

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.742 OF 2018

DISTRICT : AHMEDNAGAR

Jaibunbee W/o. Rasul Shaikh.)
Residing at Mula Nagar, Tal. Rahuri,)
District : Ahmednagar.)...Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary, Irrigation)
Department, Mantralaya, Mumbai – 32.)
2. The Superintendent Engineer / Administrator)
Command Area Development Authorities,)
Nashik.)
3. The Collector, Ahmednagar.)
4. The Executive Engineer, Ahmednagar)
Irrigation Department, Fakirwada,)
Ahmednagar.)
5. The Sub-Divisional Engineer,)
Devlali Sub Division, Devlali pravara,)
Tal.: Rahuri, Dist : Ahmednagar.)
)
(Copy of Respondent Nos.1 & 5 to be)
Served on Presiding Officer, MAT Bench)
at Aurangabad))...Respondents

Mr. H.U. Dhage, Advocate for Applicant.

Mr. N.U. Yadav, Presenting Officer for Respondents.

CORAM : SHRI JUSTICE A.H. JOSHI, CHAIRMAN



Reserved on : 21.09.2018

Pronounced on : 09.10.2018

JUDGMENT

1. Heard both sides.
2. Perused O.A, annexures and reply.
3. Applicant has approached this Tribunal with prayers which read as follows :-

“(B) To direct the respondents to decide the claim of the applicant a fresh and give appointment to the applicant or her son as early as possible and for that purpose issue necessary orders.

(B1) To direct the respondents to consider the name of the son of applicant in her place for appointment on compassionate ground as early as possible by setting aside the letter of communication dated 04.04.2009 and for that purpose issue necessary orders.”
(Quoted from Page 8 and Page 8A)

4. Impugned communication dated 04.04.2009 reads as follows :-

“ज.क्र.अपावि/आ१/अनुकंपा/१९२०/०९

अहमदनगर पाटबंधारे विभाग, अहमदनगर
दिनांक : ४/४/२००९

प्रति,
श्रीमती जयबुनबी रसुल शेख
(मु.पो.मुळानगर, ता.राहुरी)
जि.अहमदनगर.

विषय : अनुकंपा तत्त्वावर वारस या नात्याने वडिलांचे जागेवर मुलास नियुक्ती देण्याबाबत.
संदर्भ : आपला दिनांक १४.०३.२००९ चा अर्ज या कार्यालयासप्राप्त दि.२६.३.२००९.

महोदय,

आपला दिनांक १४.३.०९ चे अर्जांन्वये कळविण्यात येते की, आपले पती श्री.रसुल बाबुलाल शेख यांचे दि.१.२.९८ रोजीचे निधनानंतर अनुकंपा तत्त्वावर नोकरी मिळणेबाबतचा आपला प्रस्ताव मा.जिल्हाधिकारी-अहमदनगर यांचेकडे सादर करण्यात आला असता मा.जिल्हाधिकारी अहमदनगर यांचे पत्र क्र.मह.कार्या.५६/१९२१/०५ दि.१.११.०५ अन्वये या कार्यालयास दि.१८.११.०५ रोजी अनुकंपा यादी व प्रस्ताव प्राप्त झाला आहे.

सादर प्राप्त झालेली यादी व प्रस्ताव (१८) या कार्यालयाचे नियुक्ती अधिकारी मा.अधिक्षक अभियंता व प्रशासक लाभक्षेत्र विकास प्राधिकरण नाशिक यांचेकडे पत्र क्र.आ१/अपावि/अकंपा/८८१४ दि.२२.११.०५ अन्वये सादर करण्यात आले आहे.

प्रचलित शासन निर्णय क्र.अकंपा/१००४/प्र.क्र.५१/२००४ आठ मंत्रालय मुंबई-३२ दि.२२ ऑगस्ट ०५ मधील तरतूद २(२) अन्वये यापुढे वयाच्या ४० वर्षापर्यंतच्या उमेदवारांना अनुकंपा नियुक्ती अनुज्ञेय असेल त्यामुळे प्रतिकासुचीत त्यांची नावे वयाची ४० वर्षे पूर्ण होताच आवश्यक ती नोंद घेवून सुचीतुन काढून टाकण्यात यावीत.

आपली जन्मतारीख १.७.१९६६ अशी असल्याने आपले वयाची ४३ वर्षे पूर्ण होत आहेत.

महाराष्ट्र शासन जलसंपदा विभाग मंत्रालय, मुंबई शासन पत्र क्रमांक अकंपा/१००८/१८४६ (५९७/२००८)आ (अतिरिक्त) दि.६.१०.२००८ नुसार प्रतिका सुचीवर असलेल्या उमेदवारांच्या ऐवजी अन्य वारसाचे नाव नोंदविण्याची तरतूद

प्रचलित धोरणात अंतर्भूत नाही त्यामुळे श्री.शाबुद्दीन रसूल शेख यांचा अनुकंपा तत्वावर नोकरी मिळणेसाठीचा विचार करता येत नाही याची नोंद घ्यावी.

सबब आपला दि.१४.३.०९ चा अर्ज निकाली काढण्यात येत आहे.

सही/-
उपकार्यकारी अभियंता
अहमदनगर पाटबंधरी विभाग,
अहमदनगर”

(Quoted from Page 18)

5. By amending the O.A, the Applicant has incorporated the pleadings and grounds of challenge to the impugned communications. Those averments read as follows :-

“9A. The applicant states that, the date of birth of the applicant is 01.07.1966, the applicant completed 45 years of age on 01.07.2011, the applicant states that till 01.07.2011 the claim of the applicant for appointment on compassionate ground was alive in view of the judgment passed by Hon’ble High Court in Writ Petition No.7832/2011. The applicant states that, on 14.03.2009 the applicant made an application to the respondent to consider the name of the son in place of her for compassionate appointment. The applicant states that, in similar facts of the case the Hon’ble High Court in Writ Petition No.7793/2009 pleased to allow the substitution of the name of son in place of mother, and Division Bench and Single Bench of this Hon’ble Tribunal in number of Original Application taken similar view and allowed the Original Applications by directing the authorities to substitute the name of another heir in place of earlier heir.

9B. The applicant states that, the applicant have made an application for substituting the name of son in her place on 14.03.2009 when her claim for appointment on compassionate ground was alive, the applicant states that by letter communication dated 04.04.2009 the respondent No.4 rejected the application dated 14.03.2009 of the applicant on the ground that such substitution is not provision to substitute the name of one heir in place of another heir. The applicant states that, the Hon’ble High Court in Writ Petition No.7793/2009 pleased to allow the substitution of the name of son in place of mother, and Division Bench and Single Bench of this Hon’ble Tribunal in number of Original Application taken similar view and allowed the substitutions.

9C. The applicant states that, the applicant is very poor unemployed lady and she has an unemployed son, she is unable to maintain herself as after the demise of her husband she lost the shelter and now for the remaining life of the applicant she required the service for better care about life. The applicant submits that, If in case the applicant’s son not get the appointment, then they would be put to hardships and Therefore, in the interest of justice, it is necessary to direct the respondents to consider the name of the son of applicant in her place for appointment on compassionate ground by setting aside the letter of communication dated 04.04.2009.”

(Quoted from Pages 6A and 6B)

6. Applicant has placed reliance on various Judgments/orders of Hon’ble High Court and this Tribunal as follows :-



Judgments of Hon'ble High Court			
Sr.No.	Case No. & Date of Judgment	Name of Parties	Page Nos.
1)	Writ Petition No.7793 of 2009, dated 9 th December, 2009.	Vinodkumar K. Chavan Vs. The State of Maharashtra & Ors.	64 to 66
2)	Writ Petition No.7832/2011, dated 28 th February, 2012.	Anuradha Suresh Ingle Vs. The State of Maharashtra & Ors.	115

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1)	O.A.No.370 of 2017, dated 7 th August, 2017 (at Mumbai).	Smt. Vanita P. Shitole & Anr. Vs. The State of Maharashtra & Ors.	67 to 76
2)	O.A.No.979 of 2016, dated 7 th August, 2017 (at Mumbai).	Rahul V. Ahire Vs. The State of Maharashtra & Ors.	77 to 86
3)	O.A.No.382 of 2013, dated 31 st March, 2017 (at Nagpur Bench).	Suraj S. Bhende Vs. The State of Maharashtra & Anr.	87 to 100
4)	O.A.No.239 of 2016, dated 21 st October, 2016 (at Mumbai).	Swati P. Khatavkar & Anr. Vs. The State of Maharashtra & Anr.	101 to 108
5)	O.A.No.503 of 2015, dated 5 th April, 2016 (at Mumbai).	Piyush M. Shinde Vs. The State of Maharashtra & Ors.	109 to 122
6)	O.A.No.21 of 2013, dated 20 th August, 2014 (at Mumbai).	Smt. Archana R. Badmanji & Anr. Vs. The Superintending Engineer, Sangli Irrigation Circle, Sangli & Anr.	123 to 140
7)	O.A.No.636 of 2016, dated 21 st March, 2017 (at Mumbai).	Sagar B. Raikar Vs. The Superintending Engineer, Thane Irrigation Circle, Thane & Ors.	141 to 158

7. Applicant's case and case in W.P.No.7832/2011 Anuradha Suresh Ingle's case are compared as below :-

Sr.No.	Particulars	Applicant	Petitioner in W.P. No. 7832/2011
1.	Date of Birth	01.07.1966	02.05.1968
2.	Date of crossing 40 years	01.07.2011	02.05.2009
3.	Date of application for submission of son's name	14.03.2009	-
4.	Ground of deletion from waiting list	Request is not admissible as per Rules	Request is not admissible as per Rules
5.	Date of rejection	04.04.2009	24.05.2010

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8. From the comparison of data noted in foregoing Para, it is evident that case of Applicant is a replica of facts of the case in W.P.No.7832/2011.
9. In O.A.239/2016, bench of this Tribunal (at Mumbai), has been relying on the Judgment in O.A.7832/2011 granted final relief.
10. The view as laid down in W.P.7832/2011 has been followed in all cases which are as much as seven in number which are described in foregoing Para No.6.
11. Moreover, the view of this Tribunal is based on ratio laid down and order passed by Hon'ble High Court, is consistent on the principles governing the increase in age of Applicant upto 45 years for continuation on waiting list and for substitution of name of dependent child on the waiting list.
12. In the result, the impugned order is proved to be contrary to the consistent view taken by this Tribunal which view and orders are based on and by following binding precedents of Hon'ble High Court, in cases listed in foregoing Para No.6.
13. Therefore, impugned communication deserves to be quashed and set aside.
14. This Tribunal holds that the Applicant's request for substitution of Applicant's name in the waiting list deserves to be allowed.
15. Claim of applicant's son be treated as liable, to be considered on the date due for substitution i.e. the date when Applicant attained 45 years of age.
16. In case, any candidate junior in waiting list than Applicant or her son, was eventually appointed in the intervening period, Applicant be offered appointment as and when a vacancy becomes available. If Applicant has lost chance of appointment because his name was not included at that time, and no opportunity to appoint the Applicant was offered.
17. However, if a junior to Applicant/Applicant's son was appointed, and now if a vacancy is not available, the Applicant shall be free to apply to the competent authority for appropriate relief such as creation of supernumerary post, by making a representation after collecting factual data.

18. Hence, O.A. is allowed and the impugned order is quashed and set aside and relief is granted in terms of foregoing Paras 13 to 17. Parties are directed to bear their own costs.



(A.H. Joshi, J.)
Chairman
05.10.2018

Mumbai
Date : 09.10.2018
Dictation taken by :
S.K. Wamanse.