants, merely on the basis of ad-hoc promotional order.

24. With certitude, we observe that the petitioner was entitled to maintain his application for compassionate appointment. We accordingly allow the present petition by the following order:-

ORDER

- i. The impugned order dated 25 June 2018 passed by the tribunal in Original Application No.70 of 2018 is quashed and set aside, as also the order dated 13 November 2017 passed by respondent no.3 in rejecting the petitioner's application for compassionate appointment is quashed and set aside.
- ii. The respondents are directed to consider the petitioner's application for compassionate appointment as valid, and as per rules, grant compassionate appointment to the petitioner in the class-III post.
- iii. The petition is allowed in the above terms. No costs.

(G. S. KULKARNI, J.)

(SUNIL P. DESHMUKH)