

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.40 OF 2021

DISTRICT: SOLAPUR

Shri Sachin Kailas Patole,)
Aged 34 yrs, Occ. Nil,)
R/o. A/P Modlimb, Tal. Madha, Dist. Solapur.)... **Applicant**

Versus

1) The State of Maharashtra,)
Through Principal Secretary,)
Water Resources Department, Having Office at)
Mantralaya, Mumbai-400 032.)
2) The Superintending Engineer,)
Command Area Development Authority,)
Having Office at Sinchan Bhavan,)
Guru Nanak Chowk, Solapur.)... **Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

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

CORAM : A.P. Kurhekar, Member (J)

DATE : 09.03.2022.

ORDER

1. The Applicant has challenged the communication issued by Government dated 26.07.2018 whereby request of the Applicant for appointment on compassionate ground is rejected on the ground that there is no provision for substitution of heir in the scheme for appointment on compassionate ground.

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant's father Kailas was Chowkidar on the establishment of Respondent No.2 as Class-IV employee. He died in harness on 16.08.1998. After his death, widow Chhaya made an application for appointment on compassionate ground and in pursuance of it, her name was taken in the waiting list. However, her name came to be deleted from waiting list on attaining the age of 40 years. The date of birth of Applicant's mother is 09.06.1967 and she attained 40 years of age in 2007. Thus, in 2007 the name of Applicant's mother came to be deleted. Interestingly before that eventuality, the Applicant Shri Sachin applied for appointment on compassionate ground on 18.10.2005 stating that though the name of his mother was taken in the waiting list, she was not provided appointment on compassionate ground and family is in need of financial assistance. The Applicant's date of birth is 02.06.1986 and attained 18 years of age in 2004 but he applied on 18.10.2005. However, his application came to be rejected by the Government by communication dated 26.07.2018 stating that there is no provision for substitution of heir after the name of his mother is deleted from the waiting list. The Applicant was not informed about the decision of rejection of his claim. He got the said information by communication dated 16.12.2020 under the provisions of RTI Act.

3. It is on the above factual aspect, the Applicant has filed present O.A. on 14.01.2021 challenging communication dated 16.12.2020 rejecting his claim for appointment on compassionate ground.

4. The Respondents in Affidavit in Reply raised the plea of limitation and all that contends that in absence of provision of scheme of appointment on compassionate ground, the name of the Applicant cannot be substituted or taken in waiting list so as to provide appointment on compassionate ground.

5. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

6. Insofar as the issue of limitation is concerned, there is specific pleading that the Applicant was not communicated the decision of Government dated 26.07.2018 and he got the information only on 16.12.2020 under RTI Act. When specific query was raised to learned P.O. as to whether there is any record of communication of order dated 26.07.2018 to the Applicant, he fairly concedes that there is no such record of communication. This being the position, the objection raised on the point of limitation does not survive since for the first time, the Applicant came to know about denial of his claim by communication dated 16.12.2020.

7. Now the question posed for consideration as to whether rejection of claim of the Applicant for appointment solely on the ground that there is no provision for substitution of heir in the scheme for appointment on compassionate ground is legal and valid and answer is in emphatic negative.

8. True, there is no specific provision for substitution of heir in the scheme of appointment on compassionate ground. Notably, the name of the Applicant's mother taken in the waiting list. She attained 40 years of age in 2007. When she applied for appointment on compassionate ground that time, Applicant was minor. The family waited for long time but no appointment was provided to Applicant's mother. Needles to mention that the object of scheme of appointment on compassionate ground to the heir of deceased employee is to alleviate financial difficulty of distress family due to loss of sole earning member of the family. Such appointment needs to be provided within reasonable time otherwise the very purpose of the scheme to be frustrated. If the name of heir is taken in the waiting list then appointment is to be given without further delay. However, in present case no such appointment was provided to Applicant's mother and unfortunately on attaining the age of 40 years in

terms of provision in the scheme, her name came to be deleted on attaining the age of 40 years.

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 the 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. Now, turning to the facts or present case, after waiting for long period, the Applicant on attaining majority applied for appointment on compassionate ground on 18.10.2005. Material to note that, when he applied for appointment on compassionate ground in place of his mother that time name of her mother was very much existing and valid in the waiting list. She attained 40 years of age in 2007. This being the position, there is no denying that even before deletion of name of mother, the Applicant had applied for appointment on compassionate ground on attaining majority. In such situation, Applicant's name could have been taken in waiting list instead of rejecting his claim on the technical ground of absence of any such provision in the scheme. Indeed, in terms of decision of the Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra), appointment ought to have been provided immediately by creating supernumerary post, if the posts were not vacant. However, it appears the Respondents were only waiting for completing of 40 years of age by helpless widow so that her name could be deleted. Such approach is totally unjust and unfair otherwise very purpose of scheme for appointment on compassionate ground would be defeated.

11. Furthermore, it would be useful to refer the decision rendered by this Tribunal in earlier O.A. 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.

12. At this juncture, it would be apposite to take recourse of one more Judgment of Hon'ble Supreme Court, which is directly on the point in issue. In this behalf, Hon'ble Supreme Court in **Civil Appeal No.5216/2018 (Supriya S. Patil Vs. State of Maharashtra) decided on 12.05.2018** held as under :-

"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."

13. 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.

14. True, the Applicant had attained majority on 02.06.2005 but applied on 18.10.2005. As per the scheme for appointment on compassionate ground, the application is required to be made within one year on attaining majority. However, as per G.R. dated 11.09.1996 and Circular dated 05.02.2010, the period of one year can be extended up to two years subject to condonation of delay by competent authority. In present case, there is delay of hardly four months in making application, and therefore, it requires to be condoned. It is more so, since on the date of making application, the name of Applicant's mother was very much existing in the waiting list, therefore, Applicant's claim cannot be rejected on the ground of four months delay on making the Application.

15. Indeed, as rightly pointed out by learned Counsel for the Applicant, the claim of Applicant was not rejected on the ground of four months delay in making application, his application was rejected on the ground of absence of provision of substitution of heir which is not at all sustainable in view of various decisions referred to above.

16. For the reasons stated above, I have no hesitation to sum up that impugned communication rejecting claim of the Applicant for appointment on compassionate ground is bad in law and deserves to be quashed. Hence the following order:-

ORDER

- (A) The Original Application is partly allowed.
- (B) The Respondents are directed to consider the application dated 18.10.2005 made by the Applicant for appointment on compassionate ground and it is equitable as well as judicious that his name is included in the waiting list for issuance of appointment order, subject to fulfillment of eligibility criteria in accordance to Rules.
- (C) The Exercise should be completed within two months from today.
- (D) No order as to costs.

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

Place: Mumbai
Date: 09.03.2022
Dictation taken by: Vaishali S.Mane