

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.347 OF 2019

DISTRICT : A'NAGAR

Shri Prashant Ambadas Gangarde,)
Age : 22 years, Occ.: Nil)
R/O. Nimgaon gangarde, Tal. Karjat,)
Dist. Ahmednagar – 414401.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through Secretary, Irrigation Dept.,)
Mantralaya, Mumbai 32.)
2. The Superintendent Engineer,)
Barne Road, Mangalvar Peth, Pune 11.)...**Respondents**

Shri R. M. Kolge, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.07.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 26.09.2016 whereby his application for appointment on compassionate ground has been rejected invoking Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts are as under:-

The Applicant's father namely Ambadas Pandharinath Gangarde was serving on the post of Mazdoor (Class-IV) on the establishment of Respondent No.2. Unfortunately, he died on 04.12.2003 in harness leaving behind widow, namely, Smt. Lankabai Gangarde and son Prashant Gangarde (present Applicant). After the death of husband, Smt. Lankabai Gangarde made an application on 10.02.2004 for appointment to her on compassionate ground contending that after the death of her husband there is no earning member in the family. Her name was accordingly taken in the waiting list. However,

before she got an employment, she attained 40 years of age, and therefore, in terms of G.R. dated 22.08.2005 her name was deleted from waiting list. Smt. Lankabai was born on 01.06.1970 and had attained 40 years of age on 01.06.2010.

3. Thereafter, the Applicant who was minor at the time of death of his father made fresh application on 08.09.2016, on attaining majority, for providing employment to him. However, his application stands rejected by order dated 26.09.2016 solely on the ground that name of his mother was already taken in the waiting list which was later deleted on account of crossing the age of 40 years and there being no provision for substitution of heir, he is not entitled to appointment on compassionate ground. This rejection by order dated 26.09.2016 is under challenge in the present Original Application.

4. Respondent No.2 resisted the application by filing Affidavit in Reply (Page Nos.54 to 59) *inter-alia* denying the entitlement of the Applicant to the relief claimed. No separate reply is filed by the Respondent No.1. The Application is opposed *inter-alia* on the ground that Applicant being resident of Ahmednagar district, the Aurangbad Bench has only jurisdiction in the matter and secondly there is no provision for substitution of heir for appointment on compassionate ground.

5. Heard Shri R. M. Kolge, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

6. In-so-far as objection raised by the learned P.O. on the point of jurisdiction is concerned, admittedly the Applicant resides at village Nimgaon, Tal. Karjat, Dist. Ahmednagar. However, it is rightly pointed out by learned Counsel for the Applicant that as per Rule 6 of the Maharashtra Administrative Tribunal (Procedure) Rules 1988, the cause of action has arisen in the jurisdiction of this Tribunal, and therefore, objection raised in this behalf holds no water. Rule 6 of Maharashtra Administrative Tribunal (Procedure) Rules, 1988 is as follows:-

“6. Place of filing applications :- *The application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction,-*

- (i) The applicant is posted for the time being, or*
- (ii) The cause of action has arisen, or*
- (iii) The respondent or any of the respondents against whom relief is sought, ordinarily resides :*

Provided that the application may be filed with Registrar of the Principal Bench and, subject to Section 25 of the Act, such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter.”

7. In-so-far as Clause (i) of Rule 6 is concerned, it applies where the applicant is already appointed and serving at particular place and service dispute arises. Whereas, in the present case, the Applicant is not appointed and is seeking appointment on compassionate ground. Therefore, Clause (i) of Rule 6 will not apply. As per Clause (ii), the application shall be filed before the bench within the jurisdiction which the cause of action has arisen. In present case, the Applicant has challenged the impugned order dated 26.09.2016 passed by Respondent No.2-Superintendent Engineer, Kukadi Sinchan Mandal, Pune – 11. As such, the cause of action has arisen at Pune which falls within the territorial jurisdiction of this Tribunal. This being the position, I see no substance in the objection raised by the learned P.O. on the point of jurisdiction.

8. Original Application is opposed mainly on the ground that there is no provision for substitution of heir in Government Resolutions applicable to the scheme of appointment on compassionate ground. In addition to it, Original Application is opposed by the learned P.O. on the ground that Applicant had attained the age of 18 years on 21.08.2014 but the application for appointment on compassionate ground was made on 08.09.2016 (vide Page No.24 of O.A.), and therefore, it being not made within one year from the date of attaining majority, the same was barred by limitation in terms of G.R. dated 20.05.2015.

9. In-so-far as point of limitation is concerned, it is material to note that in impugned order, there is no such reference of the point of limitation. Neither

there is any pleading to that effect in reply. In reply all that it is contended that after deletion of name of mother from waiting list, the name of Applicant cannot be substituted in place of mother for want of any specific provision to that effect.

10. Here it would be apposite to refer the G.R. dated 20.05.2015 in respect of limitation. Clause 'D' of G.R. dated 20.05.2015 (Page No.51 and 52 of PB) is relevant here which is as follows:-

“ड. अनुकंपा तत्वावर नियुक्तीसाठी पात्र वारसदाराला अर्ज सादर करण्यास २ वर्षांपर्यंतचा विलंब क्षमापित करण्याबाबत:-

शासकीय कर्मचा-याच्या मृत्युनंतर १ वर्षांच्या आत अनुकंपा नियुक्तीसाठी पात्र वारसदाराने अर्ज सादर करणे आवश्यक आहे. तथापि १ वर्षानंतर २ वर्षे इतक्या कालावधीपर्यंत (मृत्युच्या दिनांकापासून ३ वर्षांपर्यंत) अर्ज सादर करण्यास विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधित मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात येत आहेत.

दिवसंत शासकीय कर्मचा-यांच्या अज्ञान उमेदवाराच्या बाबतीत तो उमेदवार सज्ञान झाल्यावर त्याला अनुकंपा नियुक्तीसाठी अर्ज सादर करण्यास १ वर्षापेक्षा अधिक २ वर्षांपर्यंत (सज्ञान झाल्याच्या दिनांकापासून ३ वर्षांपर्यंत) इतका विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधित मंत्रालयीन प्रशासकीय विभागांच्या विभागप्रमुखांना देण्यात येत आहेत.”

11. The Applicant was born on 21.08.1996 had attained 18 years of age on 21.08.2014. Whereas, he made an application on 08.09.2016. Thus, admittedly it is not made within one year from the date of attaining majority. However, in terms of G.R. referred to above, administrative head of the department is empowered to condone the delay and the application can be made within three years from attaining majority. Here, admittedly, the application dated 08.09.2016 is made within three years from attaining majority. Therefore, it is for the administrative head in Mantralaya to consider the point of delay and at this stage contention raised by the learned P.O. on the point of limitation which is indeed without any pleading, is premature and unsustainable.

12. Now comes material question as to whether once the name of mother was deleted from the waiting list, the name of the Applicant can be

substituted for providing appointment on compassionate ground. True, there is specific provision of substitution of name in scheme for appointment on compassionate ground. However, this issue is no more *res integra* in view of various decisions rendered by this Tribunal where directions were given to consider the name of the Applicant, where name of heir was earlier taken in waiting list but deleted on account of crossing the age of 40/45 years.

13. Needless to mention that idea and object behind providing compassionate appointment to the heir of deceased employee is to alleviate the financial difficulties of distressed family due to loss of sole earning member of the family. Such appointment needs to be provided immediately to redeem the family in distress and application made by the heir should not be kept pending for years together. If the name of the heir is taken in waiting list then appointment is required to be given without further delay and it should not be kept pending, awaiting attaining the age of 40/45 years so that name can be deleted from waiting list mechanically. If such approach of executive is allowed, it would defeat very purpose of the scheme of compassionate appointment. In so far as facts of present case are concerned, there is absolutely nothing on record to indicate as to why appointment order was not issued to the Applicant's mother though her name was entered in waiting list. Indeed, in terms of decision of the Hon'ble Supreme Court even there is no suitable post for appointment, then supernumerary post should be created to accommodate the heir of the deceased for providing appointment on compassionate ground.

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 **AIR 1989 SC 1976 (Smt. 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.”

15. Furthermore, it would be useful to refer the decisions rendered by this Tribunal in earlier O.As, wherein directions were issued to consider the name of the Applicant for providing appointment on compassionate ground and the defence of absence of provision for substitution of heir was rejected.

(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.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.

(iv) **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.645/2017 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.

16. As such, even if there is no specific provision for substitution of heir, this aspect is no more *res integra* in view of the aforesaid decision. Indeed, it is obligatory on the part of Respondents to create supernumerary post, if there is no suitable post for appointment and to provide appointment to the heir of the deceased. Had this mandate of the Hon'ble Supreme Court in **Sushma Gosain's case (cited supra)** was followed by the executive, the Applicant's mother would have got appointment on compassionate ground before she attained the age of 40 years. However, unfortunately the Respondents did not take any action, as if, they were waiting for the Applicant's mother to cross the age of 40 years. Such approach of executive is contrary to spirit and mandate of the decision of the Hon'ble Supreme Court in **Sushma Gosain's** case as well as object of the scheme for appointment on compassionate ground. Only because after the death of the deceased Government servant, his family had managed to survive for long period, that itself cannot be the ground to reject the application and it cannot be assumed that there is no immediate necessity for appointment on compassionate ground. Indeed, there is no such inaction on the part of Applicant. He had applied within three years from attaining majority in terms of G.R. dated 20.05.2015.

17. The necessary corollary of aforesaid discussion leads me to conclude that rejection of the application by impugned order dated 29.09.2016 is arbitrary and not sustainable in law and facts and deserved to be quashed. The Respondents ought to have considered the delay in terms of G.R. dated 20.05.2015 and should have provided appointment on compassionate ground in view of consistent decisions rendered by this Tribunal referred to above as well as the decisions of the Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly. Hence the following order.

ORDER

- (A) Original Application is allowed partly.
- (B) The impugned order dated 26.09.2016 is hereby quashed and set aside.
- (C) The Respondent No.1 is directed to consider the aspect of delay and shall pass appropriate order for condonation of delay in terms of Clause 'D' of G.R. dated 20.05.2015.
- (D) The Respondents are further directed to consider the application dated 08.09.2016 made by the Applicant for appointment on compassionate ground and it would be equitable as well as judicious that his name is included in the waiting list for the issuance of appointment order, subject to fulfilment of eligible criteria in accordance to Rules.
- (E) Above exercise be completed within three months from today.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place :Mumbai

Date : 02.07.2020

Dictation taken by : VSM

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