

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.503 OF 2015

DISTRICT : PUNE

Shri Piyush Mohan Shinde. )  
R/o. Khadakwasala, P.W.D, Colony, )  
Sinhgad Road, Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Water Conservation Department, )  
Old Irrigation, Mantralaya, )  
Mumbai - 400 032. )  
2. The Superintending Engineer. )  
Mechanical Circle (Right Canal), )  
Tarabai Park, Kolhapur - 03. )  
3. Executive Engineer. )  
Chief Gate Erection Unit No.3, )  
Pune - 37. )...**Respondents**

**Shri R.M. Kolge, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**



**DATE : 05.04.2016**

**JUDGMENT**

1. This Original Application is made by the son of a deceased Government employee who died in harness on 3.8.2002 after a similar application made by the Applicant's mother was turned down because she was held to have become disqualified on account of bar of age of 40 years as the Respondents understood the same.

2. The date of birth of the Applicant is 15.4.1992. The date of birth of his mother is 10.1.1966. His father, the deceased Government servant died on 3.8.2002. The said deceased was working under the Respondent No.3 – Executive Engineer, Chief Gate Erection Unit No.3. The Respondent Nos. 1 & 2 are the State of Maharashtra through the Secretary, Water Conservation Department and Superintending Engineer, Mechanical Circle respectively. The said deceased was neither in Group 'A' nor in Group 'B' and was therefore working in such a capacity, so as to make his heirs and LRs eligible, subject to meeting other requirements for being considered for compassionate appointment. How we wish a clear



pleading was made with regard to the precise post that he held. But so be it.

3. The record shows that the present Applicant holds the qualifications which would otherwise make him eligible for being appointed on compassionate ground. The record shows that his mother made an application on 5.4.2003 which was within one year of the demise of her husband for being given compassionate appointment. The Superintending Engineer addressed a communication to the District Collector for including her name in the waiting list. The date thereof is not quite clear. However, it was not before 17<sup>th</sup> March, 2006 that the Executive Engineer wrote to her that her name had been included in the waiting list for compassionate appointment. Her name was at Serial No.33.

4. The next event or non-event whichever way one looks at it took place on 23<sup>rd</sup> June, 2008 when the Deputy Engineer wrote to the mother of the Applicant informing her *inter-alia* that in accordance with the G.R. of 23.4.2008, she having crossed the age of 40, which she did on 10.1.2006 in fact, her name had been deleted from the waiting list.

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5. The mother of the Applicant then addressed a communication to the Sup rinting Engineer on 18.1.2001 mentioning therein *inter-alia* that her matter remained pending for about five years and then her name was deleted in the circumstances mentioned above. She then made reference to a G.R.क. अकंपा/प्र.क/३०८/१०, dated 6.12.2010 (to be hereinafter called '2010 G.R.'). Thereunder, the age of reckoning for being considered for compassionate appointment had been increased to 45, and therefore, she claimed that she was entitled still to be considered for that appointment. Quite pertinently while concluding that particular letter, she mentioned, "जर मला नोकरीवर घेणार नसाल तर माझ्या मुलाला नोकरीवर घेण्यात यावे ही विनंती करीत आहे."

6. It is, therefore, clear that the lady had made it clear that either her claim be considered as "live" or her son's name be included. This aspect of the matter has its own significance.

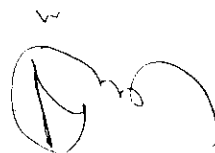
7. On 15.3.2014, the Applicant herself addressed a communication in Marathi to the competent authority claiming appointment on compassionate basis. He annexed relevant documents which were 13 in all. I may only mention that the Applicant has two sisters and both



of them as well as mother had also given "No Objection" on Affidavit.

8. On 21<sup>st</sup> March, 2014, the Deputy Executive Engineer addressed a communication to the Superintending Engineer in respect of the claim of the Applicant and there he set out the history which has been summarized hereinabove. He apparently expressed the view that on the basis of a G.R. of 22.10.1990, Applicant's case may not stand, but then he still forwarded his application.

9. On 9.5.2014, a communication was addressed from Assistant Superintending Engineer to the Executive Engineer informing *inter-alia* that in view of the G.R. of 20.10.1990, the heir and LR of the deceased employee who was minor at the time of his demise could be considered for compassionate appointment, provided he applied within one year of attaining majority. He then set out the facts with regard to Applicant's mother which has been discussed hereinabove and further mentioned that there was no provision for substitution of the name of one claimant for the other, and therefore, the claim of the Applicant could not be entertained. A copy thereof was endorsed to the Applicant. The Applicant is aggrieved by

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this particular order and has moved this Tribunal with this OA.

10. I have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

11. The above discussion must have made it clear that, initially the mother of the Applicant applied for compassionate appointment and her claim remained pending for years on. She then addressed a communication based on 2010 G.R. seeking for all practical purposes reconsideration of her claim. It is quite possible that if I have correctly understood the Respondents, they do not dispute the fact that under the 2010 G.R, the age of reckoning has been increased from 40 years to 45 years. What most probably is their case is that in as much as in the year 2008 itself, the name of the mother of the Applicant had been deleted, she would not be eligible or entitled for being considered or more appropriately put reconsidered for compassionate appointment. Now, as to this submission of and on behalf of the Respondents, I find that the order of Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in



**Writ Petition No.7832/2011 (names of the parties not there), dated 28.2.2012** is a complete answer to all the questions that the Respondents would like to throw up. A copy of that order of the Hon'ble High Court is at Exh. 'H' (Page 37). I am not too sure if this order has been reported in any journal, and therefore, it will be most appropriate to reproduce it entirely.

- “1. Rule. Rule made returnable forthwith and heard finally.
2. Petition arises out of peculiar facts. Petitioner's husband, who was employee of the Respondent-Zilla Parishad expired on 7.4.2006. The petitioner, therefore, made an application to the Respondent for appointment on compassionate ground.
3. Accordingly, her name was included in the waiting list. However, by order dated 24.5.2010, name of the petitioner was deleted from the waiting list, on the ground that she completed 40 years of age. The said communication was challenged before this Court by way of Writ Petition No.1585 of 2011.
4. In the meanwhile, by Govt. Resolution dated 6.12.2010, policy of the Respondent underwent a

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change and a decision was taken by the Government to increase the upper age limit from 40 to 45 for appointment on compassionate ground.

5. However, it is the contention of Respondent-Zilla Parishad that the said Government Resolution dated 6.12.2010 has been given effect from 6.10.2010 and since the petitioner's name is deleted from the waiting list, she is not entitled to appointment on compassionate ground.

6. Petitioner's date of birth is 2.5.1968 and as such, she would be completing 45 years of age only on 2.5.2013. Even if it is considered that the effect of the said Govt. Resolution dated 6.12.2010 is given from 6.10.2010, still the petitioner would certainly be entitled to be appointed on compassionate ground till 2.5.2013 when she will be completing 45 years of age. We, therefore, find that the petitioner's case deserves to be considered in terms of the Govt. Resolution dated 6.12.2010.

7. We, therefore, allow the petition and direct the Zilla Parishad to consider the claim of the petitioner for appointment on compassionate ground by restoring her position in the waiting





list as it stood prior to the order dated 24.5.2010 deleting her name from the list. The respondent-Zilla Parishad shall issue appointment order to the petitioner in accordance with the said Govt. Resolution and as per law. The same shall be done within six weeks from today.

8. Petition stands disposed of. Rule is made absolute, in aforesaid terms.

Sd/-  
(Sunil P. Deshmukh, J)


Sd/-  
(B.R. Gavai, J)"

12. Nothing remains to be said or done once the above order has been fully reproduced. But even on a plain reading of the 2010 G.R. of which the first clause is relevant, it would become quite clear that whatever may have happened till such time as the claimant attained 45 years of age would not be relevant and if the claimant answers the requirement of the said G.R., the simple consequence would be that it could be taken that her claim would remain alive till she attained the age of 45 years. The said provision in Marathi reads as under :-

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“१. शासकीय कर्मचा-यांच्या पात्र कुटुंबीयांना अनंकांपा नियुक्ती देण्यासाठी या आधी असलेल्या ४० वर्षे या कमाल वयोमर्यादित वाढ करण्यात येत असून ती आता वयाची ४५ वर्षे इतकी राहिल.”

13. There is absolutely no provision therein with regard to whatever may happen, if in the meanwhile, the action was taken the like of which the Respondents took in case of Applicant's mother. Therefore, as per the judgment of the Hon'ble Bombay High Court, it is very clear that the age of reckoning for the lady would be 45 which in this case would be till the year 2011. She had already made it clear before attaining the age of 45 that if she could not be considered then her son's case be taken into consideration and it was thereafter that the Applicant also applied for being considered for appointment on compassionate ground. At this stage itself, it needs to be quite pertinently noted that a recent G.R. of 20<sup>th</sup> May, 2015 in respect of the compassionate appointments introduces at least two major changes from the earlier state of affairs. In the first place, it lays down a mandate that the dependants of the deceased employee would have to be informed in writing, in effect their rights and entitlement post demise of their ascendant. Secondly, the time limit of one year has been increased to three years in so far as member of the family like Applicant's mother is concerned from the date of the demise of the deceased employee and also three years after



attaining the age of majority as far as the member of the family like the present Applicant is concerned. One year period stands and the concerned authority has been granted powers to condone the delay of the next two years and the period thus makes up for three years.

14. As per the G.R. of 6.12.2010 as already mentioned above, the maximum age of entitlement has been increased from 40 to 45 years.

15. I have already mentioned above that in the present case, guided by the order of the Hon'ble High Court fully extracted above, the claim of the Applicant's mother still subsisted till August, 2011 and she had made a composite request for herself and the Applicant as if in the alternative. The argument that the Respondents usually advance in such circumstances is in ignorance of the earlier judgments of binding nature, which ignorance may be either genuine or may not be. But then, I must go with those judgments only. In **OA 184/2005 (Nirmala B. Doijad and one another Vs. State of Maharashtra and three others, dated 3.5.2006) (Aurangabad Bench of MAT)** in similar circumstances, widow and son of the deceased jointly moved the Tribunal for a similar relief. The Respondents cited the absence of any provision of

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substitution of the name of the dependants. After an elaborate discussion, the Tribunal held that even if such Rules were not there, a proper judicial view to advance the cause of justice needs to be taken and the claim of the Applicants there was upheld.

16. It appears from another judgment rendered by a Division Bench of this Tribunal at Aurangabad in **OA 432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 others, dated 0.12.2014)** that the judgment in **Nirmala Doijad** (supra) was upheld by the Hon'ble High Court. Relying thereupon the Bench in **Shivprasad's** case granted relief to the Applicant there who was the son of the deceased and the facts were exactly similar like the present one. There also, the mother had crossed the age of 40 just like the present one and the claim of the son was negated just like the Respondents did herein. As already mentioned above, the Tribunal advanced relief to the Applicants in that matter.


17. In Writ Petition No.7793/2009 (Vinodkumar K. Chavan Vs. State of Maharashtra, dated 9<sup>th</sup> December, 2009 also, the facts were that after the demise of a class IV employee, his widow made an application for appointment on compassionate ground. Correspondence took place.



After a few years, she made an application requesting for substitution for the name of her son. She was informed that her name had already been deleted because she had crossed the age of 40 years which was the cut-off at that point in time, and therefore, her request could not be considered. Their Lordships, however, directed that her request be considered and made a clear observation that the request of the lady could not have been rejected.

18. The above judgment of the Hon'ble High Court was followed by the 2<sup>nd</sup> Bench of this Tribunal which spoke through the Hon'ble Vice-Chairman in **OA 1043/2014 (Shubham V. Surve Vs. State of Maharashtra and one another, dated 3.11.2015)**. The earlier judgments of this Tribunal and the above referred judgment of the Hon'ble High Court were relied upon and the OA succeeded.

19. In view of the foregoing, I think I must hold for the Applicant in this matter. In the context of the present facts, the better course of action would be to direct the Respondents to consider the case of appointment of the present Applicant for appointment on compassionate ground on the basis of the application of the mother of the Applicant referred to above dated 18.1.2011 (Exh. 'G', Page 34 of the paper book). The Respondents are, therefore,

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directed to consider the said application of Applicant's mother and to replace her name by the name of the present Applicant for appointment on compassionate ground and pass an appropriate order as per law within a period of two months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)****Member-J****05.04.2016**

05.04.16

Mumbai

Date : 05.04.2016

Dictation taken by :

S.K. Wamanse.

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