

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.21 OF 2013

DISTRICT : SANGLI

1. Smt. Archana Ramkrishna Badmanji))
Age 51 yrs, Occu. Household.)
 2. Nilesh Ramkrishna Badmanji.))
Aged 23 yrs, Occu. Nil,))
))
Both are R/o. Bhawani Nagar,))
Nevari Road, A/P. Vita, Tal. Khanapur,))
District : Sangli.))
Address for service of notice :))
Shri A.V. Bandiwadekar, Advocate,))
Having office at 9, "Ram-Kripa",))
Lt. Dilip Gupte Marg, Mahim,))
Mumbai - 400 016.))
-)...Applicants**

Versus

1. The Superintending Engineer,))
Sangli Irrigation Circle, Sangli and))
having office at Sangli.))
 2. The State of Maharashtra.))
Through the Principal Secretary,))
Water Resources Department,))
having office at Mantralaya,))
Mumbai - 400 032.))
-)...Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri D.B. Khaire, Chief Presenting Officer for Respondents.

**CORAM : SHRI RAJIV AGARWAL (VICE-CHAIRMAN)
SHRI R.B. MALIK (MEMBER-J)**

DATE : 20.08.2014

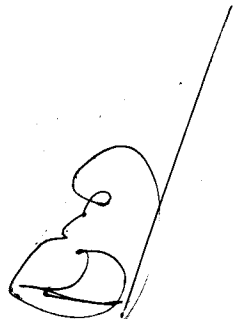
PER : SHRI R.B. MALIK (MEMBER-J)

JUDGMENT

1. The Applicants being the heirs and legal representatives (widow and son) of a deceased Class-III employee in effect hereby seek an appointment on compassionate ground for either of them.

2. We have perused the record and proceedings and heard the rival submissions.

3. The deceased Shri Ramkrishna Badmanji was working as a Record Keeper (Group 'C') in what was then called Irrigation Department and which Department has now been rechristened as Water Resources Department. He died in harness on 21st March, 2004. Apart from the Applicants, the deceased also left behind two daughters



viz. Shubhangi and Manisha (See page 29 of the paper book).

4. There is a scheme governed by the G.Rs. issued from time to time, whereunder appointment can be given to one (and only one) member of the family of the deceased employee which in common parlance has come to be called compassionate appointment. As the state of affairs stands as of now, after the G.R. of 2005 came into force, the move in the form of an application is required to be made within one year of the demise of the legal ascendants of the claimant. In case the claimant was minor at the time of the death of his ascendant, he must make such an application within one year of attaining majority. This scheme is available only for Class-III and Class-IV (Group 'C' and 'D') employees. The maximum age limit for such a claimant is 40 years. In various relevant G.Rs, there is a mandate for maintenance of what can be called waiting list of the claimants falling within this category. Even if the name of a claimant came to be enlisted before he attained the age of 40, it would have to be deleted once he turned 40. In this category, therefore, one must get the employment with all its attributes before attaining the age of 40.



5. The said deceased having died on 21st March, 2004. The Applicant No.1 submitted an application for appointment on compassionate ground on 17th/20th September, 2004. Her date of birth is 21st April, 1961. Therefore, she had crossed the age limit of 40 during the life time of her husband. So, for all one knows, she was not qualified right from the inception for being enlisted in the waiting list of such a category. But that was provided the authorities had cared at least to read her application with a modicum of caution and may be even duty consciousness.

6. With all that has been mentioned above, the application of Applicant No.1 made in September, 2004 got "final reply" on 21st August, 2010 (vide Exh.'A' page 19 of the paper book). That communication is in Marathi and it refers to Applicant No.1's application of 17.9.2004 and G.R. No.अकंपा-१००४/प्र.क्र. ५१/२००४/आठ, dated 22nd August, 2005. It was mentioned therein that in as much as Applicant No.1's date of birth was 21st April, 1961 and she having completed that age on 20th April, 2001 under the G.R. above referred to, her name came to be deleted from the waiting list. It was mentioned that her application was post 22nd August, 2005. We shall be



presently pointing out as to how the conduct of those who dealt with this matter was not as it should be in dealing with such matters. Now, the order just referred to at Exh. 'A' is one or the two herein impugned.

7. We may as well note that even as the Applicant No.1's application coursed through tediously making its way to something fruitful before hitting the dead end, there came into existence apart from the correspondence *inter-partes*, the recommendations from dignitaries in favour of the Applicants. We would however restrict ourselves to the facts that befall the correspondence between the parties.


8. It seems that pending consideration of the matter regarding the application of Applicant No.1, it apparently must have dawned on her that her chances were quite bleak probably because of age bar or for any reason whatsoever. She, therefore, introduced the factor of the request for the Applicant No.2 being considered for the compassionate appointment. That was by the letter dated 23rd June, 2008 (Exh.'E' page 27 of the paper book). The Applicant No.2 was born on 28th January, 1989. He is physically handicapped. The document in

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that behalf is at page 33 of the paper book issued by पद्मभूषण वसंतदादा पाटील शासकीय रुग्णालय, सांगली. The Applicant No.2 apparently suffers "Congenital Intercalated segmental deficiency" and that disability is more than 50%. Later on, the Applicant No.2 himself made an application directly to the Secretary, Water Resources Department on 19th December, 2008. It seems that he should have made an application to the office of the Superintending Engineer, Water Resources Department, Sangli. But the record also shows that the said office of Superintending Engineer supported the cause of the Applicant No.2 and the communication in that behalf is to be found at page 35 of the paper book. However, the same office, vide a communication which is at Exh.'H' on page 37 of the paper book जा.क्र. /सांपामं/आ-४/३४९४/२०११, dated 18th May, 2011 wrote back to the Applicant No.2 that under the scheme of compassionate appointment, it was not permissible for substitution of the name of one heir by the another (अनुकंपा तत्वावर नियुक्तीसाठी प्रतिक्षा यादीवर असलेल्या उमेदवाराच्या ऐवजी अन्य वारसाचे नांव नोंदविण्याची तरतुद प्रचलित शासन धोरणांतर्गत नाही). It is this order which is also subjected to challenge in this Original Application.

9. It is, therefore, clear that the Applicant No.2 having attained the age of majority on 27th January,

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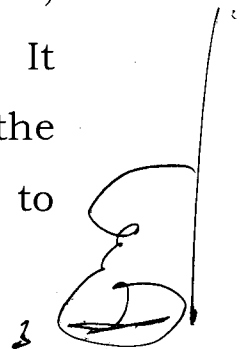
2007, his claim should have been laid within one year of that date viz. 27.1.2008. It was actually laid on 23rd June, 2008 by his mother. He followed it up still later by his own letter of 19.12.2008 and that too, to the Secretary of concerned department. This aspect of the matter to the extent necessary may have to be dealt with a while from now.

10. Now let us scan the Affidavits on behalf of the Respondents to see as to how this matter was handled and also how the Applicants were treated. The crux of the case of the Respondents is that the name of the Applicant No.1 was deleted from the list after she attained the age of 40. Now as already mentioned above, she crossed that age even during the life time of her husband and if that be so, one can mention without any fear of contradiction that she was not qualified at all to be considered for the appointment on compassionate ground. If the Respondents had informed this fact in time, it was always possible for the family of the said deceased to think in terms of taking some other steps. There are two daughters left behind by him and in any case, the Applicant No.2 could then have applied may be a little earlier though after attaining majority. It is very

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clear that an impression is being sought to be created by the Respondents that the Respondent No.1 turned 40 while still in the waiting list. That apparently could be with a view to avoid an obvious question about there being no proper scrutiny at all, at an appropriate initial stage. It was in this background that, as already mentioned above, the case of Applicant No.2 was put forth for appointment on compassionate ground. It is no doubt true that there is a maxim, "ignorantia-juris-nemi nemi excusat" which means 'ignorance of law is no excuse'. That indeed is one aspect of the matter, but then, in the first place, one must bear in mind as to whether this maxim would apply with equal force to the persons who are drawn from gullible ignorant strata of the society and that too, not in relation to an enacted law, statutory rules or any such instrument of higher origin and potency. Here we are concerned with executive action reflected in G.Rs, Circulars, etc. Secondly and more importantly, even the said maxim cannot be pressed into service when the other party i.e. Respondents were the only ones to move in the matter, once the initial act of the application had been made. It was always open to the Respondents to inform the Applicant No.1 at the initial stage about her disability to

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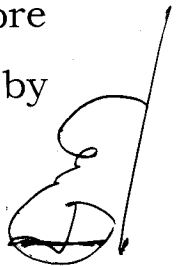
seek appointment on compassionate ground. As far as the Applicant No.2 is concerned, the only case that the Respondents have come up with is that his mother's name had already been put up in the waiting list and there was no provision to substitute her by him. That was apparently the Respondents' understanding of the case of Applicant No.2 in the light of the events that took place as hereinabove discussed.

11. In Para 7 of the Affidavit-in-reply (Page 53 of the paper book), it is in effect pleaded that although the Applicant No. 1 submitted her application for appointment on compassionate ground, but she had not enclosed necessary documents. One searches in vain wading through the Affidavits filed on behalf of the Respondents to find out as to just what was the defect. One wonders whether this is also an attempt to cover up the lax manner in which the matter was dealt with. It is thereafter mentioned that the application was received on 21.12.2005 which obviously is incorrect, because the application was received in September, 2004. What apparently may have happened in December, 2005 was that the Applicant No.1's name was enlisted in that month (22nd December, 2005). A perusal of Para 3 (Page

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65 of the Affidavit-in-sur-rejoinder which apparently traverses the facts stated in Para 8 of the Affidavit-in-rejoinder, *inter-alia* mentions that the application initially filed was incomplete that it was presented on 20th September, 2004 to Sub Divisional Officer, Vita, Taluka Khanapur, District Sangli. It was then forwarded to the Executive Engineer, Division-1 resulting in consumption of some time. The application was scrutinized and then "certain shortfalls" were noticed and hence, "relevant documents" were sought for and this fact was informed to the Applicant No.1 immediately on 9.6.2005 and on 27.6.2005, she was asked to submit the papers and next date that any event took place was only in the month of December, 2005. We are very sure that if such is the conduct that could be called "immediately" then one would shudder to imagine as to the state of affairs such as they would obtain were it to be in the normal circumstances. The whole conduct is completely careless and lacking in sensitivity. Right here itself, it will be most appropriate to refer to the judgment of the Hon'ble Supreme Court in **Smt. Sushma Gosain vs. Union of India, AIR 1976 SC 1976**. That was also a matter more or less like the present one. In Para 4, it was observed by the Hon'ble Supreme Court as under :

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"She was said to have passed the trade test. But nonetheless she was not appointed. Whenever she approached DCDR, she was told that her case was under consideration."

A perusal of Para 5 would again make it clear that there is much factual similarity between that particular matter and the present one. Para 9 needs to be fully reproduced:

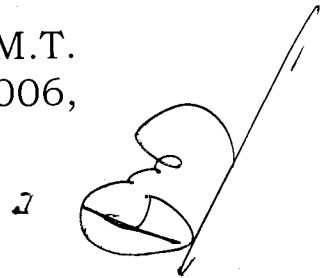
"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such 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."



As a matter of fact, Their Lordships of the Hon'ble Supreme Court also disapproved of the manner in which that particular matter was dealt with by the Hon'ble Delhi High Court. It is, therefore, very clear that the expeditions attention to matters such as this one is an absolute imperative in a matter like this and if the approach is indolent, then such an action has to be disapproved in principle and remedy advanced even by moulding of the relief taking care that no law or rule was offended.

12. The Respondents apparently have raised certain pleas and it seems to us that they *inter-alia* wanted to rely upon at least three judgments of the Hon'ble Supreme Court. They are :

- (i) Eastern Coalfields Ltd. Vs. Anil Badyakar 2009 (5) CPSC 925;
- (ii) Union of India & Anr. Vs. Shashank Goswami & Anr. 2012 (5) CPSC 34; and
- (iii) Union Bank of India & Ors. Vs. M.T. Latheesh, Appeal (Civil) 3548 of 2006, dated 18th August, 2006.



It was held by Their Lordships in the above matters that this is a special class of claimants seeking appointments and there is no vested right in the claimants to seek appointment on compassionate ground. The said observations will have to be read in totality and not piece meal. Generally so speaking in those particular matters and in the earlier judgments therein referred to, there was considerable delay of years together in some cases. Further, Their Lordships held there that such appointments being a departure from the normal rule of appointment through open competition, the schemes and the rules that regulate the same would have to be strictly applied. Now, we have applied those principles hereto. Very pertinently, there is no hitch even according to the Respondents as far as the Applicant No.1 is concerned other than she having crossed the age bar. In case of the Applicant No.2, the hitch was that he could not have been substituted for his mother in the list. As a necessary fallout, there is no other defect in case of either of them. Although, as we shall be presently pointing out, there is no way, Applicant No.1's claim can be considered for appointment on compassionate ground. But then, the fact remains that applying the several clauses of the various relevant G.Rs. including the G.R. of 2005 on


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Respondents' own showing there was no defect other than the one that they have pointed out. We must repeat, however, that in setting up the case against the Applicant No.1, whatever has been dished out is just a ruse to cover up Respondents' negligence in performance of their solemn duty and/or complete insensitivity or both or may be other vitiating vices. The claim of the Applicant No.2 in the set of circumstances has a peculiar hue which may not be found quite easily in other matters. Instead of rejecting the claim of the Applicant No.1 at the threshold, the family was lulled into an expectation of success and ultimately, it was not till 21st August, 2010 that her claim was finally rejected on record. As observed already, the Applicant No.1 laid the claim for her son in all probability after she realized that she might just be hitting the dead end or may be she thought that her son was a better claimant. There would be nothing wrong in case she thought that way.

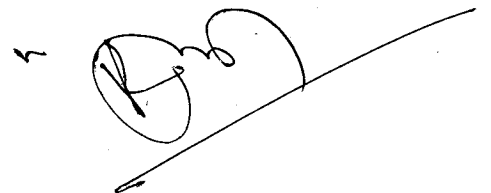
13. Very pertinently, therefore, the claimants of both the Applicants were rejected not for any substantive clause or in violation of any of the provisions of the G.R. except for delay of a few months in case of the Applicant No.2. Now, if we were to visit the consequences of delay

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on the Applicant No.1, the fallout and the net result would be to do so, even when that could be the consequences of any inexcusable indolence and complete insensitivity of the Respondents. We may mention quite unhesitatingly that the Respondents herein have dubious distinction of being in the company of the employers in **Smt. Sushma Gosain's** case (supra). The observations of the Hon'ble Supreme Court in that matter would apply fairly and squarely in this particular matter to the Respondents. The issue, therefore, is as to whether there is a way out or there is no other go, but to leave the interest of justice dialated and sacrificed at the alter of procedure. In search of an answer, we can do no better than rely upon an earlier judgment of this Tribunal to which one of us (Shri Rajiv Agarwal, Vice-Chairman) was a party. That matter was **O.A.884/2012 (Mr. Deepak Mohan Naik vs. The Commissioner of Police for Greater Mumbai and another, dated 24.12.2013)**. That matter before the Bench of the Hon'ble then Chairperson arose out of a similar claim for appointment on compassionate ground in Police force. There also, there was slight delay in following the procedure. One aspect of the matter was that the claimant therein was already working as a Child Constable. But in an

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elaborately considered judgment, this Tribunal held that in certain circumstances, the delay could safely be ignored, more particularly when the facts demanded the said course of action. We must note carefully that the Tribunal in that matter made it clear that the course of action adopted therein was an exceptional one and should not be allowed to become routine as a precedent. However, in its application to the present matter, in our view, may be the Applicant No.2 is slightly better placed because right from the year 2004, as already made clear hereinabove, the Respondents so conducted themselves vis-à-vis the issue in hand as to lull the Applicants into a belief that their case was under consideration. If that be so, then as already mentioned above, to refuse to advance remedy to the Applicant No.2 at least would tantamount to put premium on Respondents' felony and punishing the Applicants for something that they are not responsible for. It is undoubtedly true that when the limitation is provided for even in the instruments like G.Rs, Circulars, etc, the said provision has to be strictly construed, but one cannot lose sight of the fact that in deserving cases, if enacted laws provide for condonation of delay a'la Section 5 of the Limitation Act, then it is a far cry to suggest that a judicial body should sit by

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helplessly and let injustice prevail. Therefore, without causing any embarrassment to the Bench of the then Hon'ble Chairman on our own assessment on the facts at hand, we are so disposed as to apply the same course of action that they adopted in that particular matter.

14. The upshot is that, this matter will have to be decided on the basis of the principles laid down by the Hon'ble Supreme Court in **Smt. Sushma Gosain's** case (supra). The principles laid down by the Hon'ble Supreme Court in the three rulings hereinabove cited on behalf of the Respondents to the present matter would produce a result that we are driving at.

15. The claim of the Applicant No.1 cannot be considered at all for the reasons set out hereinabove. She was not qualified on the anvil of age right from the inception, the claim of the Applicant No.2, however, can be considered. He is a handicapped person. The authorities will be directed and they are accordingly directed to consider, if he can be appointed on compassionate ground, as requested for by him ignoring the delay in making application in that behalf. The Respondents must take that decision within four months

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from today. The Respondents shall bear in mind the observations hereinabove, generally and particularly, those are based on the law laid down by the Hon'ble Supreme Court in **Smt. Sushma Gosain** (supra). As a consequence, the communication from the Respondents to the Applicant No.2 dated 18.5.2011 being Exh.'H' page 37 of the paper book stands hereby quashed and set aside with a direction given just now. The claim on behalf of the Applicant No.1 is rejected. The Original Application is disposed of accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
20.08.2014

Sd/-
(Rajiv Agarwal)
Vice-Chairman
20.08.2014

Mumbai
Date : 20.08.2014
Dictation taken by :
S.K. Wamanse.