

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.327 OF 2018

DISTRICT : SANGLI

1] Shri Pravin Subhash Shinde)
Age : 33 Yrs., Occu.: Nil,)

2] Shri Sandeep Subhash Shinde)
Age : 28 Yrs., Occu.: Nil,)

Both residing at A/P : Devrashtre,)
Tal.: Kadegaon, District : Sangli.)...**Applicants**

Versus

1. The Superintending Engineer.)
Sangli Irrigation Circle,)
Sangli.)

2. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 18.01.2021

JUDGMENT

1. The Applicants have challenged the communication dated 06.08.2016 and 07.09.2016 whereby the request made by Applicant No.2 for substitution of his name in place of Applicant NO.1 for appointment on compassionate ground was rejected.

2. Shortly stated undisputed facts are as under :-

(i) The father of the Applicants viz. Subhash Shinde was Clerk on the establishment of Respondent No.1 and unfortunately, he died in harness on 21.07.2010 leaving behind widow, two sons (present Applicants) and one daughter.

(ii) After the death of father, the Applicant No.1 – Pravin made an application on 02.10.2010 for appointment on compassionate ground.

(iii) The name of Applicant No.1 was taken in waiting list having found eligible for appointment.

(iv) Before any formal order of appointment came to be issued to Applicant No.1, he developed mental illness “Anxiety Depression Syndrome” rendering himself unfit for Government service and the same was certified by Civil Surgeon by his Medical Certificate on 24.02.2014 (Page No.19 of P.B.).

(v) In view of mental illness of Applicant No.1, his brother – Applicant No.2 Sandeep made an application on 26.12.2014 to Respondent No.1 stating that due to mental illness, the Applicant No.1 is unfit for job, and therefore, requested to substitute his name in waiting list. He had passed 10th Standard with 60% marks and claims to be eligible for appointment on compassionate ground.

(vi) Applicant No.1 and other family members gave consent for giving appointment to Applicant No.2 on compassionate ground

(vii) Applicant No.2 gave reminder and again requested for substitution of his name by letter dated 27.12.2018 but the same

was not responded. Ultimately, Respondent No.2 – Government by order dated 06.08.2016 rejected the claim of Applicant No.2 stating that there is no provision for substitution in G.R. dated 20.05.2015 which is challenged in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicants submits that since Applicant No.1 became medically unfit because of subsequent mental illness, the Respondents ought to have accepted the request made by Applicant No.2 for substitution keeping in mind the aim and object of the scheme for appointment on compassionate ground. According to him, the rejection on the specious ground of absence of provision in G.R. dated 20.05.2015 is arbitrary and contrary to letter and spirit of the scheme for appointment on compassionate ground.

4. Whereas, learned Presenting Officer opposed the O.A. contending that there is no provision for substitution in G.R. dated 20.05.2015. According to her, it is only in case of death of heir whose name is taken in waiting list, the name of another heir could be taken in waiting list in terms of Clause (c) of G.R. dated 20.05.2015.

5. In view of pleadings advanced at the Bar, the issue posed for consideration is whether the impugned communication dated 06.08.2016 is legally sustainable in law and the answer is in emphatic negative.

6. Needless to mention that the very aim and object of the scheme for appointment on compassionate ground is to provide financial assistance to the distressed family because of loss of sole earning member. True, the appointment on compassionate ground is not matter of right and the same is by way of concession. At the same time, one should not be oblivious of the object of the scheme for appointment on compassionate ground and hyper-technical approach is not expected by executives. Such applications are always required to be considered sympathetically

with objective assessment, of course, within the guidelines framed in this behalf under the scheme for appointment on compassionate ground.

7. The origin of the scheme for appointment on compassionate ground is in G.R. dated 23rd April, 1976 issued by GAD, the State of Maharashtra. By this G.R, for the first time, the scheme for appointment on compassionate ground was introduced so as to provide appointment to the heir of the deceased who died in harness. Thereafter, from time to time, various G.Rs. were issued about the limitation, eligibility, etc. In this behalf, by G.R. dated 26.10.1994 husband/wife, son or unmarried daughter were held eligible for appointment on compassionate ground and application for appointment was to be made within five years from the death of deceased. Thereafter, by G.R. dated 22nd August, 2005, the provision was made to delete the name of heir from waiting list on attaining the age of 40 years. Then again by G.R. dated 20.05.2015, the provision was made that in case the death of heir whose name is on waiting list, another heir can be taken in waiting list, subject to maintaining the original seniority. Apart, the period of one year for making application for appointment on compassionate ground is extended upto three years, subject to condonation of delay by the competent authority. Then, by G.R. dated 17.11.2016, in view of decision of Hon'ble High Court, the list of eligible candidates for appointment on compassionate ground has been amended and following are held eligible for appointment.

“शासन निर्णय :-

१. शासन निर्णय क्र.अकंपा-१०१३/प्र.क्र.८/आठ, दि. २६.०२.२०१३ रद्द झाल्याने त्यानुषंगाने तसेच उपरोक्त संदर्भ क्र. १, २ व ३ अन्वये विहित केलेल्या अनुकंपातत्वावरील नियुक्तीसाठी दिवंगत शासकीय कर्मचा-यांच्या पात्र नातेवाईकांच्या यादीमध्ये सुधारणा करण्यात येत असून खालील नमूद केलेले नातेवाईक हे अनुकंपा नियुक्तीसाठी पात्र राहतील व त्यापैकी एका पात्र नातेवाईकास नियुक्ती अनुज्ञेय राहिल.

१) पती/पत्नी,

२) मुलगा/मुलगी (अविवाहीत/विवाहीत), मृत्युपूर्वी कायदेशीररित्या दत्तक घेतलेला मुलगा/मुलगी (अविवाहीत/विवाहीत)

३) दिवंगत शासकीय कर्मचा-याचा मुलगा हायात नसेल किंवा तो नियुक्तीसाठी पात्र नसेल तर त्याची सून

४) घटस्फोटीत मुलगी किंवा बहिण, परित्यक्ता मुलगी किंवा बहिण, विधवा मुलगी किंवा बहिण

५) केवल दिवंगत अविवाहीत शासकीय कर्मचा-यांच्या बाबतीत त्याच्यावर सर्वस्वी अवलंबून असणारा भाउ किंवा बहिण.

२. अनुकंपा तत्वावर नियुक्ती देण्यापूर्वी संबंधितांकडून दिवंगत कर्मचा-यावर अवलंबून असलेल्या कुटुंबातील अन्य व्यक्तींचा सांभाळ करण्याबाबत प्रतिज्ञापत्र घेण्यात यावे. भविष्यामध्ये सदर प्रतिज्ञापत्राचे उल्लंघन झाल्याबाबतची तक्रार संबंधित कुटुंबातील सदस्यांनी केल्यास सदर तक्रारीची चौकशी संबंधित नियुक्ती प्राधिकारी/शिस्तभंग विषयक प्राधिका-याने करावी. चौकशी अंती अनुकंपा नियुक्ती धारकाने प्रतिज्ञापत्राचे उल्लंघन केल्याचे निष्पन्न झाल्यास त्याला सेवेतून काढून टाकण्याची देखील शिक्षा देण्यात येईल.”

8. It is thus explicit that the scheme for appointment on compassionate ground has been amended from time to time taking note of changed circumstances as well as socio-economic factors with the object that after the death of sole earning member, the family should not live in financial distress and appointment should be provided as a succor.

9. Now turning to the facts of present case, there is no denying that after the submission of application for appointment on compassionate ground, the Applicant No.1 developed serious mental illness viz. Anxiety Depression Syndrome which renders him unfit for job. At the time of making an application on 02.10.2010, he was medically fit but later unfortunately developed mental illness which was not in his hand. As mental illness renders him unfit for job, his brother Applicant No.2 made an application to substitute his name in waiting list. Indeed, such a request ought to have been considered sympathetically since Applicant No.1 became unfit because of mental illness. Otherwise the whole object of scheme would be defeated.

10. There is one another aspect of the matter about consideration of provisions of 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' (hereinafter referred to as 'Disabilities Act 1995' for brevity) read with Right of Persons with Disabilities Act, 2016 which repealed the former Act. The provisions of this Act protect the employee who acquires a disability during his service. Such an employee cannot be removed from service and law obliges the employer to adjust such an employee against any

post and if not possible, to keep him on supernumerary post or to continue him till he attains the age of superannuation, whichever is earlier. In the present case, the Applicant No.1 applied in 2010 and his name was taken in waiting list, but no employment was provided. In fact, as per the mandate of Judgment of Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. Vs. Union of India)**, such appointment was required to be provided immediately to redeem family in distress even by creating supernumerary post, so as to accommodate such person without loss of time. In the present case, no such step was taken to provide employment immediately. Had he appointed within reasonable time, in that event, in view of mental illness suffered in 2014, his employment could have been protected under the provisions of 'Disabilities Act 1995'. Whereas, the Applicant No.1 suffered disability before getting actual appointment. In such situation, he being declared unfit for Government service, the Respondents ought to have substituted the name of Applicant No.2 having regard to the aim and object of the scheme.

11. True, there is no provision for substitution of another heir in scheme for appointment on compassionate ground. However, this Tribunal has taken consistent view in various proceedings that substitution is permissible depending upon the facts and circumstances of the matter.

12. At this juncture, it would be apposite to take note of following decisions of the Tribunal, which are as under :-

(i) O.A.No.432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 Ors.) decided on 01.12.2014. In this matter, in similar situation, the substitution of the name of son in place of mother's name was rejected. However, the order of rejection has been quashed. In this judgment, the Tribunal has referred its earlier decision in O.A.No.184/2005 decided on 03.05.2006 wherein substitution was allowed and the said order has been confirmed by Hon'ble High Court.

(ii) O.A.No.184/2005 (Smt. Nirmala Doijad Vs. State of Maharashtra) decided on 03.05.2006. In this matter, while allowing the substitution, this Tribunal held that where there is no specific provision for substitution, justice requires that the policy of Government should be implemented and interpreted in its spirit for giving its benefit to the legal representative of the person who died in harness. It has been held that, there is no specific rule prohibiting the substitution, and therefore, the directions were issued for substitution of the heir and appointment subject to eligibility.

(iii) O.A.No.503/2015 (Piyush Shinde Vs. State of Maharashtra) decided on 05.04.2016. In this matter arising from similar situation, this Tribunal relying on its various earlier decisions rendered in **O.A.No.184/2005** (cited supra), **O.A.No.432/2013** (cited supra), **O.A.No.1043/2014** (cited supra) and Judgment of Hon'ble High Court in **Writ Petition No.7793/2009 (Vinodkumar Chavan Vs. State of Maharashtra) decided on 09.12.2009**, directions were given to replace the name of the Applicant for appointment on compassionate ground.

(iv) O.A.604/2016 (Anusaya More Vs. State of Maharashtra) decided by this Tribunal on 24.10.2016, wherein the name of one of the heir of the deceased employee was taken on record, but having attained the age of 40 years, her name was deleted. In her place, her son seeks substitution, which came to be rejected. The Tribunal held that it would be equitable that son's name is included in waiting list where his mother's name was placed and O.A. was allowed. This Judgment was challenged in Writ Petition No.13932/2017. The Hon'ble High Court by Judgment dated 18.07.2018 maintained the order of Tribunal with modification that the name of son be included in waiting list from the date of application made by son w.e.f.11.02.2014 and not from the date of mother's application.

(v) O.A.No.327/2017 (Smt. Vanita Shitole Vs. State of Maharashtra) decided on 7th August, 2017, O.A.636/2016 (Sagar B. Raikar Vs. Superintending Engineer) decided on 21.03.2017, O.A.239/2016 (Swati Khatavkar Vs. State of Maharashtra) decided on 21.10.2016, O.A.884/2016 (Mayur Gurav Vs. State of

Maharashtra) decided on 30.03.2017 and O.A. 1126/2017 (Siddhesh N. Jagde Vs. State of Maharashtra) decided on 04.06.2018. In all these O.As, the name of one of the heir was taken on record for the appointment on compassionate ground, but having crossed 40 years of age, the name came to be deleted and second heir son seeks substitution, which was rejected by the Government. However, the Tribunal turned down the defence of the Government that in absence of specific provision, the substitution is not permissible. The Tribunal issued direction to consider the name of the Applicant for appointment on compassionate ground.

(vi) O.A.No.445/2017 (Manoj Damale Vs. Superintending Engineer and Administrator) decided on 02.04.2019. The facts of this O.A. are similar to the present O.A. In that O.A. also, the request was made by the mother to provide appointment on compassionate ground either to her or her son, who was minor at the time of making application. However, mother's name was taken in waiting list, but it was deleted on attaining the age of 40 years. Thereafter, again application was made by son on attaining majority. That application made by his mother was joint application and it should have been considered for substitution in the name of mother. The O.A. was allowed. The defence taken by Respondents that the substitution is not permissible in policy was turned down and directions were issued to consider the name of the Applicant for appointment on compassionate ground.

(vii) At this juncture, it would be also apposite to refer the decision of Hon'ble Supreme Court in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** which is squarely applicable to the present situation. In that case also, the name of widow was empanelled under the compassionate appointment scheme but later it was declined on account of crossing the age. Thereafter, her daughter made an application for substitution of her name in place of widow. The claim was opposed on the ground that the family had already managed to survive for 10 years, and therefore, there was no immediate necessity. The Hon'ble Supreme Court held that only because family had managed to survive 14 years, it

cannot be the reason for rejection and whether the family pulled on begging or borrowing should not have been the consideration. In Para No.3, the Hon'ble Supreme Court held as under :-

“3. We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”

13. In similar situation, in **O.A.No.884/2016 (M.V. Gurav Vs. State of Maharashtra) decided on 30.03.2017**, this Tribunal had allowed the substitution where widow whose name was taken in waiting list developed cancer and was not in a position to accept the offer of appointment on compassionate ground. Therefore, her son applied for substitution of his name which came to be rejected by the Government. The Tribunal quashed the order of rejection dated 01.07.2016 and directed the Government to include the name of Applicant in place of his mother. There is nothing on record that this Judgment has been challenged by the Respondents. Thus, it seems to have attained the finality.

14. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by Hon'ble Supreme Court in **Sushma Gosain's case** (cited supra) 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.

15. As such, even if there is no specific provision in the scheme for appointment on compassionate ground, the decision in this behalf is required to be taken by the competent authority keeping in mind the aim and object of the scheme and the ground on which substitution is asked for, so as to advance social justice. Needless to mention that such decision should be fair. In the present case, after making an application, the Applicant No.1 developed serious mental illness rendering him unfit for such. In such peculiar situation, the request of Applicant No.2 for substitution ought to have been accepted taking sympathetic, judicious and fair view of the matter, so that the distressed family should get some financial assistance in the form of appointment on compassionate ground to Applicant No.2. However, unfortunately, the Respondent No.2 adopted hyper-technical approach. Suffice to say, the impugned order is arbitrary and unsustainable in law.

16. The aforesaid discussion leads me to conclude that the impugned orders dated 06.08.2016 and 07.09.2016 are unsustainable in law and deserves to be quashed. Hence, I proceed to pass following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 06.08.2016 and 07.09.2016 are quashed and set aside.
- (C) The Respondents are directed to consider the application of Applicant No.2 for appointment on compassionate ground and it is equitable as well as judicious that his name is included in the waiting list for the issuance of appointment order as a special case, subject to fulfillment of eligible criteria in accordance to Rules.

- (D) This exercise should be completed within three months from today.
- (E) No order as to costs.

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

Mumbai

Date : 18.01.2021

Dictation taken by :

S.K. Wamanse.

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