

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.928 OF 2018

(Subject :- Compassionate Appointment)

DISTRICT : AURANGABAD

1. **Smt. Kavita wd/o Deepak Hiwrale,**)
Age: 44 yrs., Occu.: Household,)
R/o: L-1, 8/3, Hanuman Mandir,)
Mukundwadi, Cidco, Aurangabad.)

2. **Ajay s/o Deepak Hiwrale,**)
Age: 26 yrs., Occu.: Hil,)
R/o: As above.)...**Applicants**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department, M.S.,)
Mantralaya, Mumbai-32.)

2. **The Superintendent of Police,**)
Jalna.)...**Respondents.**

Shri A.S. Deshmukh, learned Advocate for the Applicant.

Shri I.S. Thorat, learned Presenting Officer for the Respondents.

CORAM : B.P. PATIL, ACTING CHAIRMAN

RESERVED ON : 20.11.2019.

PRONOUNCED ON : 28.11.2019.

ORDER

1. The Applicants have challenged the communication dated 27.9.2018 issued by the Respondent No.2 rejecting the application for replacing the name of the Applicant in the waiting list of the eligible candidates to be appointed on compassionate ground by filing the present Original Application and prayed to quash the said communication and direct the Respondent No.2 to include the name of the Applicant No.2 in the waiting list of the eligible candidates to be appointed on compassionate ground at appropriate place and to consider his case for grant of appointment on compassionate ground.

2. Deceased Deepak Bhimrao Hiwrale was husband of the Applicant No.1 and father of the Applicant No.2. He entered service of the Government of Maharashtra in its Police/Home Department as Police Constable. Thereafter he was promoted as Police Head Constable. He died in harness on 16.9.2004. After death of deceased Deepak Bhimrao Hiwrale, the Applicant No.1 applied to the Respondent No.2 for grant of employment on compassionate ground for her in class 'IV'/Group 'D' category. Accordingly, her name was included in the waiting list of the eligible candidates to be appointed on compassionate ground. But no job was offered to her though she was asked to remain present

for participating in the selection process for the post of Lady Police Constable (LPC) which is Class 'III'/Group 'C' category post. It is their contention that she passed 7th standard and therefore, she was not fulfilling the qualification for getting appointment on any Group 'III'/Group 'C' post.

3. It is contention of the Applicants that the Applicant No.2 Shri Ajay s/o Deepak Hirwale born on 10.05.1992. He passed 10th standard examination in March 2010. But his date of birth has been wrongly mentioned as 10.05.1995 in his SCC Certificate issued by the 'Maharashtra State Board of Secondary & Higher Secondary Education, Pune.' The Applicant No.2 made efforts to get corrected his date of birth as 10.5.1992 in the school record by approaching the Education Officer. However, the Education Officer had refused to entertain the same. Therefore, he approached the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad by filing the Writ Petition No.532 of 2013. The said Writ Petition was partly allowed on 19.09.2013 on the basis of statement made by the learned AGP and the Hon'ble High Court directed the Respondent Nos.1 to 3 to take appropriate steps on the application of the Applicant. On the basis of the said order, the "Maharashtra State Board of Secondary & Higher Secondary, Pune" issued a certificate correcting the date of birth of the Applicant No.2 as 10.05.1992.

4. The Applicant No.2 attained the age of majority on 10.05.2010. But due to above said dispute, neither the Applicant No.1 nor the Applicant No.2 submitted any application to the Respondent No.2 seeking compassionate appointment for the Applicant No.2 immediately after 10.05.2010. However, in the mid of the year 2013 i.e. before correction of his date of birth by the SSC Board, the Applicant No.1 had submitted an application to the Respondent No.2 on 16.4.2013 along with all the requisite documents urging that her son i.e. the Applicant No.2 be given compassionate appointment as Police Constable. The Respondent No.2 had not considered the said application. After correcting the date of birth recorded in the SSC certificate, the Respondent No.2 submitted an application to the Respondent No.2 on 16.01.2015 with the request to give him employment on compassionate ground. Thereafter also the Applicant No.1 submitted another application addressed to Special Inspector General of Police, Aurangabad Range, Aurangabad on 17.01.2015 with the similar request. In response to the application filed by the Applicant No.1, the Respondent No.2 orally conveyed that her request cannot be accepted as there is no provision to change the name recorded in the list of compassionate appointment seekers. But it was not communicated in writing to the Applicant. The Applicants were hoping that their request would be accepted. But they had not

received any response from the Respondent No.2. Therefore, the Applicant No.1 filed another application on 18.8.2018 and 14.09.2018 with the same request. The Respondent No.2 issued communication dated 27.09.2018 and rejected the request of the Applicant for replacement of her name with the name of Respondent No.2 in the waiting list of eligible candidates to be appointed on compassionate ground. In the said communication the reference was given to the letter dated 14.08.2015 by which the request of the Applicant No.1 was rejected. Infact the said letter was never served on her.

5. It is their contention that the Respondent No.2 passed the impugned order illegally in contravention of the provisions of G.R. and scheme of the Government. It is their contention that this Tribunal as well as the Hon'ble High Court had granted similar relief to the similarly situated persons but the Respondent had not considered the said aspect and therefore, they approached this Tribunal by filing the present Original Application and prayed to quash the impugned order and direct the Respondent to include the name of the Applicant No.2 in the waiting list of the eligible candidates to be appointed on compassionate ground in place of the Applicant No.1 and to direct the Respondent No.1 to give him appointment accordingly.

6. The Respondent No.2 resisted the contention of the Applicant by filing his affidavit-in-reply. He has not disputed the fact that deceased Deepak Hiwale died in the year 2004 leaving behind the Applicants as his legal heirs. At that time the Applicant No.1 was 30 years old and the Applicant No.2 was 12 years old. He has admitted the fact that the Applicant No.1 applied to him for getting employment on compassionate ground in Class 'IV"/ Group 'D' category. Accordingly, her name was included in the waiting list of eligible candidates to be appointed on compassionate ground. The name of the Applicant was at Sr.No.4 in the waiting list and the same is continued till today. It is his contention that 10% posts of the total vacant seats have been reserved for the Group 'D' employees to be appointed on compassionate ground. But till the date, there is no vacancy for the post to be filled in Group 'D' category. Hence, the request of the Applicant had not been considered. He has admitted the fact that the Applicant No.1 had submitted application to him on 16.04.2013 along with all the requisite documents requesting that her son may be given employment on the compassionate ground. But her application was not considered by the Respondent No.2 as there is no provision to replace or change the name of the person entered in the list of the candidates seeking employment on compassionate ground.

7. In view of the G.R. dated 21.09.2017 and the provisions in the G.R. dated 20.05.2015, after death of the Government servant if the name of the eligible family member included in the waiting list then the name of the other eligible family member shall not be included in the waiting list of the eligible candidates to be appointed on compassionate ground and the name of the other eligible family member can be included only in case of death of the family member whose name was recorded in the waiting list as provided. As there was no provision, the application of the Applicant was not considered and accordingly the decision was communicated to the Applicant on 14.08.2015 and 27.09.2018. It is his contention that there is no illegality in the impugned communication and the said communication is in accordance with the said G.R. There is no illegality in the impugned. Therefore, he has prayed to reject the Original Application.

8. I have heard Shri A.S. Deshmukh, learned Advocate for the Applicant and Shri I.S. Thorat, learned Presenting Officer for the Respondents. I have perused the documents on record.

9. Admittedly, deceased Deepak Bhimrao Hiwrale was husband of the Applicant No.1 and father of the Applicant No.2.

He entered the service of the Government of Maharashtra in its Police/Home Department as a Police Constable. Subsequently, he was promoted as Police Head Constable and he was working there till his death. Deceased Deepak Bhimrao Hiwrale died in harness on 16.09.2004, leaving behind the Applicants as his legal heirs. Admittedly, at the time of the death of the deceased Deepak Hiwrale, the Applicant No.1 was 30 years old and the Applicant No.2 was 12 years old. Admittedly, the Applicant No.1 applied to the Respondent No.2 for getting employment on compassionate ground after death of the deceased Deepak Hiwrale on Class 'IV'/Group 'D' post. Accordingly, her name was recorded in the waiting list of the eligible candidates to be appointed on compassionate ground and it continued till today. There is no dispute about the fact that the Applicant No.2 attained the age of majority on 10.05.2010.

10. Admittedly, the Applicant No.2 filed Writ Petition before the Hon'ble High Court for correction of his date of birth recorded in the SSC certificate and as per the decision therein, the SSC Board corrected his date of birth in the year, 2014. Admittedly, in the year 2013 i.e. on 16.04.2013, the Applicant No.1 moved an application to the Respondent No.2 and requested to replace her name with the name of the Applicant No.2 in the waiting list of the eligible candidates to be appointed on compassionate ground.

Admittedly, her application came to be rejected by the Respondent No.2 by communication dated 14.08.2015. Admittedly, thereafter, the Applicant moved applications dated 16.01.2015, 17.01.2005, 18.08.2018 and 14.09.2018 with the Respondent No.2 and made the similar request. The applications of the Applicants came to be rejected by impugned communication dated 27.9.2018 on the ground that there is no provision to replace the name of the heir whose name has been record in the waiting list of the eligible candidates to be appointed on compassionate ground with the name of another heir of the deceased employee.

11. Learned Advocate for the Applicant has submitted that at the time of the death of the deceased Deepak Hiwrale, the Applicant No.1 was 30 years and the Applicant No.2 was 12 years of age. Since the Applicant No.2 Shri Ajay Deepak Hiwrale was minor, her mother i.e. the Applicant No.1 had moved an application to the Respondent No.2 with the request to include her name for appointment on compassionate ground and accordingly, her name was included in the waiting list of the eligible candidates to be appointed on compassionate ground. He has submitted that the date of birth of the Applicant No.2 is 10.05.1992 but it was wrongly mentioned as 10.05.1995 in the SSC Certificate. He approached the concerned authority for correction of date of birth, but the concerned authority had not considered his request.

Therefore, the Applicant No.2 filed Writ Petition No.532 of 2013 before the Hon'ble High Court of Judicature, Bombay, Bench at Aurangabad. He has submitted that the Writ Petition No.532 of 2013 was disposed of on 19.9.2013 and in view of the direction given by the Hon'ble High Court, he approached to SSC Board and the SSC Board corrected his date of birth in the SSC Certificate as 10.05.1992 on 17.01.2014.

12. He has further submitted that thereafter, he moved an application for recording his name in the waiting list of the eligible candidates in place of his mother. He has submitted that the Applicant immediately approached the Respondent No.2 after decision of the Hon'ble High Court after correcting the date of birth in the SSC Certificate. His application was well within the prescribed period of the limitation stipulated in the G.R. The Respondent No.2 had not considered the said fact and rejected the request of the Applicant.

13. Learned Advocate for the Applicant has argued that this Tribunal has granted similar relief to that of the relief claimed by the Applicants in case of **Smt. Nirmala w/o Bharaat Doijad & Ors. Vs. State of Maharashtra & Ors., in O.A.No.184 of 2005 decided on 03.05.2006,** in case of **Shivprasad s/o Umakant Wadnere Vs. The Sate of Maharashtra & Ors., in**

O.A.No.432 of 2013 decided on 01.12.2014, in case of *Jyoti Dilip Siddhewar Vs. State of Maharashtra & Ors, in O.A.No.574 of 2016, decided on 19.9.2018 and in Writ Petition No.1384 of 2016 decided by Hon'ble High Court of Judicature at Bobmay, Bench at Aurangabad in case of The State of Maharashtra & Ors. Vs. Mohd Zakiyoddin Mohd Anisoddin, decided on 27.2.2017.*

14. He has submitted that the case of the present Applicants is squarely covered by the above said decisions and therefore, in view of the principles laid down in the above cited cases, the Original Application deserves to be allowed and therefore, he has prayed to allow the Original Application prayed to direct the Respondent to record the name of the Applicant No.2 in place of the Applicant No.1.

15. Learned P.O. for the Respondents has submitted that name of the Applicant No.1 has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground on the basis of the application filed by her in the year 2004 and it continued till the date. He has submitted that in the year 2015, the Respondent No.1 moved an application with the Respondent No.2 and requested to enter the name of the Applicant No.2 in her place. But her application was rejected by the Respondent No.2

and the decision was communicated to her by post. He has submitted that the Applicant No.1 has not challenged the said order though it has been served on the address of the Applicant No.1. Thereafter, they made several applications with the Respondent No.2 in the year 2015 and 2018. The Respondent No.2 rejected the same by impugned order on the ground that there is no provision in the G.R. to replace the name of the heir whose name has been recorded in the waiting list by inserting the name of the another heir. He has submitted that the provisions of G.R. dated 20.05.2015 and subsequent G.R. dated 21.09.2017 provide specifically that name of the heir recorded in the waiting list cannot be replaced by another heir. He has submitted that there is no illegality in the impugned order and therefore he prayed to reject the Original Application.

16. Learned P.O. for the Respondents has further submitted that the decisions relied on by the Applicants are not applicable to the present case as the facts of those cases are different than the facts in the present case.

17. On perusal of record it reveals that name of the Applicant No.1 has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground in the year 2004 as she was eligible to get appointment. Admittedly, the

Applicant No.2 was 12 years old at the time of death of his father. He attained the age of majority in the year 2010 i.e. on 10.05.2010. For one and other reasons, he had not filed application for appointment on compassionate ground within one year on attaining the age of majority. The Applicant No.1 moved an application dated 16.04.2013 to the Respondent No.2 and requested to replace her name by inserting the name of the Applicant No.2. Her application was rejected by the Respondent No.2 by communication dated 14.08.2015 and she was informed accordingly by the Respondent No.2. But the Applicants denied the service of the said communication on them. The extract of the outward register produced by the Respondent No.2 shows that the said communication was sent to the Applicant on the address given by the Applicant No.1 by post. Therefore, it can be presumed that the said communication was duly served on the Applicant. In spite of the service of the said communication, the Applicant No.1 has not challenged the said decision and she herself and Applicant No.2 namely Ajay Deepak Hiwrale started making applications again and again to the Respondent No.2 by claiming similar relief. The Respondent No.2 by impugned communication dated 27.9.2018 rejected the request of the Applicants and communicated the said decision to them that there is no provision to replace the name of the heir whose name has been recorded in

the waiting list with the name of another heir. He has also informed the Applicants that their earlier application filed in the year 2015, had been rejected in the year 2015.

18. On perusal of G.R. dated 20.05.2015 and 21.09.2017, it is crystal clear that there is no specific provision to replace the name of the legal heir whose name has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground by inserting the name of the another heir. Therefore, the Respondent No.2 has rightly rejected the claim of the Applicants. I do not find any illegality in the impugned order. Therefore, no interference is called for in the impugned order.

19. I have gone through the decisions referred by the learned Advocate for the Applicant. Facts in the above cited decisions are difference than the facts in the present case and the same are not identical. Considering the peculiar circumstances and facts in those cases the Tribunal had given direction to the Respondents to consider the case of those Applicants. In the present case, the earlier application filed by the Applicant No.1 in the year 2013 had been rejected in the year 2015. She has not challenged the said decision. Therefore, the decision of the Respondent became conclusive. In spite of rejection of the application filed by the Applicant No.1 in the year 2015, the

Applicant No.1 and Applicant No.2 started making application again and again with the Respondent No.2. The Respondent No.2 rejected those applications by impugned order by recording sound reasons. Therefore, the above said decisions are not much useful to the present case.

20. In the decision of **Hon'ble High Court of Judicature at Bobmay, Bench at Aurangabad in case of The State of Maharashtra & Ors. Vs. Mohd Zakiyoddin Mohd Anisoddin, decided on 27.2.2017,** the name of the sister of the petitioner was recorded in the waiting list. But she has been married and therefore the Tribunal directed the Respondents to give appointment to the petitioner in that matter on compassionate ground. Accordingly, his name has been recorded. The Hon'ble high Court considered the peculiar circumstances in the case and upheld the decision of this Tribunal. Considering the facts in this case, in my view the above said decision is not much useful to the Applicants in the present case and therefore, the same cannot be relied upon.

21. In the present case, Respondent No.2 has rightly rejected the application of the Applicant No.1 to replace her name by inserting the name of Applicant No.2 as there is no provision in the scheme or G.R. issued by the Government from time to time. I

find no illegality in the impugned order. Therefore, no interference is called for in the impugned order. There is no merit in the Original Application. Hence, it deserves to be dismissed.

22. In view of the discussion in the foregoing paragraph, the Original Application stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place:- Aurangabad

Date :- 28.11.2019

Sas. O.A.No.928 of 2018. Appointment on Compassionate Ground. BPP