

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

(S.B.)

CIVIL APPLICATION NO.110/2017

AND

ORIGINAL APPLICATION NO.226/2017.

- 1) Smt. Vibha Prabhakar Bhute,
Aged about 47 years,
Occ-Nil,
R/o Hanuman Nagar, Takia Ward, Bhandara.
- 2) Ku. Sharayu Prabhakar Bhute,
Aged about 21 years,
Occ-Student,
R/o Hanuman Nagar, Takia Ward, Bhandara.

Applicants.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Water Resources,
Mantralaya, Mumbai-400 032.
- 2) The Collector,
Civil Lines, Nagpur.
- 3) The Superintending Engineer/
Sub-Divisional Officer, Vigilance Cell,
(Nagpur Division), Water Resources Department,
2nd floor, Administrative Building No.1,
Civil Lines, Nagpur.
- 4) The Deputy Superintending Engineer,
Gosekhurd Sub-Irrigation Division,
Ambadi (Bhandara), Dist. Bhandara.

Respondents

Shri R.S. Khobragade, the learned counsel for the applicants.
Shri M.I. Khan, the learned P.O. for the respondents 1 and 2.
Shri A.M. Kukday, learned counsel for respondent Nos. 3 and 4.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

JUDGMENT

(Delivered on this 8th day of February 2019.)

Heard Shri R.S. Khobragade, the learned counsel for the applicants, Shri M.I. Khan, the learned P.O. for respondent Nos. 1 and 2 and Shri A.M. Kukday, learned counsel for respondent Nos. 3 and 4.

2. The C.A. as well as the O.A. are being disposed of together. The C.A No. 110/2017 is for condonation of delay in filing the O.A. It is stated that there is a delay of 2 years, 2 months and 24 days in filing the O.A. for grant of appointment on compassionate ground. The applicant No.1's name was removed from the waiting list of persons to be appointed on compassionate ground vide communication dated 14.12.2015 and prior to that, on 18.1.2014, applicant No.1's request to substitute the name of her daughter in her place in the waiting list was rejected and both the applications are challenged in this O.A., though the cause of action for both the applications are different. The cause of action for the application is

shown in para No.4 of the C.A. from which it seems that the applicant read some news in Marathi daily Lokmat dated 23.3.2017 regarding the judgment delivered by Principal Bench of this Tribunal at Mumbai, whereby the M.A.T., Mumbai has directed the respondents to consider the son of then applicant in place of his mother, since the mother had crossed the age of 45 years. In fact, reading of the said news cannot be said to be cause of action. Applicant's name was already rejected in the year 2014-2015 as already stated. No other reason is made out for condonation of delay and, therefore, application for condonation of delay has no merits. However, since the matter is being heard on merits, applicants' case will be considered on merits also.

2-A. The applicant No.1 Smt. Vibha Prabhakar Bhute is the mother of applicant No.2 Ku. Sharayu Prabhakar Bhute. They are claiming directions to the respondents to consider the case of the applicant No.2 Ku. Sharayu Prabhakar Bhute for appointment on compassionate ground. They are also claiming the impugned order dated 14.12.2015 (Annexure R-7) (P.44) whereby the name of the applicant No.1 has been removed from the list of candidates to be appointed on compassionate ground, be quashed and set aside.

They are also claiming that the communication dated 18.1.2014 whereby the respondents refused to substitute the name of the applicant No.2 in the wait list in place of her mother i.e. the applicant No.1, has been rejected.

3. From the admitted facts on record, it seems that the applicant No.1's husband and the father of applicant No.2, viz. Prabhakar Bhute was serving as Technical Assistant with the respondents. He died on 3.10.2008. After his death, the applicant No.1 being the widow of the deceased, applied for appointment on compassionate ground in place of her husband on 24.11.2008 and the name of the applicant No.1 was included in the wait list on 2.4.2009. In 2013, the applicant No.1 applied that in her place, name of her daughter i.e. the applicant No.2 be substituted. However, said application was rejected vide communication dated 18.1.2014 and vide letter dated 14.12.2015, name of the applicant No.1 was deleted from the list on the ground that, she has crossed the age of 45 years and hence both these communications have been challenged.

4. The respondent Nos. 3 and 4 have filed reply affidavit. The learned P.O. submits that as per the scheme, a person who crosses the age of 45 years, is to be deleted from the list of

persons to be appointed on compassionate ground and since the applicant No.1 crossed the age of 45 years, her name was deleted. It is further stated that there is no provision for substitution of the name. It is further stated that the applicant No.2 became major prior to deletion of the name of the applicant No.1 from the wait list and she never applied for appointment on compassionate ground and, therefore, there is no question of considering her name. The respondent Nos. 1 and 2 have resisted the claim and submitted that the applicant No.2 never applied even after becoming major. It is further stated that on 4.12.2015, the applicant No.2 was called for verification of documents, since her name was in the list of candidates to be appointed on compassionate ground. It was found that she has crossed the age of 45 years and, therefore, as per the Government policy, her name was deleted. As regards the name of the applicant No.2, it is stated that there is no provision for substitution of the name in the list of persons to be appointed on compassionate ground. From the facts on record, it seems that the applicant No.2's date of birth is 27.7.1993 and she became major on 26.7.2011. Admittedly, applicant No.2 never applied for appointment on compassionate ground. It also seems that the applicant No.1 has applied for the post on compassionate ground and her application

was accepted and she was kept in the wait list. On 24.9.2013, she had filed an application stating that the name of the applicant No.2 be substituted in her place. Again on 9.10.2013, she had filed another application and requested that in case she crossed the age of 45 years, she may face great hardship and hence she shall be appointed immediately or the name of the applicant No.2 be substituted in her place. Both these applications for substitution of the name, were filed in the year 2013 and at that time, the applicant No.2 was already major. Even after becoming a major, on 26.7.2011 till 24.9.2013 and on 9.10.2013, no application was filed by the applicant No.2 and even till today the applicant No.2 has not filed any separate application for getting appointment on compassionate ground.

5. The learned counsel for the applicants has placed reliance on some judgments of the Principal Seat of this Tribunal at Mumbai in **O.A. No. 606/2016 in case of Ashish Ramdas Kharat V/s State of Maharashtra and two others, delivered on 31.1.2017,** **O.A. No. 239/2016 in case of Swati P. Khatavkar and one another V/s State of Maharashtra and one another, delivered on 21.10.2016** and **O.A. No. 488/2016 in case of Shridhar Vishwas Dhandare V/s State of Maharashtra and two others, delivered on**

8.8.2017 by this Tribunal at Nagpur Bench and O.A. No. 252/2018 delivered on 1.11.2018 by this Tribunal at Nagpur in case of Smt. Manisha Pradeep Talvekar V/s State of Maharashtra and two others.

6. In O.A. No. 239/2016 as referred above, this Tribunal has observed in para No.6 as under:-

“6. In my view, it will be erroneous to contend that the G.R. of 20.5.2015 places difficulty and it is not as if unless enlisted heir was to die another heir cannot be enlisted. In my view, the said G.R. in that behalf incorporates only an enabling provision to take care of a particular contingency i.e. death. It is, therefore, very clear from the forgoing that the issue involved herein as already mentioned above is fully governed by the above referred cases and the respondents will have to act in accordance with that. I reject their case that so called substitution is impermissible and I hold that the applicant no.2's name 8 will have to be enlisted in place of the applicant no.1 and consider him for appointment on compassionate ground”.

7. Even accepting the fact that the provisions of the G.R. that unless enlisted heir was to die, another heir cannot be enlisted is true, fact remains that the applicant No.2 in this case never applied for appointment on compassionate ground in place of her

father. Though, her mother has applied for substitution of the name, the applicant No.2 was already major at that time. Even as per the G.R. and the scheme, a person has to apply within one year after attaining majority and this has not been done by the applicant No.2. The facts of the present case are, therefore, not analogous to the said facts in the citations relied on by the applicants.

8. The Govt. of Maharashtra has issued a G.R. dated 21.9.2017 as regards appointment on compassionate ground. As per the said G.R., Clause-4 deals with the persons who are eligible for being appointed on compassionate ground. The said clause reads as under:-

“(४) अनुकंपा नियुक्तीसाठी पात्र कुटुंबीयः-

(अ) अनुकंपा तत्वावरील नियुक्तीसाठी खालील नमूद केलेले नातेवाईक पात्र राहतील व त्यापैकी एका पात्र नातेवाईकास नियुक्ती अनुद्नेय राहिल.

(१) पती / पत्नी

(२) मुलगा/मुलगी (अविवाहित/विवाहित, मृत्युपूर्वी कायदेशीररीत्या दत्तक घेतलेला मुलगा/मुलगी (अविवाहित/विवाहित).

(३) दिवंगत शासकीय कर्मचाऱ्याचा मुलगा ह्यात नसेल किवा तो नियुक्तीसाठी पात्र नसेल तर त्याची सून.

(४) घटस्फोटीत मुलगी किवा बहिण, परित्यक्ता मुलगी किवा बहिण, विधवा मुलगी किवा बहिण,

(५) केवळ दिवंगत अविवाहित शासकीय कर्मचाऱ्याच्या बाबतीत त्याच्यावर सर्वस्वी अवलंबून असणारा भाऊ किवा बहिण (शासन निर्णय दि. २६.१०.१९९४ व दि. १७.११.२०१६).

- (आ) मृत अधिकारी/कर्मचाऱ्यांच्या पत्नी/पत्नीने कोणाची अनुकंपा तत्वावर नियुक्ती करावी याबाबत नामांकन देणे आवश्यक राहिल. मृत अधिकारी/कर्मचाऱ्यांचे पती/पत्नी हयात नसल्यास त्याच्या/तिच्या सर्व पात्र कुटुंबीयांनी एकत्रित येऊन कोणाची नियुक्ती करावी याबाबत नामांकन करावे. (शासन निर्णय दि. १७.७.२००७).

9. Sub-Clause (आ) of Clause 5 of the aforesaid G.R. clearly shows that now the Govt. has taken a decision that in case the employee dies and his legal heirs have to apply for compassionate appointment, they have to nominate the proper person and in case the deceased employee or his wife/husband is not alive, then all the members of the family have to come together and to decide as to which legal heir shall apply. Admittedly, in the present case, the applicant No.1 has applied for compassionate appointment and her name was taken in the list of persons to be appointed on compassionate ground and since she has become ineligible, having crossed the age of 45 years, she has applied that name of her daughter i.e. the applicant No.2 be substituted. As already stated, the applicant No.2 did not apply within one year of the date of attaining majority on compassionate ground and, therefore, her application cannot be considered.

10. The learned P.O. submitted that the deceased employee died in 2008 and we are in the year 2019 and financial crisis do not survive after such a long gap. He relied on the judgment reported in **(2018) 6 Mh.L.J. 232 in case of Snehal Chandrakant Shetty and another V/s State of Maharashtra**, wherein it has been held that the financial crisis do not survive after 10-12 years of the death of the employee and that the appointment on compassionate ground was rightly rejected by the administration. Though, the applicants' application has not been rejected on this ground, this ground also cannot be ignored.

11. The learned P.O. submits that there is no provision which permits substitution of legal heir of the candidate in waiting list, if the candidate completes the age of 45 years and this fact has been dealt with by this Tribunal in **O.A. No. 252/2018 in case of Smt. Manisha Pradip Talwekar V/s State of Maharashtra and two others decided on 1.11.2018.** In para 12 of the said judgment, this Tribunal has observed as under:-

“After going through the compilation paragraph 21, it is laid down that in case of death of candidate in the waiting list his legal heir can be substituted. The learned counsel for the applicant was unable to show any G.R. which permits substitution of the legal heir of the candidate in the waiting list if the candidate completes the age limit of 45 years.”

12. On a conspectus of discussion in foregoing paras, I find no merit in this O.A. Hence, I proceed to pass the following order:-

ORDER

The O.A. as well as the C.A. both stand dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 8.2.2019.

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