

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 309 OF 2019**

DIST. : AURANGABAD

Nikhil s/o Vishwanath Wagh, )  
Age. 23 years, Occu. : Education, )  
Cidco N.7, B-1,202/203, )  
Near Datta Temple, Aurangaad, )  
Tq. & Dist. Aurangabad. ).. **APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through the Secretary, )  
Social Justice & Special Assistant )  
Department, )  
Mantralaya, Mumbai. )
  2. The Commissioner, )  
Social Welfare Commissioner )  
Office, 3 Church Path, )  
Pune 411 001. )
  3. The Divisional Dy. Commissioner,)  
Social Welfare Department, )  
Dr. Babasaheb Ambedkar, Social )  
Justice Bhavan, Khokadpura, )  
Near Shivaji Vidhyalay, )  
Aurangabad. )
  4. The Assistant Commissioner, )  
Social Welfare Department, )  
Dr. Babasaheb Ambedkar, )  
Social Justice Bhavan, Khokadpura) )  
Near Shivaji Vidhyalay, )  
Aurangabad. )
  5. The Garahpal, )  
Dr. Babasaheb Ambedkar Govt. )  
Boys Hostel (Old), )  
Hadco Corner, Aurangabad. ).. **RESPONDENTS**
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APPEARANCE :- Shri Esting Murge, learned Advocate  
for the applicant.  
: Shri M.P. Gude, learned Presenting  
Officer for the respondents.

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**CORAM : Hon'ble Shri B.P. Patil, Acting Chairman**

**RESERVED ON : 24<sup>th</sup> September, 2019**

**PRONOUNCED ON : 27<sup>th</sup> September, 2019**  
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### **ORDER**

1. The applicant has challenged the order dated 13.2.2019 passed by the res. no. 3 and prayed to quash and set aside the said order and direct the res. nos. 2 & 3 to consider his case for appointment on compassionate ground in view of G.R. dtd. 11.9.1996, by filing the present Original Application.

2. Deceased Vishwanath Yashwantrao Wagh was father of the applicant. He was appointed as a Jr. Clerk by the respondents on 17.3.1986 and was posted at Dr. Babasaheb Ambedkar Government Boys Hostel, Aurrangabad. He died on 13.9.2005 while in service. The present applicant was minor at that time. After death of Vishwanath Wagh his widow namely Smt. Jaya Vishwanath Wagh i.e. mother of the applicant has filed an application with the respondents for getting appointment on compassionate ground on 10.4.2006. Accordingly, her name has been entered in the waiting list of

the eligible candidates to be appointed on compassionate ground at sr. no. 3. Thereafter she had visited the office of the respondents on several occasions for getting the appointment, but the respondents have not taken any steps in that regard. It was only after nine years the res. no. 2 by the letter dtd. 4.8.2014 directed the mother of the applicant to remain present on 5.8.2014 at 11.00 a.m. before him along with required documents for consideration of her claim for appointment on compassionate ground. Accordingly, the mother of the applicant appeared before the res. no. 2 and submitted an application that her mental condition was not proper after filing the application for appointment on compassionate ground and therefore she was not able to do the work and she requested to consider the claim of the applicant for appointment on compassionate ground. Thereafter the applicant on attaining the age of majority has filed an application on 16.8.2014 and requested to consider his claim for appointment on compassionate ground and also submitted the required documents to the res. no. 3. Thereafter, the application of the applicant was referred to the res. no. 3 for further steps. The res. no. 3 found some deficiencies in the proposal and therefore applicant was directed to comply with those deficiencies. The applicant accordingly complied with those deficiencies.

Thereafter mother of the applicant had filed an application to the res. no. 3 requesting to consider the case of the applicant for appointment on compassionate ground. Though the res. no. 4 forwarded the proposal of the applicant to the res. no. 3, the res. no. 3 had not considered it and therefore the applicant made another application on 10.1.2017. Thereafter the res. no. 3 without verifying the documents and misinterpreting the date of birth of the applicant and his sisters had refused to consider his claim by the order dtd. 15.2.2017 on the ground that there is provision that if third child is born after 1.12.2001, the said family is not entitled to claim appointment on compassionate ground in view of the provisions of the G.R. dtd. 28.3.2001.

3. It is contention of the applicant that no child in their family is born after 1.12.2001 and therefore immediately he filed an application on 17.4.2017 and requested the res. no. 3 to reconsider his claim. The res. no. 3 by letter 29.7.2017 directed the applicant to submit the medical certificate regarding illness of his mother. Accordingly he submitted the medical certificate issued by the Medical Officer in that regard. On 28.9.2017 the applicant filed detailed application and submitted the copies of orders passed by this Tribunal in other matters. The res. no. 3 by the letter dtd. 3.1.2018 forwarded the proposal of the

applicant to the res. no. 2. The res. no. 2 thereafter sought guidance from the res. no. 1 by the letter dtd. 15.1.2018. The res. no. 1 by communication dtd. 19.4.2018 directed the res. no. 2 to submit some information as per the application made by the applicant and further asked to submit a detailed proposal. Accordingly the res. no. 2 directed the res. no. 3 to submit detailed information in that regard. The res. no. 3 without submitting the information as asked for by the res. nos. 1 & 2 passed the impugned order on 13.2.2019 and rejected the claim of the applicant. It is contention of the applicant that the impugned communication is not in accordance with the provisions of G.R. dtd. 11.9.1996. It is his contention that he moved an application to the respondents claiming appointment on compassionate ground within one year after attaining the age of majority. His mother was suffering from mental disease. It is his contention that his mother was not in a fit condition to accept the job. He has submitted that the respondents ought to have considered all these aspects and allowed his application and ought to have appointed him on compassionate ground, but the res. no. 3 has wrongly rejected his claim. Therefore, he prayed to quash the impugned communication and to direct the respondents to appoint him on compassionate ground, by allowing the present Original Application.

4. The res. nos. 2 to 5 filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the father of the applicant namely Vishwanath Wagh was working with them as Jr. Clerk and he died on 13.9.2005 while in service. They have admitted the fact that the mother of the applicant namely Smt. Jaya w/o Vishwanath Wagh filed an application for getting appointment on compassionate ground and her name has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground. They have admitted the fact that she was called in the office of res. no. 3 for considering her claim for appointment on compassionate ground on 5.8.2014. They have admitted the fact that mother of the applicant filed an application on 5.8.2014 and requested to appoint the applicant on compassionate ground as she was not mentally fit. They have admitted the fact that the application of the applicant has been rejected by the impugned communication issued by the res. no. 3 on the ground that there is no provision to replace / substitute the name of heir, whose name has already been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground. It is their contention that there is no provision in the scheme for substitution of the name of heir whose name has already recorded in the waiting list and

application of the applicant has been rejected in view of the provisions of G.R. dtd. 20.5.2015. It is their contention that there is no illegality in the impugned order and the res. no. 3 has rightly rejected the claim of the applicant in view of the guidelines contained in the G.R. dtd. 20.5.2015. Therefore they supported the impugned order and prayed to reject the Original Application.

5. I have heard the arguments advanced by Shri Estling Murge, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

6. Admittedly deceased Vishwanath Yashwantrao Wagh was father of the applicant. He was appointed as a Jr. Clerk by the respondents on 17.3.1986 and thereafter posted at Dr. Babasaheb Ambedkar Government Boys Hostel, Aurangabad. He died on 13.9.2005 while in service. Admittedly at that time the present applicant was minor and therefore his mother / widow of the deceased namely Smt. Jaya Vishwanath Wagh has filed an application with the respondents requesting for appointment on compassionate ground on 10.4.2006. On the basis of her application her name has been entered in the waiting list of the eligible candidates to be appointed on

compassionate ground at sr. no. 3. Admittedly by the letter dtd. 4.8.2014 issued by the res. no. 2 she was directed to remain present on 5.8.2014 at 11.00 a.m. in the office of res. no. 2 for consideration of her claim for appointment on compassionate ground. Admittedly she appeared before the res. no. 2 on 5.8.2014 and submitted an application with a request to appoint the present applicant on compassionate ground as she was suffering from mental disease. Admittedly the applicant attained the majority on 2.6.2014 and thereafter he filed an application on 16.8.2014 to the respondents for getting appointment on compassionate ground. After compliance of the necessary requirements his application was rejected by the res. no. 3 on the ground that there is a provision that if third child is born after 1.12.2001 the said family is not entitled to claim appointment on compassionate ground in view of the provisions of the G.R. dtd. 28.3.2001. The applicant immediately informed the res. no. 3 by his application dtd. 17.4.2017 that no child in their family is born after 31.12.2001 and therefore he requested to reconsider his claim for appointment on compassionate ground. Thereafter the matter was referred to res. nos. 2 & 1 and the res. no. 1 raised some queries and at that time the res. no. 3 passed the impugned order rejecting the application of the applicant on the ground that there is no provision to replace the



name of heir of deceased whose name has already been recorded in the waiting list by way of substitution.

7. Learned Advocate for the applicant has submitted that the applicant was minor at the time of death of his father. At the time of death of his father his mother was eligible to get appointment on compassionate ground and therefore she applied. Her name has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground. After the period of nine years no employment was offered to the mother of the applicant, but on 4.8.2014 she received a letter informing her to remain present on 5.8.2014 at 11.00 a.m. before the res. no. 2 in connection with her employment on compassionate ground. He has submitted that accordingly she appeared before the res. no. 2 and submitted an application that her mental condition was not proper after filing the application for appointment on compassionate ground and therefore she was not able to do the work and therefore she requested the respondents to consider the name of the applicant for appointment on compassionate ground. He has argued that the applicant attained the age of majority on 2.6.2014 and thereafter he applied to the respondents by filing the application dtd. 16.8.2014 for getting appointment on

compassionate ground. He has argued that the res. nos. 1 to 3 ought to have considered the fact that the mother of the applicant, whose name has already been recorded in the waiting list, is not mentally fit to serve and therefore they ought to have replaced her name by inserting the name of the applicant. He has submitted that when the applicant moved an application dtd. 16.8.2014 the G.R. dtd. 20.5.2015 was not in existence. There was no bar in the earlier G.Rs. to file an application for substitution / replacement of the name of the heir, whose name has already been inserted in the waiting list, but the res. no. 3 has not considered the said aspect and rejected the application of the applicant by the impugned order. The action on the part of the respondents is illegal and in violation of the provisions of the G.Rs. and therefore he prayed to quash the impugned order.

8. He has submitted that this Tribunal at its Nagpur Bench in case of **Chanda Wd/o Laxmikant Pangse Vs. the State of Maharashtra & Ors. (O.A. no. 88/2015)** decided on 31.3.2017 considered the said aspect and granted relief to the applicant in that matter. He has submitted that the case of the present applicant is covered by the said decision. Therefore, he prayed to allow the O.A. He has also placed reliance on the judgment of Hon'ble Supreme Court in case of **Canara Bank and another**

**Vs. M. Mahesh Kumar** reported at **2016(1) Mh.L.J. 594** and decision of Hon'ble High Court of Judicature at Bombay in case of **Leelabai Yashwant Ghodke and another Vs. Union of India** and others reported at **2018(5) Mh. L.J. 458.**

9. Learned Presenting Officer has submitted that name of the mother of the applicant has already been enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground on the basis of her application dtd. 10.4.2006. The res. no. 2 called her for appointment on 5.8.2014, but she has not produced documents and she submitted an application and requested the res. no. 2 to appoint the applicant in her place. Thereafter the applicant moved an application in that regard. He has argued that the Government issued G.Rs. regarding the appointment of the heirs of the deceased on compassionate ground from time to time. In view of the said G.Rs. one of the heirs of the deceased mentioned therein is entitled to get appointment on compassionate ground. He has submitted that accordingly the name of the mother of the applicant has been enlisted in the waiting list in the year 2006 on the basis of her application and accordingly she has been called by the res. no. 2 in connection with her appointment on compassionate ground, but she failed to produce necessary documents before

the res. no. 2. He has argued that the Government compiled all the G.Rs. and Circulars related to the scheme of compassionate appointment and issued G.R. dated 21-09-2017.

10. He has submitted that the said provision has been clarified in the subsequent G.R. dtd. 20.5.2015. As there is no provision in the G.Rs. to substitute the name of the heir, whose name has already been recorded in the waiting list, by another heir, the res. no. 3 has rightly rejected the application of the applicant by the impugned order. He has submitted that there is no illegality in the impugned order and therefore prayed to reject the O.A.

11. On perusal of documents placed on record, it reveals that after the death of Vishwanath Wagh the mother of the applicant had filed an application for getting appointment on compassionate ground. On the basis of her application her name has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground at sr. no. 3. Not only this but she has been called by the res. no. 2 for production of original documents on 5.8.2014 but she failed to produce the documents but she had submitted an application requesting the res. no. 2 to appoint the present applicant in her place.

12. In the year 1976 the Government has introduced a scheme for appointment on compassionate ground on account of death of Government employee while in service, which has been modified by the Government from time to time by issuing several G.Rs. The Government compiled all the G.Rs. and Circulars related to the scheme of compassionate appointment and issued G.R. dated 21-09-2017. On going through the same it reveals that one of the heirs as mentioned in the G.R. is entitled to get appointment on compassionate ground. In the said G.R. there is a provision that if any heir is minor at the time of death of Government employee then he can file application for appointment on compassionate ground, within one year from the date of attaining the age of majority. The mother of the applicant was eligible to get appointment on compassionate ground after death of her husband and therefore she applied for appointment on compassionate ground. Her name has been enlisted of the waiting list of the year 2006. After eight years the applicant moved an application to the respondents for inserting his name in the waiting list by deleting the name of his mother. Admittedly there is no provision in the scheme to replace the name of heir, whose name has already been recorded in the waiting list by inserting the name of another heir. This scheme has been modified by

the Government in the year 2015 by issuing G.R. dtd. 20.5.2015 and replacement of name of heir is permitted if the said heir, whose name has already been enlisted in the waiting list is dead. As there is no provision in the scheme or in any of the G.Rs. to replace the name of the heirs, whose name has been recorded in the waiting list, the res. no. 3 had rightly rejected the claim of the applicant by the impugned communication. I find no illegality in the impugned communication. Therefore in my opinion no interference in the impugned order is called for. There is no merit in the O.A.

13. I have gone through the decisions referred by the learned Advocate for the applicant. In O.A. no. 88/2015 the Nagpur Bench of this Tribunal directed the respondents therein to consider the claim of the applicant in that regard and to take appropriate decision as per rules. In this case the res. no. 3 had already considered the claim of applicant and decided his application as per the provisions of the G.R. dtd. 20.5.2015. Therefore the said decision is not much useful to the applicant in the instant case. Likewise, the facts in the present case are different than the facts in the above cited decisions and therefore the same are not applicable in the instant case.

14. Considering the above facts in my opinion there is no illegality in the impugned order. The res. no. 3 has rightly rejected the claim of the applicant. Therefore, no interference is called for in the impugned order. There is no merit in O.A. Resultantly the O.A. deserves to be dismissed.

15. In view of the discussion in foregoing paragraphs, the O.A. stands dismissed. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 27<sup>th</sup> September, 2019**