

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.151 OF 2022

**DISTRICT : SOLAPUR
SUBJECT : COMPASSIONATE
APPOINTMENT**

- 1) Smt. Suvarna Kerappa Lendave,)
Age:- 46 years, Occu.:- House Work,)
- 2) Mr. Santosh Kerappa Lendave,)
Age:- 22 years, Occu.:- Unemployed,)
Both R/o -At / Post – Aandhalgaon,)
(Lendave-Chinchale), Tahsil _ Mangalwedha,)
Dist. Solapur-413 305.)... **Applicant**

Versus

- 1) The Superintending Engineer and Command)
Area Development Authority,)
Labhkshetra Vikas Pradhikaran, Solapur,)
Sinchan Bhavan, Gurunanak Chowk,)
Solapur-413 003.)
- 2) The Deputy Executive Engineer,)
Bhima Irrigation Division, Pandharpur)
Tahsil – Pandharpur, Dist. Solapur-413 304.)
- 3) The State of Maharashtra,)
Through Principal Secretary Water Resources)
Department, Mantralaya, Mumbai-400 032.)...**Respondents**

Shri Sidheshwar N. Biradar, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 04.01.2023

JUDGMENT

1. The Applicant has challenged impugned communication dated 16.03.2018 as well as 12.11.2021 whereby the Applicant's claim for compassionate appointment was rejected.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant No.1 – Smt. Suvarna Kerappa Lendave, is widow and the Applicant No.2 – Shri Santosh Kerappa Lendave is son of deceased Government servant Kerappa Lendave who died in harness on 20.05.2011 while serving on the establishment of Respondent No.2. After death of deceased Government servant, the Applicant No.1 – Smt. Suvarna K. Lendave made an application on 22.09.2011 i.e. within period of limitation of one year seeking appointment for herself on compassionate ground stating that after the death of her husband the family is in financial distress. Accordingly, her name was taken in waiting list. However, for longtime no appointment was provided to her. Therefore the Applicant No.1 again made an application on 05.02.2018 requesting to give appointment to her son i.e. the Applicant No.2 - Shri Santosh K. Lendave in her place. However, her request came to be rejected by communication dated 16.03.2018 stating that her name is already in waiting list and there is no provision to substitute another heir. Thereafter, the Applicant No.1 crossed age 45 years. Therefore, Respondent No.2 by communication dated 12.11.2021 informed to the Applicant No.1 that her name is deleted in terms of G.R. dated 21.09.2017.

3. It is on the above background the Applicant has challenged communicated dated 16.03.2018 and 12.11.2021 inter-alia contending that it is bad in law and in contravention of the scheme for compassionate appointment and arbitrary.

4. Respondents resisted the O.A. contending that there is no provision in the scheme of compassionate appointment for substitution of heirs and in absence of any such provision substitution cannot be entertained. This is the only contention raised in their Affidavit-in-Reply.

5. Heard Shri S.N. Biradar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

6. In view of the submission advanced at the Bar, issue posed for consideration is whether the impugned communication is sustainable in law and my answer is in emphatic negative.

7. The facts as narrated above are not in dispute. After the death of deceased Government servant, the Applicant No.1 widow, made an application within one year and her name was taken in waiting list in 2011. However, no further steps were taken to provide appointment to her and the name was simply kept in the waiting list. Needless, to mention having regard to the aim and object of the scheme for compassionate appointment, such appointment ought to have been provided immediately to redeem the family in distress. The act on the part of Respondent to keep the name in the waiting list for years together without taking actual steps for providing appointment is totally unjust and it would defeat the very purpose and object of the scheme for appointment on compassionate ground.

8. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer to the observations made by the Hon'ble Supreme Court in **AIR 1989 SC 1976 [Sushma Gosain & Ors. Vs. Union of India]** wherein in Para No.9, it has been held as follows :

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in

appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

9. True, in the scheme for appointment on compassionate ground, there is no such express provision for substitution of heir. However, when name of one heir is enrolled in waiting list and continued in waiting list for years together and then deleted on the ground of age bar is totally unfair. If the name of the heir in waiting list is deleted on the ground of age bar in such situation name of another heir ought to be substituted so as to advance aim and object of the scheme of compassionate appointment. Respondents cannot be allowed to take disadvantage of their inaction of not providing job to the heirs within reasonable time. Indeed, as per decision of Hon'ble Supreme Court ***Sushma Gosain's case (cited supra)*** such appointment is required to be given expeditiously to redeem the family even by creating supernumerary post if there is no suitable post for appointment. Suffice to say, rejection of the request of another heir for substitution would frustrate very object of the scheme and would amount to denial of appointment on compassionate ground causing serious injustice and hardship to the family of the deceased Government servant. As per scheme for compassionate appointment one heir is eligible and where name of one heir is deleted from waiting list there is no reason to debar another heir from requesting the substitution.

10. Indeed, the Tribunal has taken consistent view allowing the substitution of heirs which is now reinforced in view of the decision of Hon'ble High Court delivered in ***Writ Petition No.6267/2018 (Dnyaneshwar R. Musane V/s. The State of Maharashtra & Ors.) decided on 11.03.2020.*** In the said Writ Petition Government had taken stand that in view of restriction imposed by G.R. dated 20.05.2015, the name of legal representative of deceased employee cannot be considered in place of another representative who is in the

waiting list. Hon'ble High Court turndown the contention with the finding that the provision imposed by G.R. dated 20.05.2015 is arbitrary, irrational and unreasonable and violates the fundamental right guaranteed by Article 14 of the Constitution of India. Hon'ble High Court also directed that the provision contained in the G.R. dated 20.05.2015 be deleted. Para 5 and Clause I & II of operative order of the Judgment of the Hon'ble High Court is as under:-

“5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view that the prohibition imposed by the Government Resolution dated 20.05.2015 that name of any legal representative of deceased employee would not be substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the fundamental rights guaranteed by Article 14 of the Constitution of India. As the per the policy of the State Government, one legal representative of deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution dated 20.05.2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the list in place of the other legal representative who had submitted his/her application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated. It is not the case of respondent no.2 that petitioner's mother was given appointment on compassionate ground and then she resigned and proposed that petitioner should be given appointment. The name of petitioner's mother was in waiting list when she gave up her claim and proposed that the petitioner should be considered for appointment on compassionate ground.

ORDER

I) We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.

II) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.”

11. Notably, same issue has again come up before the Hon'ble High Court in ***Writ Petition No.11697 of 2019 (Prashand Bhimrao Desai and Anr. v/s. The State of Maharashtra) decided on 24.09.2021*** in which taking note of the decision in ***Dnyaneshwar R. Musane's case (cited supra)*** Hon'ble High Court directed the Government to file Affidavit-in-Reply. Accordingly, Government filed Affidavit-in-Reply stating that legal opinion is being taken from Law and Judiciary Department regarding further course of action for the compliance of direction given in ***Dnyaneshwar R. Musane's case (cited supra)*** to delete the provision contended in the G.R. dated 20.05.2015. Hon'ble High Court granted six months time to formulate the policy in that respect. Regret to note that there is no compliance and no such remedial measures are taken by the Government in terms of the decision given by the Hon'ble High Court in ***Dnyaneshwar R. Musane's case (cited supra)***.

12. Thus, even if there is no specific provision for substitution of heir, this aspect is no more *res-integra* in view of the aforesaid decisions of Hon'ble High Court. Respondents ought to have seen that the name of the Applicant No.1 was in waiting list and she was not given appointment which ought to have been given immediately even by creating supernumerary post but her name was mechanically deleted on attaining age of 45 years as if Respondents were waiting for completion of age of 45 years. Here, notably, the Applicant No.1 had applied for appointment of her son in her place even before her name was deleted in waiting list. Such request ought to have been accepted since for no fault of the Applicants they are deprived of compassionate appointment.

13. Suffice to say, rejection of substitution is totally arbitrary rather it shows total disregard to the aim and object of the compassionate appointment. The impugned communication dated 16.03.2018 and 12.11.2021 are therefore liable to be quashed and set aside. Hence, the following order.

ORDER

- A) The Original Application is allowed.
- B) The impugned communication dated 16.03.2018 and 12.11.2021 are quashed and set aside.
- C) Respondents are directed to include name of the Applicant No.2 - Shri Santosh Kerappa Lendave in the waiting list for appointment on compassionate appointment on suitable post subject to fulfillment of eligibility criteria within three months from today.
- D) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 04.01.2023
Dictation taken by: N.M. Naik.

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