

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 88/2015

Chanda Wd/o Laxmikant Pangse,
Aged adult,
R/o Plot No. 24, Ramghaji Nagar,
Waghapur Road, Yavatmal
Tq. and Distt. Yavatmal -----

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-440 032.
- 2) The District Malaria Officer,
O/o in front of City Police Station,
Yavatmal.
- 3) The Collector, Yavatmal
Distt. Yavatmal (M.S.) -----

Respondents

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1. Shri N.R. Saboo, Advocate for the applicant.
 2. Shri M.I. Khan, Presenting Officer for respondents .
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Coram:- J.D. Kulkarni : Vice-Chairman (J)

Dated : - 31/3/2017

ORDER

Heard Shri N.R. Saboo, the learned Counsel for the applicant and Shri M.I. Khan, the learned Presenting Officer for the Respondents.

2. The applicant, Chanda Laxmikant Pangase has filed this O.A. and has claimed to quash and set aside the communications dtd. 24/12/2013 and 30/12/2013 issued by the Collector, Yavatmal (R/3) and District Malaria Officer, Yavatmal (R/2) respectively. By the communication dtd. 24/12/2013, the R/2 was informed as under :-

“ उपरोक्त संदर्भीय पत्राच्या अनुषंगाने कळविण्यात येते की, अनुकंपा नियुक्ती देण्यासाठी प्रतीक्षासूचीमध्ये एकदा समाविष्ट केलेले नाव वगळून त्या जागी अन्य पात्र वारसदाराचे नाव घेण्याबाबत कोणतीही तरतूद नाही. त्यामुळे कु. सानिका लक्ष्मीकांत पांगशे यांच्याऐवजी त्यांचा भाऊ साहिल लक्ष्मीकांत पांगशे यांचे नाव अनुकंपा नियुक्तीच्या प्रतीक्षासूचीवर घेता येणार नाही. ”

3. From the facts on record, it seems that the deceased Laxmikant Pangse, was serving in the office of R/2 on the post of "Aarogya Sewak" and during service he expired on 20/10/2008. The applicant applied for compassionate appointment. Since the applicant had crossed 40 years of age at the time of death of her husband and as she was uneducated, she was not entitled to be considered for appointment. The applicant, therefore, on 16/2/2009 requested the Respondent-District Malaria Officer to provide employment to her daughter after attaining the age of majority. Her daughter was aged about 16 years at the time of such application.

4. The Respondent No.2 received the application but did not inform anything to the applicant. In the meantime, the applicant's daughter, Sanika got married and she left applicant's house and started living with her husband.

5. The applicant vide letter dtd. 10/10/2013 requested the Respondent No. 2 to consider her minor son, namely Sahil for the employment after attaining the age of majority. On 10/10/2013, the minor son of the applicant, Sahil was aged about 16 years . The Respondent No. 3 vide the impugned letter has informed the applicant that there was no provision to substitute the name and therefore, the applicant has filed this application. She has claimed that the impugned communications dtd. 24/12/2013 and 30/12/2013 issued by Respondent Nos. 3 and 2 respectively, be quashed and set aside.

6. The Respondent Nos.2 and 3 have filed their reply-in affidavit. It is stated that the application is not maintainable on the ground of limitation. The impugned communications are dtd. 24/12/2013 and 30/12/2013, whereas the application has been filed in 2015, after a lapse of more than one year. It is stated that the compassionate appointment is not inheritable right and the law of succession

and substitution is not applicable. There is no provision for substitution of the name.

7. According to the respondents, the applicant herself has filed an application and requested that her daughter, Sanika be considered for compassionate appointment in view of death of her husband and accordingly the said request was considered and Sanika's name was taken in the waiting list. The request of the applicant cannot be considered sine there is no provision to substitute the name.

8. It is material to note that in this particular case, the person in whose name the applicant is claiming appointment on compassionate ground was minor at the time of filing application. The application is moved by the mother and not in the name of minor son through guardian.

9. Admittedly, the applicant's daughter-Sanika has been taken on the waiting list for appointment on compassionate ground. She has filed an affidavit on 8/8/2013, whereby she has requested to treat her application

as cancelled and allow her brother to be taken on the waiting list. Admittedly, at that time her brother was minor. The Id. counsel for the applicant has placed reliance on the judgment delivered in O.A. No.503/2015 (**Shri Piyush Mohan Shinde-Vs. The State of Maharashtra and 3 Others**) on 5/4/2014. In the said O.A., the applicant made an application whereby she requested that her name be deleted and in her place her son be considered for compassionate appointment and it was considered that her claim was live as she requested that in case her claim was not considered, her son may be included. In the said case, the respondents were directed to consider the case for appointment on compassionate ground on the basis of an application filed by mother.

10. The learned counsel for the applicant has also placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench in Writ Petition No. 8915 of 2011 (**The Executive Engineer PWD, Solapur and ors -vs. Jijabai Choudhary**) on 14th November, 2011 and Writ Petition No. 7793 of 2009 (**Vinodkumar Khiru Chavan –**

Vs. The State of Maharashtra and Ors.) on 9th December, 2009 . In those matters, the applicant requested to delete her name from the waiting list and to consider their respective son for appointment and the Hon'ble High Court was pleased to direct the respondents-concerned authority to consider their claim.

11. In the present case admittedly, the applicant's son was minor at the time of filing of the application and admittedly neither the applicant nor her daughter has been appointed on any post. The applicant's daughter who has been taken on the waiting list has also given 'no objection' for considering applicant's minor son, Sahil, i.e., her brother for the appointment and above all the applicant's son was minor at the time of filing of the application. The Govt. of Maharashtra has issued one G.R. dtd. 11/9/1996 whereby the legal heirs of the deceased can file an application for compassionate appointment within one year after attaining majority. Considering this aspect, I find no reason for not considering the claim of the applicant's son if he applies

within one year after attaining majority, if he otherwise fit for appointment.

12. In view of the discussion in the foregoing paras even though the communications dtd. 24/12/2013 and 30/12/2013 are as per the provisions of the G.R. which states that there shall be no substitution of the name of the person in the waiting list for compassionate appointment, the applicant's son can very well file an application within one year from the date of attaining majority. The application therefore, seems to be premature and in fact, in view thereof, the following order :-

- a) The application is partly allowed. The Applicant's son may take recourse of the G.R. dtd. 11/9/1996 and file application for appointment on compassionate ground as per G.R. dtd. 11/9/1996.
- b) The respondent Nos. 2 and 3 are directed to consider the application, if filed by the applicant's son-Sahil for appointment on compassionate ground provided such application is filed within one year from the date of

attaining majority or as per any other circular in the field in this behalf on its own merits.

c) No order as to costs.

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

Skt.