

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.396 OF 2018

DISTRICT : PUNE

1. Smt. Sangita Rajendra Bhoite.)
2. Shri Sanket Rajendra Bhoite.)
-)
- Both residing at Flat No.13,)
- Vishal Market, Padwal Ali,)
- Chinchwad Gaon, Pune – 411 033.)...**Applicants**

Versus

1. The State of Maharashtra.)
- Through Principal Secretary,)
- Water Resources Department,)
- Mantralaya, Mumbai – 400 032.)
2. Superintending Engineer.)
- Pune Irrigation Circle, 2nd Floor,)
- Sinchan Bhavan, Pune – 411 011.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicants.

Mr. A.J. Chougule Presenting Officer for Respondents.

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

DATE : 20.10.2020

JUDGMENT

1. The Applicants have challenged the impugned communication dated 19.09.2017 and 17.11.2017 issued by Respondent No.2 – Superintending Engineer, Pune Irrigation Circle, Pune thereby rejecting the claim of the Applicants for appointment on compassionate ground.

2. Undisputed factual matrix of the matter for decision of the O.A. is as follows :-

(i) Deceased Rajendra Bhoite was Watchman on the establishment of Respondent No.2.

(ii) Unfortunately, he died in harness on 05.02.2008 leaving behind widow viz. Sangita R. Bhoite (Applicant No.1) and son viz. Sanket R. Bhoite (Applicant No.2) as his legal representatives.

(iii) After death of husband, the Applicant No.1 made an application on 11.03.2008 which was well within limitation of one year in view of scheme of appointment on compassionate ground.

(iv) Accordingly, the name of Applicant No.1 was empanelled in waiting list for appointment on compassionate ground.

(v) Since no appointment on compassionate ground was provided, the Applicant No.1 again made an application on 09.02.2017 requesting Respondent No.2 for appointment to her son i.e. Applicant No.2 on compassionate ground.

(vi) However, the Respondent No.2 by communication dated 19.09.2017 rejected the claim on the ground that there is no provision for substitution of heir in G.R. dated 20.05.2015.

(vii) Consequently, the Respondent No.2 by order dated 17.11.2017 deleted the name of Applicant No.1 from waiting list on the ground of crossing 45 years age in view of G.R. dated 06.12.2010.

3. The Applicants have challenged the communication dated 19.09.2017 and 17.11.2017 in the present O.A. *inter-alia* contending that the decision is arbitrary and unsustainable in law, as the very purpose of the scheme of appointment on compassionate ground is defeated by not providing the appointment to the widow immediately after the death of sole earning member of the family.

4. The Respondents resisted the O.A. by filing Affidavit-in-reply of Respondent No.2 *inter-alia* denying that the impugned communication suffers from any illegality. All that, the Respondents repeatedly averred in reply that there is no provision for substitution of heir in scheme of

appointment on compassionate ground, particularly, G.R. dated 20.05.2015, and therefore, the impugned orders cannot be questioned.

5. Heard Shri Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

6. In view of pleadings and submissions advanced at the Bar, the small issue posed for consideration in the present O.A. is to whether the stand taken by the Respondents that because of absence of any provision of scheme for appointment on compassionate ground for substitution of heir is correct. In my considered opinion, in view of catena of decisions of this Tribunal and some of which has been implemented by the Government, the stand taken by the Respondents is incorrect and impugned orders are not sustainable in law.

7. Needless to mention that the scheme of appointment on compassionate ground has been framed to alleviate the difficulties of distressed family by providing appointment on compassionate ground to the family of deceased so as to mitigate the hardship due to death of sole bread earner of the family. This being the position, the executive is expected to adopt compassionate and justice oriented approach instead of taking shelter of technical aspect otherwise the very aim and object of the scheme would be defeated. In the present case, after the death of husband, the Applicant No.1 immediately applied on 11.03.2008 for appointment on compassionate ground which itself shows the dire need of the family but unfortunately, her application was kept pending for nine years. Though the name of Applicant No.1 was taken in waiting list at Serial No.99, in reality, no appointment was actually provided and nothing was communicated to the family. After nine years suffering and long wait, the Applicant No.1 again made an application on 09.02.2017 for providing appointment to her son i.e. Applicant No.2. Unfortunately, it was again kept in abeyance without providing appointment to Applicant No.2 but later after nine months, it was communicated that

the name of son cannot be entered in waiting list, as there is no provision for substitution of heir in the scheme.

8. Material to note that the Applicant No.1 had crossed 45 years of age on 19.10.2017 in view of her birth date 29.10.1972. She applied on 11.03.2008. However, no appointment was provided and her application was kept pending for nine years as if Respondents were waiting for completion of her 45 years so that on completion of 45, her name can be deleted from waiting list easily and then to contend that son is not entitled for appointment on compassionate ground because of absence of provision for substitution of heir in scheme. Such approach of the Respondents shows total insensitivity and run counter to the very object of scheme for appointment on compassionate ground.

9. 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.”

10. Apart, note can be taken on the various decisions rendered by this Tribunal where in similar situation, the directions were issued to consider the application for substitution of heir and to provide appointment on compassionate ground.

11. The learned Advocate for the Applicants referred to various decisions, which are as follows :-

(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.

12. 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. Now turning to the facts of the present case, indeed, there is total inaction on the part of Respondents not to provide immediate relief to the family and the application of widow was kept pending for nine years instead of providing immediate relief by creating supernumerary post as per the mandate of Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra). There is nothing to show that there was no vacancy or

there was any other justifiable reason for keeping the family in abeyance for nine years.

14. As a matter of record, the Government by Circular dated 28.02.2017 issued directions for adherence to general judicial principles in service matters in view of the observations made by the Tribunal in service matters. There is also reference of decision of Hon'ble Supreme Court in **Arvind Kumar Srivastava's case** in Circular dated 28.02.2017. Para Nos. 2 to 5 of the Circular are material, which are as follows :

2. The Hon'ble Tribunal, in Para 8 of aforesaid Judgment, has observed as under :-

“If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply.”

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava** reported in **2015 (1) SCC 347** has laid down similar principle, thus :

“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court.

5. The aforesaid directions be also brought to the notice of the offices under the administrative control of the departments.”

However, unfortunate to note that there is no adherence to these instructions.

15. The necessary corollary of aforesaid discussion leads me to conclude that the impugned communication dated 19.09.2017 and 17.11.2017 rejecting the claim for substitute of heir is arbitrary and unsustainable in law. Only because there is no provision for substitution of heir in scheme, it could not have been the ground for rejection of scheme in the light of catena of decisions referred to above and the object of this scheme. There is no such express bar. The Respondents ought to have considered the request of son for providing appointment on compassionate ground to fulfill the object of scheme. The O.A, therefore, deserves to be allowed. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 19.09.2017 and 17.11.2017 are hereby quashed and set aside.
- (C) The Respondents are directed to consider the application of the 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, subject to fulfillment of eligible criteria in accordance to Rules.

(D) This exercise be completed within three months from today.

(E) No order as to costs.

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

Mumbai

Date : 20.10.2020

Dictation taken by :

S.K. Wamanse.

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