

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURABGABAD**

**ORIGINAL APPLICATION NO.394 OF 2017**

**DISTRICT : NANDED**

Shri Rajesh Vithalrao Belge. )  
Age : 30 years, Occu. Labour, )  
R/o. Nayegaon Old, Tal. Nayegaon )  
Khairgaon, District Nanded. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 32. )  
(Through Chief Presenting Officer, )  
M.A.T, Mumbai, Bench at )  
Aurangabad). )
2. The Executive Engineer, )  
Public Works Department, )  
Nanded Division Nanded, )  
Tal. & District Nanded. )
3. The Superintending Engineer, )  
Public Works Department, Nanded )  
Circle, Tal. & District Nanded. )
4. The District Collector, Nanded. )...**Respondents**

**Mr. G.N. Chincholkar, Advocate for the Applicant.**

**Mr. M.P. Gude, Presenting Officer for Respondents.**

**CORAM : SHRI B.P. PATIL (MEMBER-J)**

**Closed on : 06.04.2018**

**Pronounced on : 17.04.2018**

## **J U D G M E N T**

1. The Applicant sought directions from this Tribunal to the Respondents to appoint him on the post of Class-III or Class-IV on compassionate ground and also alternately prayed to direct the Respondents 2 to 4 to decide his applications dated 3<sup>rd</sup> September, 2015 and 17<sup>th</sup> October, 2015 expeditiously.

2. Deceased Vithalrao Belge was father of the Applicant. He was serving as Road karkun (Marg Lipik) in Public Works Department of State of Maharashtra. Vithalrao Belge died in a road accident on 25.04.1989 while he was on duty. After his death, his widow Anusayabai Vithalrao Belge filed an application with the Respondents 2 and 3 in the first week of October, 1989 with a request to appoint her as a Class IV or Class III employee on compassionate ground. She visited the office of the Respondent Nos.2 and 3 frequently, but her application was not considered. Therefore, she filed another application on 09.08.1996 with the Respondent Nos. 2 and 3. After following the due procedure, her name was enrolled in the

list of eligible candidates for the appointment on compassionate ground at Serial No.123.

3. On 20.02.2009, Assistant District Registrar, Class I and Treasury District Collector, Nanded directed the mother of the Applicant to appear before him on 02.03.2009 along with the original documents. Accordingly, his mother was appeared before the Assistant District Registrar, Class-I. But she was not appointed on the ground that she belongs to Open category but her name was recommended by the Collector from the category of Vimukta Jati (A).

4. Thereafter, on 17.12.2004, the mother of the Applicant Anusayabai filed another application with the Collector, Nanded and requested to send the proposal to appoint the Applicant on compassionate ground in her place. The Executive Engineer, P.W.D, Nanded sent a letter to the Collector, Nanded on 25.04.2005 and requested to add name of the Applicant in place of his mother Anusayabai. Accordingly, Anusayabai submitted Affidavit on 3<sup>rd</sup> July, 2004. On 31.07.2006, Deputy Engineer, P.W.D. requested Collector to prepare list of candidates for appointment on compassionate ground as per amended Scheme and to add new candidates in the waiting list. On 11.09.2014, the Applicant again filed an application with the Secretary, General Administration Department (GAD), Government of Maharashtra with the same request. The Additional Secretary, GAD called information

from Executive Engineer, PWD on certain points. The Executive Engineer, PWD Nanded had not replied to the said letter, and therefore, again, reminder was sent on 22.04.2015. In response to the said letter, Executive Engineer, PWD sent the necessary information by letter dated 25.06.2015.

5. It is contention of the Applicant that on 24.01.2013, he made application to the Executive Engineer, PWD, Nanded and requested him to appoint him on Class-IV post as per the seniority list. The Respondent No.2 – Executive Engineer, PWD, Nanded by his letter dated 14.03.2013 informed him that his name cannot be included in the combined seniority list, and therefore, he cannot be appointed.

6. It is the further contention of the Applicant that, again he made application to the Respondent No.3 on 05.08.2015 with the same request and also stated that he is a disabled person. Thereafter, he went on fast on 22.07.2014. On 19.12.2014, the Respondent No.4 by his letter dated 29.12.2014 informed him that the proposal for entering his name in place of his mother has submitted by the Department to the Collector office. Again he filed application on 13.08.2015 stating that his family has no source of income and he should be appointed on compassionate ground otherwise he will go on fast. He made several applications to the Respondents but no steps have been taken by the Respondents in that regard.

7. There were several correspondence between the Respondent Nos. 2 and 4 as regards who is the competent authority for issuing the orders regarding appointment of the Applicant on compassionate ground. As the Respondents had not appointed him on any post on compassionate ground, he filed a Writ Petition No.8518 of 2016 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad. It was disposed of on 15.03.2017 as he had withdrawn it with liberty to approach the appropriate forum. Thereafter, the Applicant has filed this O.A. and sought direction to the Respondents to appoint him on compassionate ground and to decide his application dated 3<sup>rd</sup> September, 2015 and 17<sup>th</sup> October, 2015.

8. The Respondent Nos. 2 to 4 have filed their Affidavit-in-reply and resisted the contention of the Applicant. They have not disputed the fact that the mother of the Applicant viz. Anusayabai had filed the application dated 17.12.2004 to the Respondent No.4 claiming employment on compassionate ground to the Applicant in her place. It is their contention that, at that time, the name of Anusayabai was enrolled in the waiting list of the eligible candidates for the appointment on compassionate ground. She completed 40 years of her age on 09.02.2004. Therefore, the name of the Applicant cannot be included in the waiting list in her place. It is their contention that the Applicant was not eligible and qualified, and therefore, the Respondent No.2 passed the order dated 14.03.2013 and informed the Applicant accordingly.

9. It is their further contention that the Applicant has not challenged the order dated 14.03.2013 passed by the Respondent No.2 within stipulated time, and therefore, the petition is barred by limitation in view of provisions of Section 21 of the Administrative Tribunals Act, 1981.

10. It is their contention that in the case of Kamalbai P. Magre, the application moved by her has been considered by the Collector in view of the then prevailing G.R. in respect of the appointment in such matters. In the year 2007, the Desk Officer, P.W.D, Nanded directed to concerned that, there is no provision to change or replace name of an heir in the waiting list by his letter dated 27.07.2007, and therefore, the Applicant's application was not considered. They have not disputed regarding the correspondence took place between them.

11. It is their contention that, in case of Roopak S. Tate, the Respondent No.4 issued the order on the basis of order passed by the Hon'ble High Court on 17.04.2014, and therefore, the Applicant cannot claim the same benefit in this matter.

12. It is their contention that, there is no provision to substitute the name of the heir whose name has been recorded in the waiting list by the name of another heir in the different G.Rs, and therefore, the claim of the Applicant cannot be

considered. It is their contention that the mother of the Applicant Anusayabai filed an application for such substitution after crossing her age of 40 years, and therefore, on that count also, the Applicant's application is not maintainable. On these grounds, the Respondents prayed to dismiss the O.A.

13. I have heard Mr. G.N. Chincholkar, learned Advocate for the Applicant and Mr. M.P. Gude, learned Presenting Officer (P.O.) for the Respondents. I have perused the documents on record.

14. Admittedly, Vithalrao I. Belge was serving as Karkun (Marg Lipik) in Public Works Department. He died on 25.04.1989 while in service leaving behind him, his widow viz. Anusayabai, his mother Rukminibai, daughters Sangita, Shakuntala and son Rajesh i.e. the Applicant as his legal heirs. After the death of Vithalrao I. Belge, the mother of the Applicant viz. Anusayabai moved an application to the Respondent Nos. 2 & 3 for giving appointment to her on compassionate ground. After completing the formalities and following the due procedure, her name has been enrolled in the list of the eligible candidates for appointment on compassionate ground at Serial No.123. Admittedly, Anusayabai was born on 10.02.1964. She had completed age of 40 years on 09.02.2004. Therefore, in view of the then prevailing Rules, her name came to be deleted. Prior to that, her name has been recommended by the Collector to the

Assistant District Registrar, Class-I and Treasury District Collector, Nanded for giving appointment on Class-IV post. Accordingly, she was summoned to appear before the Assistant District Registrar, Class-I and Treasury District Collector for verification of the documents. But the concerned authority had not appointed her on the ground that she belongs to Open Category while the Collector recommended her name from VJ (A) Category. Admittedly, on 17.12.2004, the mother of the Applicant moved the application to the Collector, Nanded and requested to appoint the Applicant in her place, and thereafter, the Applicant moved several applications. Admittedly, the Respondent No.2 – Executive Engineer, PWD, Nanded by his letter dated 14.03.2013 informed the Applicant that his name cannot be included in the waiting list and his application came to be rejected. The Applicant had not challenged the said order dated 14.03.2016 issued by the Executive Engineer, PWD, Nanded but thereafter, he filed several applications. In between, there was correspondence made by the Respondent Nos. 2 to 4 seeking guidelines regarding the appointment of the Applicant on compassionate ground but no decision has been taken on subsequent applications moved by the Applicant.

15. Learned Advocate for the Applicant has submitted that the father of the Applicant viz. Vithalrao Belge died on 25.04.1989. After the death, the name of his widow viz. Anusayabai has been enrolled in the waiting list of the eligible candidates for appointment on compassionate ground. He has

submitted that the Respondents had not appointed Anusayabai on any post though she has been asked to appear before Assistant District Registrar, Class I and Treasury District Collector, Nanded on 02.03.2009. He has submitted that the Assistant District Registrar, Class-I and Treasury District Collector, Nanded informed her that he could not able to appoint her as she belonging to Open Category while the Collector recommended her name from the Category VJ (A). He has submitted that the mother of the Applicant completed her 40 years in the year 2004. Therefore, she filed an application with the Respondents to enter the name of the Applicant in her place and to give him appointment. But her application has not been considered. He submitted that the Applicant had repeatedly filed several applications to the Respondents, but they have not considered it. Therefore, the Applicant approached this Tribunal.

16. Learned Advocate for the Applicant submitted has that in similar cases, the Respondent No.2 appointed another heir of the person whose name was entered in the waiting list, but they have not considered the case of the Applicant, and therefore, the conduct of the Applicant is discriminatory. He has further submitted that in similarly situated person's case, this Tribunal had also directed to the concerned authority to consider the cases of those Applicants. Therefore, on the ground of parity, he prayed to allow the O.A. and directed the Respondents to consider the case of the Applicant and to

appoint him on compassionate ground as the Applicant is physically disabled.

17. He has further submitted that, in view of the G.Rs. dated 22.08.2005 and 31.09.2017, the name of another heir can be entered in the place of the name of person whose name has already entered in the waiting list, and therefore, he prayed to allow the O.A.

18. Learned P.O. for the Respondents has submitted that the Applicant has not approached this Tribunal with a clean hand and he has suppressed the material fact. He has submitted that, after the death of Vithalrao Belge, name of his widow Anusayabai has been entered in the waiting list of the eligible candidates for appointment on compassionate ground. Anusayabai had crossed her age of 40 years on 09.02.2004, and therefore, in view of the provisions of G.R. dated 22.08.2005, her name has been removed from the waiting list. He has submitted that the mother of the Applicant Anusayabai moved another application dated 17.12.2004 recording the name of the Applicant in her place after completion of 40 years, and therefore, it is not maintainable. He has submitted that the Applicant was not eligible and qualified, therefore, the Respondent No.2 has issued the communication dated 14.03.2013 and rejected his claim. He has submitted that the Applicant has not challenged the said order, and therefore, the present O.A. is barred by limitation. He has submitted that

there is no illegality in the order passed by the Respondents, and therefore, he prayed to reject the O.A.

19. On perusal of the record, it reveals that, initially, name of the mother of the Applicant viz. Anusayabai was recorded in the waiting list after the death of father of the Applicant and it was maintained there but after crossing the age of 40 years by Anusayabai, it has been removed in view of the G.R. dated 22.08.2005. After crossing the age of 40 years, the mother of the Applicant Anusayabai moved another application for entering the name of the Applicant in her place, but as there was no provision, it has not been considered by the Respondent No.2. Thereafter, the Applicant moved several applications to the Respondents. On 24.02.2013, he moved the application for appointing him on compassionate ground. The Respondent No.2 by reply dated 14.03.2013 rejected the application of the Applicant for appointment on compassionate on the ground that his name is not entered in the waiting list, and therefore, he is not eligible to be appointed, and therefore, his name has not been considered.

20. In spite of that, he started moving applications to various authorities. Since the Respondent No.2 had taken decision not to consider the application of the Applicant and informed the said fact to the Applicant by communication dated 14.03.2013, the name of the Applicant had not been entered by the Respondent No.2. Therefore, it cannot be said

that the Respondents have not considered the applications moved by the Applicant to record his name in the list of the candidates to be appointed on compassionate ground. The Applicant has not challenged the order dated 14.03.2013, therefore, it become final. From that date, the present O.A. is not within the limitation, and therefore, on that ground also, the O.A. is not maintainable and liable to be rejected.

21. Even on considering the facts in the case, it reveals that, there is no provision in the G.R. issued by the Government from time to time to enter the name of the another legal heir in place of legal heir whose name has been entered in the waiting list of the candidates to be appointed on compassionate ground. The G.R. dated 21.09.2017 is the compilations of the various G.Rs. issued by the Government in this regard. Para No.21 of the G.R. specifically provide that there is no provision to enter the name of another heir in place of heir of a deceased employee whose name has already been recorded in the waiting list, and therefore, the Respondent No.2 has rightly rejected the application of the Applicant and communicated the decision to the Applicant on 14.03.2013. There is no illegality in the said communication. Since the Respondent No.2 has rejected the request of the Applicant for the appointment on the compassionate ground, no question of entertaining further application of the Applicant in that regard arises. Therefore, no such direction as prayed for by the Applicant can be issued to the Respondents.

22. I have gone through the decisions referred by the Applicant in support of his decision. Those decisions are not attracted in this case as the facts in those matters are different than the facts in this case. Therefore, such direction can be issued to the Respondents. On considering all these facts, I am of the view that the Applicant is not entitled to get the relief as claimed. His name cannot be entered in place of his mother, since there is no provision in the G.Rs. issued by the Government from time to time in that regard. Moreover, the name of the mother of the Applicant has been removed from the waiting list on crossing the age of 40 years and thereafter, the Applicant and his mother moved the said applications. Therefore, the directions as prayed for by the Applicant cannot be considered. There is no merit in the O.A. Therefore, it deserves to be dismissed.

23. In view of the discussion in the foregoing paragraphs and the reasons stated therein, the O.A. stands dismissed with no order as to costs.

Sd/-

**(B.P. Patil)**  
**Member-J**  
**17.04.2018**

Mumbai

Date : 17.04.2018

Dictation taken by :

S.K. Wamanse.