

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO.823 OF 2018
(Subject:- Compassionate Appointment)**

DISTRICT: - NANDED.

Shubham s/o Hanmantrao Myadarwad,)
Age :23 years, Occu. Education,)
R/o Near Nagar Parishad, Umari,)
Tq. Umari, District Nanded.)..**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Revenue Department,)
Mantralaya, Mumbai-32.)
- 2. The Collector, Nanded,**)
District Nanded.)
- 3. The Tahsildar, Kinwat,**)
Tq. Kinwat, District Nanded.)..**RESPONDENTS**

APPEARANCE : Shri G.J. Karne, learned Advocate for
the applicant.

: Shri B.S. Deokar, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **06.06.2022**

ORDER

By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned order dated 12.04.2017 (Annex. 'A-1') rejecting the claim of the applicant for getting compassionate appointment and consequently seeking direction to the respondents to consider the applicant's application for compassionate appointment.

2. The facts in brief giving rise to this application are as follows:-

- (i) The father of the applicant named Hanmant Bhumanna Myadarwad died in harness on 23.02.1997 while working as Circle Inspector at Kinwat under the office of respondent No.3 i.e. the Tahsildar, Kinwat. Death certificate of the said deceased Hanmant Bhumanna Myadarwad issued by the respondent No.3 is at Annex. 'A-2'.
- (ii) The said Hanmant Bhumanna Myadarwad died leaving behind the applicant and his mother namely Smt. Lalita Hanmant Myadarwad as reflected in heirship certificate dated 19.06.2018 (Annex. 'A-3') issued by the Police Patil of Village Umari, District. Nanded.

- (iii) The family of the applicant is landless. They have no source of income. The applicant's mother initially filed application dated 20.09.1999 (Annex. 'A-4'), seeking appointment on compassionate ground. At that time, the applicant was four years old. The name of the applicant's mother was taken in the waiting list by the office of the respondent No.2 i.e. the Collector, Nanded at Sr.No.152. Thereafter, the applicant's mother received letter dated 05.05.2004 (Annex.'A-5') from Sub-Divisional Officer, Partur, District. Jalna (wrongly mentioned as the respondent No.2 i.e. the Collector, Nanded) asking to remain present with the documents for getting an appointment (part of Annex. 'A-5' collectively). She also subsequently received letter dated 13.07.2009 (part of Annex. 'A-5' collectively) from the office of the respondent No.2 i.e. the Collector, Nanded for remaining present with the documents on 30.07.2009.
- (iv) It is submitted that the mother of the applicant belongs to Open category. Therefore, she could not remain present in the office of the respondents with Caste Certificate. Therefore, the name of the applicant's mother for appointment on compassionate

ground was not considered. Subsequently, the applicant's mother was informed by letter dated 10.06.2016 (Annex. 'A-6') by the respondent No.2 that she is not eligible for getting compassionate appointment as she has completed age of 40 years on 15.06.2008 and she is not entitled for appointment on compassionate ground as per G.R. dated 22.08.2005.

- (v) Meanwhile, the application dated 25.05.2016 (part of Annex. 'A-7' collectively) was made by the applicant's mother for getting appointment on compassionate ground to her son i.e. the applicant as he had completed 20 years of age then and had completed education. Thereafter, the applicant also made application dated 15.05.2018 (part of Annex. 'A-7' collectively) seeking compassionate appointment. However, the said claim of the applicant is rejected by the respondents by issuing impugned order dated 12.04.2017 (Annex. 'A-1') as well as by letter dated 10.06.2016 (Annex. 'A-6') contending that there is no provision for substitution in the said scheme.
- (vi) It is the contention of the applicant that in case of similarly situated persons, the respondent No.2 i.e. the Collector, Nanded has allowed the claim of the sons in

place of their respective mothers as per letters dated 14.11.2007 and 11.06.2001 (Annex. 'A-8' collectively).

- (vii) In this regard he also placed reliance on the G.R. dated 11.09.1996 and the decision of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.7005 of 2015 in the matter of **Hrishikesh Yeshwantrao Shinde Vs. The State of Maharashtra and Ors.**

3. The affidavit-in-reply is filed on behalf of the respondent Nos.2 and 3 by one Dhondiba Narayan Gaikwad working as Naib-Tahsildar (Revenue-1) in the office of the Tahsildar, Kinwat, District. Nanded.

- (i) He thereby denied all adverse contentions raised in the application. It is however, admitted that the father of the applicant named Hanmant Bhumanna Myadarwad was working as Circle Inspector at Kinwat when he died on duty on 23.02.1997 and that the name of the applicant's mother was taken in the waiting list and she was at Sr.No.152. It is further submitted that by letter dated 05.05.2004 (Annex. 'A-5') the mother of the applicant was directed to remain present with the requisite documents. However, she remained absent.

Therefore, her name could not be considered for appointment on compassionate ground. Thereafter, the name of the mother of the applicant was removed from the waiting list on 10.06.2016 relying on the G.R. dated 22.08.2005 as she completed 40 years of age.

- (ii) It is admitted that the mother of the applicant made application dated 25.05.2016 and requested appointment for applicant on compassionate ground. However, the same is rejected on the ground that once the name of the mother of the applicant put in the waiting list, her son's name cannot be considered again as there is no such requisite Rule. Hence the applicant is liable to be dismissed.

4. I have heard the arguments advanced by Shri G.J. Karnee, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer for the respondents on other hand.

5. Perusal of rival pleadings would show that undisputedly after death of the applicant's father on 23.02.1997, the mother of the applicant Smt. Lalita Hanmant Myadarwad made application dated 20.09.1999 (Annex. 'A-4'). Admittedly, her name was taken in the waiting list. She was at Sr.No.152 in the waiting list.

Perusal of the letter dated 05.05.2004 (Annex. 'A-5') addressed by Sub-Divisional Officer, Purnur, Dist. Jalna would show that she was offered compassionate appointment on the post of Peon and she was asked to remain present along with the documents such as Birth Certificate, Education Certificate, Caste Certificate and Caste Validity Certificate etc. There was no response from the applicant's mother. On that point also in the Original Application it is sought to be contended that as the applicant's mother belongs to Open Category, she was not having Caste Certificate and thereafter she did not remain present in office for production of documents.

6. Record shows that further opportunity was given to the applicant's mother for giving compassionate appointment on the post of Peon by issuing letter dated 13.07.2009 (Annex. 'A-5' collectively). By the said letter the respondent No.2 i.e. the District Collector, Nanded asked the applicant's mother to remain present with the requisite documents on 30.07.2009. She was cautioned that if she failed to remain present with documents her claim for compassionate appointment would come to end. It appears that applicant's mother did not respond to the said letter also.

7. Thereafter, by letter dated 10.06.2016 (Annex. 'A-6'), the respondent No.2 informed the applicant's mother that her date of birth is 15.06.1968 and she completed age of 40 years on

15.06.2008. In view of the same, as per the G.R. dated 22.08.2005, she became ineligible for getting appointment on compassionate ground. By the same letter it was also informed that the applicant is also not entitled for compassionate appointment for want of substitution.

8. It appears that the said letter was issued in view of applicant's mother's application dated 25.05.2016 (Annex. 'A-7') seeking compassionate appointment to her son i.e. the applicant on becoming major in her place.

9. Perusal of the record would show that the applicant also independently made application on 15.05.2018 (part of Annex. 'A-7' collectively) seeking appointment on compassionate ground mentioning that her mother was not given appointment in 2004 as she did not produce the Caste Certificate and at that time he was about 12 years old. This application seems to have been made after rejection of the claim of the applicant vide letter dated 10.06.2016 as well as letter dated 12.04.2017 (Annex. 'A-1'). Letter dated 10.06.2016 (Annex. 'A-6') is addressed to applicant's mother whereas the letter dated 12.04.2017 (Annex. 'A-1') is addressed to the applicant.

10. Perusal of the record would show that the date of birth of the applicant is 07.04.1992 as reflected in School Certificate (part of

Annex. 'A-7' collectively, page no.25 of P.B.). In view of same, the applicant attained the age of majority on or about 06.04.2010. The application for appointment on compassionate ground was made on behalf of the applicant by his mother for the first time on 25.05.2016 (Annex. 'A-7' collectively, page no.21 of P.B.). It is after about six years of attaining age of majority by the applicant. Before that the applicant's mother was offered appointment on compassionate ground in the year, 2004 as well as 2009 as discussed earlier.

11. However, the applicant's mother failed to produce the requisite documents for getting appointment on compassionate ground. Moreover, the applicant's mother attained the age of 40 years in the 2008 and in view of that she was ineligible for getting compassionate appointment in view of the concerned G.R. dated 22.08.2005. As per G.R. dated 11.09.1996 (part of Annex. 'A-9' collectively), the limitation period for making application for compassionate appointment is one year after attaining the age of majority by the member of family of the applicant.

12. Learned Advocate for the applicant submitted that the claim of the applicant is denied on the ground that there is no provision in the scheme of compassionate appointment to substitute the name of family members. That is wrong. To substantiate the said submission he placed reliance on following decisions:-

- (i) **Writ Petition No.7005 of 2015** in the matter of **Hrishikesh Yeshwantrao Shinde Vs. The State of Maharashtra and Ors.** decided on 10.12.2015 by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad.
- (ii) **Writ Petition No.6267 of 2018** in the matter of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra & Ors.** decided on 11.03.2020 by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad.
- (iii) **O.A.No.205 of 2019** in the matter of **Vaijnath Mallikarjun Karadkhele Vs. The State of Maharashtra & Ors.** decided on 15.11.2021 by the Maharashtra Administrative Tribunal Bench at Aurangabad.
- (iv) **O.A.No.12 of 2020** in the matter of **Vaibhav Venkat Chandle & Anr. Vs. The State of Maharashtra & Ors.** decided on 26.11.2021 by the Maharashtra Administrative Tribunal Bench at Aurangabad.

13. It is true that in all the abovesaid citations it is held that substitution is not barred. However, in the present case, it is not only the case of substitution. In this case as discussed before the name of the applicant's mother was considered and her name was

taken in the waiting list. She was offered appointment twice, but she failed to produce requisite documents. She was offered an appointment on compassionate ground that was in the year, 2004 and 2009. The applicant attained the age of majority on or about 06.04.2010. The application on his behalf for compassionate appointment for the first time was made on 25.05.2016. The explanation given in the said application that his mother could not produce requisite documents for getting compassionate appointment is vague. The compassionate appointment is given to support the family of the deceased who died in harness. Reasonable diligence is expected from the family members of the deceased. For non production of requisite documents, no plausible explanation is forthcoming from the applicant's side. Faint attempt is being made in the Original Application stating that the applicant's mother belongs to Open category and therefore she could not produced Caste Certificate. In my considered opinion, this explanation without any supporting evidence is not acceptable. This inaction shows the negligence. This is not the case where the applicant's claim was made immediately after within one year after attaining his age of majority. For that also no plausible explanation is forthcoming. In my humble opinion, ratio laid down in abovesaid citations will not be applicable to the present applicant in view of forgoing discussion.

14. In view of aforesaid discussion, in my considered opinion, no case is made out by the applicant for getting an appointment on compassionate ground. The case of the applicant suffered from the aspect of barred by limitation as well as laches and gross negligence. The respondents had already offered requisite appointment on compassionate ground to the applicant's mother. However, the said benefit is not availed in accordance with law. In view of above, the Original Application deserves to be dismissed. Hence, following order:

ORDER

- (A) The Original Application is dismissed.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 06.06.2022
SAS O.A.823/2018