

(2016) 08 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 9188 of 2015

Mahadev S/o Pandharinath Rakh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 5 AIRBomR 263 : (2016) 5 ALLMR 876

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Ms. Pradnya Talekar h/f Mr.S.B. Talekar, Advocates, for the Petitioner; Mr. V.H. Dighe, A.G.P, for the Respondent/State

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. It is the case of the petitioner that the petitioner's father was working in the Government service and expired in the year 1994, when the petitioner was of 17 years old. The application was made by the mother of the petitioner to appoint the petitioner in Government service on compassionate ground. The said application was considered and the Commandant, State Reserved Police Force (SRPF) replied on 2nd December, 1994, stating that there is no mention of exact post on which appointment is sought. Further it is stated that the person, who is seeking compassionate appointment in Government service, should have completed 18 years of age and followup should be done regarding this matter, after the petitioner attains the age of 18 years. When the petitioner attained age of 18 years, the petitioner had even applied for a certificate in respect of non appointment of any other member of the family on compassionate ground after the death of his father. The petitioner thereafter, in the year 2007 made a written application to the Commandant, SRPF along with a list of 15 relevant documents, such as death certificate of father, first request application dated 29th November,

1994, educational qualification certificates and mark-sheets etc. The Commandant, SRPF sent communication to the petitioner on 17th March, 2007 regarding clarification about the exact post on which appointment was sought. The petitioner made another application on 29th March, 2007, requesting appointment on compassionate ground on the post of clerk and attached a list of relevant documents. The Commandant, SRPF thereafter communicated the request submitted by the petitioner to the Collector, Hingoli, vide communication dated 12th/13th April, 2007.

3. It is the case of the petitioner that the petitioner had made so many rounds to the Commandant, SRPF office. He had an opportunity to see the wait list regarding compassionate appointments, in which his name was at Sr. No.1, whereas he realised sometime in late 2007 that the list had been changed behind his back and illegally in which his name had been shifted from Sr.No.1 to Sr. No.7. He submitted two applications to the Commandant as well as the then Dy. Chief Minister regarding the change in the wait list behind his back and requested to grant him appointment on compassionate ground. Thereafter the Commandant, SRPF made a communication with the petitioner, asking him to submit some more documents, vide its communication dated 6th August, 2008. The petitioner immediately submitted the requisite documents. The petitioner further submitted three more applications on 7th October, 2008, 19th November, 2008 and 11th January, 2009 to the Commandant, SRPF, requesting to grant him compassionate appointment. On 23rd March, 2009, the petitioner made an application to the DIG regarding his request to grant him appointment on compassionate ground. He made further application to the Commandant, on 1st April, 2009 and the Commandant, SRPF made a communication on 3rd June, 2009 to the petitioner stating therein that the petitioner would be appointed as and when vacancy would arise in the Government service. Further application was submitted to the Commandant, SRPF by the petitioner for appointment on compassionate ground on 16th June, 2009. On the very next day, the Commandant, SRPF sent a letter to the petitioner stating that his name was removed from the wait list and he was ineligible to be appointed on compassionate ground, as no application had been made as per the Government Resolution dated 11th September, 1996 within one year after attaining the age of 18 years. Thereafter, the petitioner received a communication from the Commandant, SRPF regarding his ineligibility for appointment on compassionate ground. The Special I.G. made a communication to the Commandant, SRPF as well as to the petitioner stating that the petitioner's name was once included in the wait list in the year 1994, as per the letter of the Office dated 6th December, 1994. The Special I.G. further mentioned that the Office once having put the name of the petitioner on wait list, the petitioner ought to have been informed and invited for appointment each time whenever the appointments were made since 1994, or since the petitioner attained the age of 18 years. He also inquired with the office of Commandant, SRPF as to how candidate at serial no.6 on the wait list maintained for compassionate appointment was included in the list

despite having the age of 10 years. The I.G. had directed the Commandant to appoint the petitioner as and when vacancy arose, as his application has been accepted and his name has been included in the wait list on 6th December, 1994. Immediately, the petitioner came to be selected on 1st August, 2009 and appointed on 18th August, 2009 on the post of peon in the Government service. The petitioner, having worked diligently and without even a single complaint from his supervisors, suddenly was issued with termination order dated 31st January, 2012, almost 3 years after he had served as a peon in the Government service. There was no notice or hearing given to the petitioner; but, a sudden order of termination was handed over to the petitioner.

4. It is the case of the petitioner that the termination order made a reference to communication dated 8th April, 2011, which was a letter from the Desk Officer to the Police Director General and Police commissioner stating that as per the Government Resolutions, as it is necessary to undertake proceedings and if the conditions under it are not satisfied the Government cannot recommend any candidate to be appointed on compassionate ground as a "special case". The name of the petitioner appeared at Sr. No. 13 on the list even though he had not been appointed as a "special case", but rather because he had fulfilled all the conditions mentioned in the Government Resolution dated 26th October, 1994 for compassionate appointment. The petitioner was not only terminated under misunderstanding and misapprehension, but he was not even given an opportunity to refute the allegations on the basis of which his services had been terminated, that too after almost 3 years of serving as a peon. The petitioner submitted several representations to the Commandant, SRPF as well as other authorities to reconsider the order of termination, but it was of no avail. The petitioner filed Original Application in Maharashtra Administrative Tribunal being Original Application No. 273 of 2002 on 15th March, 2012. The said Original Application came to be decided on 20th August, 2013 vide judgment and order of the Maharashtra Administrative Tribunal and the claim of the petitioner was rejected, and the Original Application came to be dismissed. Hence this Writ Petition.

5. The learned counsel appearing for the petitioner submits that the Government Resolution dated 11th September, 1996 could not have been applied to the case of the petitioner. The Government Resolution issued in the year 1994 was applicable to the petitioner's case. It is further submitted that the Maharashtra Administrative Tribunal did not appreciate the contention of the petitioner that the petitioner's services were terminated without any notice and in breach of the principles of natural justice. It is submitted that once the name of the petitioner was included in the wait list, there was no need of filing further application for appointment on compassionate ground. Not only that the petitioner's name was included in the wait list, but as a matter of fact, the petitioner was appointed on the post of peon and thereafter, after completing two years of service, the petitioner's services have been illegally terminated. It is submitted that the mother of the petitioner passed away in October, 2013 and the financial position

of the petitioner was very precarious and he could not give proper medical treatment to his mother. The learned counsel appearing for the petitioner, relying upon the pleadings/grounds taken in the petition and contents of the short affidavit tendered across the Bar, submits that the Petition deserves to be allowed.

6. On the other hand, the learned A.G.P. appearing for the Respondent/State, relying upon the reasons recorded by the Maharashtra Administrative Tribunal in the impugned judgment and order, submits that the Petition is devoid of any merits and the same may be dismissed.

7. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the Respondent/State. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, reasons assigned by the Maharashtra Administrative Tribunal in the impugned judgment and also the averments made in the affidavit filed by the petitioner.

8. It is not in dispute that the father of the petitioner was in service of the Respondents and died in harness on 1st November, 1994. According to the petitioner, the mother of the petitioner filed application on 29th November, 1994 for appointment on compassionate ground to her minor son i.e. the petitioner. It further appears from the record that the mother of the petitioner was informed by the authorities that the age of the petitioner was below 18 years at that point of time, and therefore, the mother of the petitioner should pursue the request for appointment on compassionate ground after the petitioner attained the age of 18 years. It appears that the petitioner completed 18 years of age on 30th June, 1996, however, upon perusal of the documents from the original record, which are produced by the Respondents, the petitioner's name was included in the wait list of the candidates desirous for appointment on compassionate ground. It clearly appears from the communication between the petitioner and the authorities that the petitioner's mother and the petitioner were given assurance by the concerned Respondents from time to time that he would be appointed on compassionate ground. It further appears that his name was included in the wait list and after the name was included in the wait list, there was change in the serial number and the name of the petitioner was mentioned at sr. no. 7 in the said wait list. Thereafter, on 24th April, 2009, the letter was addressed to the petitioner for submitting the written consent for giving appointment to him in a particular group or cadre. It further appears that by communication dated 17th June, 2009, the petitioner was informed by the Respondent authorities that he had submitted the application for appointment on compassionate ground belatedly, after attaining the majority, and therefore, he was not entitled for appointment on compassionate ground and his name was removed from the wait list.

9. It appears that the issue was brought to the notice of the Special I.G., State Reserve Force, Nagpur by the concerned Respondents, by letter dated 3rd July,

2009. At this juncture, it would be apt to reproduce herein below the said letter, which has direct bearing on the subject matter involved in this Petition, which reads thus :

"ek0 fo"ks"k iksfyl egkfufj{kd]

jkT; jk[kho iksfyl cy]

ukxiqj0

tk0dz0i"kk&2@vuqdaik@jk[k@2009@4327 fgaxksyh fnukad 03-07-2009

lanHkZ%& ek0 fo"ks"k iksfyl egkfufj{kd] jkT; jk[kho iksfyl cy] ukxiqj ;kaps i=dz0 vk;th@jkjksikcy@vkLFkk&1@1364@2009] fnukad 26-06-2009-

fo"k;%& vuqdaik rRokoj "kkldh; Isosr fyihd fdaok d{k Isod ;k inkoj use.kwd dj.ks ckcr0

mijksDr fo"k;kUo;s lknj dj.;kr ;srs dh] lanHkhZ; i=dkUo;s vtZnkj Jh0 egknso ia<+jhukFk jk[k ;kauk vuqdaik rRokoj fyihd fdaok d{k Isod ;k inkoj use.kwd dj.ks ckcr eqn~ns fugk; ekfgrh fujkdj.kklg lknj dj.;kr ;sr vkgs0

v0dz0

eq|k

vfHkizk;

1-

vtZnkjk dMqu vtZ izkIr >kY;kpk fnukad vuqdaik rRokoj "kkldh; Isosr fyihd fdaok d{k Isod ;k inkoj use.kwd dj.ks ckcr0

Jherh panzdyckkbZ ia<jhukFk jk[k ;kauh R;kapk eqyxk vuqdaik rRokoj inkpk mYys[k u djrk ukSdjh feG.ks ckcr fnukad 29-11-1994 jksth vtZ lknj dsyk0 R;k osGh vtZnkjkpk eqyxk egknso ia<jhukFk jk[k ;kaps o; tUe fnukad 01-07-1978 uqlkj 16 o"kZ 4 efgus 28 fnol ,o<s gksrs0 R;keqGs rs vKku vLY;kus o ukSdjhIkBh 18 o"kZ iw.kZ >kY;k uarj ikBiqkok dj.;kl dk;kZy;hu i= dz0 iO;"kk&@ukSdjh@94@4911] fnukad 06-12-1994 vUo;s dGfo.;kr ;soqu vtZ fudkyh dk<.;kr vkyk vkgs0

2-

vtZnkjkps uko izfr{kk ;knhoj ?ks.;kr vkY;kpk fnukad

vtZnkj Jh0 egknso ia<jhukFk jk[k ;kauh fnukad 10-01-2009 jksth vuqdaik rRokoj ukSdjh feG.ks ckcr vtZ lknj dsY;kus R;kaps uko utj pqdhus izfr{kk ;knhoj vuq0dz0 7 oj ?ks.;kr vkysys vkgs0

3-

R;kauk Isosr lkekowu ?ks.;k ckcr vk|ki i;Zar dj.;kr vkysyh dk;Zokgh

Jherh panzdyckkbZ ia<jhukFk jk[k ;kauh eqykl vuqdaik rRokoj use.kwd feG.ks

ckcr fnukad 29-11-1994 jksth vtZ lknj dsyk R;k osGh eqykps o; 18 o"kkZ is{kk deh vly;kus o rs vKku vly;kus 18 o"kZ iq.kZ >kY;kuarj ikBiqjok djkok vls dGfo.;kr vkys gksrs0

vtZnkj Jherh panzdykckbZ jk[k ;kaph fdaok R;kapk eqyxk egknso ia<jhukFk jk[k ;kauh R;kaps o;kps 18 o"kZ iw.kZ >kY;kuarj R;kapk tUe fnukad 01-07-1978 uqlkj IKku >kY;kpk fnukad 30-06-1996 jksth iklqu ,d o"kkZps vkr vuqdaikrRokoj ukSdjh feG.ks ckcr vtZ lknj djko;kl ikfgts gksrk] ijUrq R;kauh fnukad 10-01-2007 jksth Eg.kts 09 o"kZ 06 efgus 11 fnolkuarj foyackus vtZ lknj dsyk vkgs0 ijUrq R;kp osGh "kklu fu.kZ; dz0"kk0fu0 vuqdaik&1095@izdz&34&v@vkB fnukad 11-09-1996 vuqlkj Isosr vlrkauk fnoaxr >kysY;k fdaok nq/kZjO;k/kheqGs vdkyh Isokfuo`Rr >kysY;k deZpk&;kaP;k dqVqackrhy vKku okjlnkjP;k ckcrhr ,dkus IKku Eg.kts 18 o"kZ >kY;koj ,d o"kkZP;k vkr ;k ;kstus [kkyh ukSdjhlkBh vtZ lknj dj.ks vko";d vkgs0 ijarq R;kauh 9 o"ksZ 6 efgus 11 fnol foyackus vtZ lknj dsyk vkgs0 R;keqGs vtZnkj gs vuqdaikrRokoj use.kqdhlkBh ik= ukgh fd ckc R;kp osGh vtZnkjkl dGoko;kl ikfgts gksrh0 ijUrq R;kosGh dKxni=kph iMrkG.kh u djrk utj pqdhus vtZnkjkps uko izfr{kk ;knhoj vuq0dz0 7 oj ?ks.;kr vkys vkgs0 R;kuqlkjp osGksosGh rlkp i=O;ogkj dk;Zokgh dj.;kr vkysyh vkgs0 ;k dk;kZy;kps vkLFkkiusoj ,dgh dfu"B Js.kh fyiHdkps in fjDr ukgh0

4-

l|fLFkrhr miyC/k vlysY;k vuqdaik izfr{kk ;knhph izr

l|fLFkrhr miyC/k vlysY;k vuqdaik izfr{kk ;knhph izr ;k lkscr voyksdukFkZ tksMyh vkgs0

5-

l|fLFkrhr fjDr vlysY;k oxZ&3 o oxZ&4 ph ins

l|fLFkrhr oxZ&3 ps dJsyh ,dgh in fjDr ukgh0 rlsp oxZ&4 ps Hkkstuky; Isod&11 Ugkoh&2] eksph&1 d{ksod&1] /kksch&1] pijklh&2 vls ,dw.k 18 ins fjDr vkgsr0

6-

vtZnjgps uko izfr{kk ;knhrqu dks.kR;k dkj.kkLro deh dsys

lkekU; iz"kklu foHkkx "kklu fu.kZ; dz0 vdaik&1095@izdz&34@v@vkB fnukad 11-09-1996 vuqlkj Isosr vlrkauk fnoxr >kysY;k fdaok nq/kZjO;k/kheqGs vdkyh Isokfuo`Rr >kysY;k deZpk&;kaP;k dqVaqackrhy vKku okjlnkjP;k ckcrhr ,dkus IKku Eg.kts 18 o"kZ >kY;koj ,d o"kkZP;k vkr ;k ;kstus [kkyh ukSdjhlkBh vtZ lknj dj.ks vko";d vkgs0 ijarq vtZnkj ;kauh fnukad 10-01-2007 jksth vuqdaik rRokoj use.kqdh ckct vtZ lknj dsysyk vkgs0 Eg.kts 9 o"kZ 6 efgus 11 fnol ,o<;k foyackus vtZ lknj dsysyk vkgs0 R;keqGs vtZnkj egknso ia<jhukFk jk[k gs vuqdaik rRokoj useq.kdhlkBh ik= ulY;kus R;kaps uko izfr{kk ;knho:u deh dj.;kr vkys vkgs0 r"kh let lacaf/krkauk fnukad 17-09-2009 jksth ns.;kr vkysyh vkgs0

7-

vtZnkj vuqdaik fu;qDrhl ik= ulY;k R;kaps uko lu~ 1994 rs 2009 i;Zr toGikl 15

o"kZ izfr{kk ;knhr dk Bso.;kr vkys

Jherh panzdyckkbZ ia<jhukFk jk[k ;kauh R;kapk eqyxk vuqdaik rRokoj inkpk mYys[k u djrk ukSdjh feG.ks ckcr fnukad 29-11-1994 jksth vtZ lknj dsyk0 R;k osGh vtZnkjpk eqyxk egknso ia<jhukFk jk[k ;kaps o; tUe fnukad 01-07-1978 uqlkj 16 o"kZ 4 efgus 28 fnol ,o<s gksrs0 R;keqGs rs vKku vLY;kus o ukSdjhkBh 18 o"kZ vko";d vLY;kus 18 o"kZ iq.kZ >kY;k uarj ikBiqjkok dj.;kl dk;kZ;yhu i=dz= iO;"kk&1@94@4911] fnukad 06-12-1994 vUo;s dGfo.;kr ;soqu vtZ fudkyh dk<.kr vkys vkgs0 rlsp vtZnkj ;kauh fnukad 10-01-2007 jksth vuqdaikrRokoj ukSdjh feG.ks ckcr vtZ lknj dsyk Eg.kts toGikl 12 o"kkZ uarj vtZ lknj dsyk0 ijarq vtZnkjkus vtZ lknj dsY;kP;k fnukadkl fnukad 10-01-2007 jksth vtKZph iMrkG.kh d:u R;kaps uko izfr{kk ;knhoj u ?ksrk oj ueqn "kklu fu.kZ;kuqlkj rs vuqdaikrRokoj ik= uLY;kps R;kauk dGfo.ks vko";d gksrs0 i.k rls u djrk R;kaps uko izfr{kk ;knhoj utj pqdhus ?ks.;kr vkysys vLY;kus izfr{kk ;knhoj Bso.;kr vkysys vkgs0

8-

vtZnkj"kh o ofj"B dk;kZy;k"kh i=O;ogkj djrkauk vtZnkjkps uko izfr{kk;knhr vlys ckcr okjaokj mYys[k dj.;kr vkyk vlqugh R;kaps uko fnukad 17-06-2009 jksth dk deh dj.;kr vkys

vtZnkjkps uko T;kosGh izfr{kk ;knhoj ?ks.;kr vkys R;kosGh eq|k dz0 7 izek.ks dk;Zokgh >kysyh vLY;kus rlk i=O;ogkj vtZnkj o ofj"B dk;kZy;k"kh dj.;kr vkysyk vkgs0 ijarq lnj vtZnkj gk ek0 fo"ks"k iksfyl egkfufj{kd] jk0jk0 iksyhl cy ukxiqj ;kaps dMs le{k HksV.;klkBh xsys vlrk R;kcnny nqj/ouho:u lnj izdj.kh fopkj.kk dj.;kr vkY;kus R;k ckcr vkEgh vtZnkjkauh lknj dsysY;k dkxni=kph ckjddbZus iMrkG.kh dsyh vlrk vtZnkj gk lkekU; iz"kklu foHkkx "kklu fu.kZ; dz0vdaik& 1095@iz0dz0&34@v@vkB fnukad 11-09-1996 vuqlkj vuqdaik rRokoj use.kqdhlkBh ik= uLY;kps fnukad 17-06-2009 jksth fun"kZukl vkY;kus R;kaps uko izfr{kk ;knho:u deh dj.;kr vkysys vkgs0 r"kh let lacaf/krkauk ns.;kr vkysyh vkgs0

9-

vtZnkj vuqdaik fu;qDrhlkBh ik= Bjr uLY;kl R;kaps uko izfr{kk;knhr dks.kR;k vk/kkjs ?ks.;kr vkys0

vtZnkj vtZ lknj dsY;kps fnukadkl R;kph iMrkG.kh d:u uko izfr{kk ;knhr ?ks.ks vko";d gksrs0 ijarq rs vuqdaik rRokoj ukSdjhkBh ik= ulrkaukgh R;kaps uko iMrkG.kh u djrk utj pqdhus izfr{kk ;knhoj ?ks.;kr vkysys vkgs0

-

;k dfjrk dks.k tckcnkj vkgs0 ;k ckcrph lfoLrj ekfgrh0

vtZnkj Jh0 egknso ia<jhukFk jk[k gs 01-01-2007 jksth vtZ lknj dsyk R;kosGh laca/khr "kk[ksl use.kqdhl vlysY;k oJsfy@lks0;q0ok;0 ?kulkoar ;kauh vtKZph iMrkG.kh u djrk vtZnkj ;kaps uko izfr{kk ;knhoj utj pqdhus ?ksrksys vkgs0 R;k uarj dJsfy@vkj0Mh0 "kkgw ;kauh T;s"Brk ;knh r;kj dsyh R;kosGhgh R;kauh

dkxni=kph iMrkG.kh dsysyh ukgh0 o T;s"Brk ;knh ofj"Bkauk lknj dsyh vkgs0
R;kauh dsysY;k pqdhps dk;Zokgh ckcr R;kapk [kqyklk ekxfo.;kr ;sr vlqu [kqyklk
izkIr gksrkp tckcnkj vlysY;k lacaf/krkfo:) dk;Zokgh d:u vuqikyu vgoky lknj
dj.;kph n{krk ?ksryh vkgs0

lgh@&

(ds0,p0 vfgjs)

jk0j0 iksfyl cy xV dz0 12 fgaxksyh0

10. On perusal of the contents of the said letter, it was abundantly clear that the petitioner's name was included in the wait list and there was no denial to the said fact by the Respondents. It further appears that the petitioner's name was at Sr. No.1 and then it was shifted to sr. no.7. Pursuant to the letter written by the Special I.G., State Reserve Force, Nagpur on 23rd July, 2009 to the concerned Respondents, the petitioner was appointed on the post of peon by order dated 18th August, 2009. Accordingly, the appointment order was issued in favour of the petitioner. It further appears that by order dated 31st January, 2012, the services of the petitioner have been terminated by Respondent No.4. Therefore, upon perusal of the original record, it appears that the petitioner has rendered more than two years service after joining on the post of peon. Therefore, in case the Respondents wanted to take drastic action of terminating his services, in our considered view, even in absence of any provision to give notice to put forth his contention, in adherence to the principles of natural justice, the notice ought to have been given to the petitioner by Respondent No.4, so as to afford him reasonable opportunity of placing/to put forth his contentions.

11. The facts of the present case would stand on different footing, visavis, the case wherein the application is filed by the heirs and legal representative of the deceased employee belatedly and not within stipulated time, after attaining the age of majority. The petitioner's father died in the year 1994 and at the relevant point of time, the Government Resolution dated 26th October, 1994 was applicable to the case of the petitioner. That apart, upon perusal of the original record and copies of the documents placed on record, it is abundantly clear that the petitioner's name was already included in the wait list and not only that the petitioner was appointed and served for more than two years, and therefore, the ground on which the petitioner's services have been terminated loses its importance. It is abundantly clear from reading the contents of the letter written by the Special I.G., State Reserve Force, Nagpur to Respondent No.4 i.e. the highest authority at the State level, in the facts of the case found that the name of the petitioner had already been included in the wait list and since adverse circumstances were being faced by the family of the petitioner, his appointment on compassionate ground was warranted in the facts and circumstances of the case. Once such conscious decision was taken by the highest authority at the State Level and the appointment was given on compassionate ground, so as to

give solace to the family of the petitioner, who was facing financial crunch, in all fairness, the services of the petitioner should not have been terminated on the ground that the application filed by the petitioner was not within time from attaining the age of majority by him. By virtue of putting service of more than two years, it appears that the petitioner was proceeding in his life and pooling on his family with the aid of salary received by him, and therefore, as a modern employer or welfare State, it was not proper on the part of the respondent to terminate the services of the petitioner only on the ground that his application was not within time from the date of attaining the age when his name was already included in the wait list, and the said wait list was acted upon at the instance of the highest and controlling authority of Respondent No.4.

12. It will not be out of context to make a reference to the contents of the letter written by the petitioner to the Additional I.G., State Reserve Force dated 30th October, 2013, so as to assess the mental agony and loss faced by the petitioner and his family due to termination of his services. The contents of the said letter reads thus:

"---- eyk dkeko:u deh dsY;keqGs ek>s vkbZus R;k xks"Vhpk eukoj ifj.kke d:u ? ksryk R;keqGs rh vktkjh gksowu fryk fnukad 25-09-2013 jksth gn;fodkjkpk >Vdk ;sowu frpk e`R;q >kyk vkgs0 ek>s ukstdjh xsY;kuarj ek>h jkstankjh o vkbZps isU"kuoj ek>s ?kj pkyr gksrs0 ek>h vkfFkZd ifjLFkfr vR;ar gkyk[khph vlwu R;kr vktkjh o`) vkbZps vkS"k/k mipkjkpk [kpz ;keqGs eh dtZcktkjh >kyks vkgs ek>h ifjLFkfrh vR;ar fcdV vlqu l;/k ek>h iRuh] ygku eqyxh vls dqVqac vlwu ek>s ifjLFkfrheqGs erk ek>s dqVqacklg ftou laifoysf"kok; nqljk dks.krkgh i;kZ; f"KYyd jkfgysyk ukgh0 rjh d`i;k ek>soj >kysyk vU;k; nwj d:u eyk ek>s ukstdjhr iqUgk lkekowu ?ksowu ek>sojhy vU;k; nwj djkok gh fouarh vkgs0"

13. Therefore, in the peculiar facts and circumstances of this case and the fact that the petitioner's case was governed by the Government Resolution dated 26th October, 1994 and the petitioner's name was throughout included in the wait list and on the instructions of the higher and controlling authority of Respondent No.4 at state level, the petitioner was appointed on the post of peon, his services should not have been terminated only on the ground that he filed application belatedly and not within stipulated time after attaining the age of majority, when asking him to file such application itself was unwarranted since his name was already included in the wait list, as it is evident from perusal of the original record.

14. In our considered view, for more than one reasons discussed herein above, and in particular, upon reading the aforementioned portion from his letter addressed to Special I.G., it would be travesty of the justice, in case we do not invoke our discretionary and equitable jurisdiction, when the action taken by the Respondents terminating the services of the petitioner shocks judicial conscience in the peculiar facts of this case and keeping in view the object of providing the employment on the compassionate ground.

15. In that view of the matter, we quash and set aside the impugned order of termination dated 31st January, 2012 and also the judgment and order dated 28th August, 2013 passed by the Maharashtra Administrative Tribunal. We direct the Respondents, and in particular, Respondent No.4 to restore/reinstate the petitioner on the post of peon, as expeditiously as possible, and preferably within four weeks from today i.e. on or before 19th August, 2016. However, we make it clear that the petitioner will not be entitled for salary for the period from 31st January, 2012 till he would be reinstated to the post of peon. However, the petitioner would be entitled for continuity in service and other consequential benefits, if any.

16. The Writ Petition is partly allowed and same stands disposed of. Rule is made absolute in the above terms. No costs.