

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.427 OF 2016
WITH
ORIGINAL APPLICATION NO.509 OF 2018

DISTRICT : MUMBAI/KOLHAPUR

ORIGINAL APPLICATION NO.427 OF 2016

1. Shri Aniket Suresh Gaikwad.)
Age : 23 Yrs., Occu.: Student.)
2. Smt. Rekha Suresh Gaikwad.)
Age : 46 Yrs., Occu.: Housewife,)
Both residing at Gaikwad Chawl No.2,)
Room No.5, Karupada, Kurla (W),)
Mumbai 400 072.) **...Applicants**

Versus

1. The State of Maharashtra.)
Public Health Department,)
Through its Principal Secretary,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner.)
Employees State Insurance Scheme,)
Govt. of Maharashtra, Panchdeep)
Bhavan, 6th Floor, N.M. Joshi Marg,)
Lower Parel, Mumbai 400 013.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.509 OF 2018

- Shri Prasad Sunil Kumbhar.)
Age : 18 Yrs., Occu.: Nil,)
R/o. Kapse Galli, Gijawane Village,)

Tal. Gadhinglaj,)
District : Kolhapur 416 502.) **...Applicants**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Irrigation Department, Mantralaya,)
Mumbai 400 032.)
2. The Superintendent Engineer.)
Water Resources Department,)
Sangli Irrigation Circle, Sangli.) **...Respondents**

Mr. A.A. Desai, Advocate for Applicants in O.A.No.427/2016.

Mr. R.M. Kolge, Advocate for Applicant in O.A.No.509/2018.

Ms. N.G. Gohad, Presenting Officer for Respondents in O.A.No.427/2016.

Mr. S.D. Dole, Presenting Officer for Respondents in O.A.No.509/2018.

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

DATE : 21.01.2019

JUDGMENT

1. In both the Original Applications, the challenge is to the refusal of the Respondents to substitute the heir of the deceased in waiting list for the appointment on compassionate ground, and therefore, these O.As are decided by this common Judgment.

2. Briefly stated facts giving rise to O.A.No.427/2016 are as follows :

The Applicant No.1 – Aniket is the son and the Applicant No.2 – Smt. Rekha is the widow of deceased Suresh Gaikwad who was the employee in E.S.I.S. Hospital under the control of Respondents. The deceased Suresh was Clerk-cum-

Typist and died in harness on 9th March, 2006 leaving behind widowed mother, Applicants and elder son Abhishek. After his death, the Applicant No.2 being widow of the deceased made an application on 29th May, 2006 for appointment in cadre 'C' on compassionate ground in view of death of her husband in harness. Initially, her application was not considered for long time on the ground that she has not passed S.S.C. Examination. However, the Applicant No.2 has pointed out that she had obtained B.A. degree from Yashwantrao Chavan Mukta Vidyapeeth and eligible for appointment on Class-III post. Accordingly, her name was included in the waiting list. However, by letter dated 16.06.2009, the Respondent No.4 (Medical Superintendent, ESIS Hospital) informed her that, she has completed age of 40 years, and therefore, not eligible for appointment on compassionate ground in view of G.R. dated 22.08.2005. Thereafter, the Applicant No.1, on attaining majority, made an application to Respondent No.2 on 17th February, 2011 requesting him to appoint him on compassionate ground in view of deletion of name of his mother from waiting list, as there is no earning members in the family and family is in dire need and financial assistance for their survival. Then, he was called upon to submit necessary information and document which he accordingly complied. He has passed 10th Standard and possess Typing qualification and MSCIT.

3. The Applicant No.2 again made representation for the appointment on compassionate ground and was pursuing the matter with Respondents. However, the Respondent No.2 by communication dated 07.05.2015 informed the Applicant that his mother's name was included in waiting list, but it came to be deleted on attaining the age of 40 years, and therefore, his request for appointment on compassionate ground in place of deceased father cannot be accepted.

4. The Applicant has, therefore, approached this Tribunal invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act,

1985 contending that the rejection of his application is contrary to the principles of law and arbitrary. He contends that his elder brother Abhishek is not looking after the family and staying far away in another State. As such, the family have no source of income and is in financial distress. The Applicant, therefore, contends that the very purpose of the Scheme of appointment on compassionate ground is defeated by rejection of his application though he is eligible and qualified for Class-III post. With this pleading, he prayed for setting aside the impugned order dated 07.05.2015 and for direction to the Respondents to appoint him on compassionate ground.

5. The Respondent Nos. 1 to 4 resisted the application by filing Affidavit-in-reply (Page Nos.28 to 34 of the Paper Book) *inter-alia* denying the entitlement of the Applicant for the appointment on compassionate ground. Admittedly, his father deceased Suresh died in harness on 09.03.2006 and in pursuance of the application made by Applicant No.2, her name was included in the waiting list which was later deleted in view of completion of 40 years age in terms of G.R. dated 22.08.2005. It is not in dispute that, the Applicant No.2 then applied on 07.02.2011 and his application came to be rejected by impugned order dated 07.05.2015. The Respondents contend that the application made by Applicant No.2 was not within limitation, as the same was required to be filed within one year from the date of death of employee. The Respondents further contend that, as the name of Applicant No.2 was deleted from waiting list, there being no provision for substitution of the heir, the application made by Applicant No.1 was rightly rejected. The Respondents, therefore, prayed to reject the application.

6. Here, it is material to note that during the pendency of this application, the Respondent No.2 made enquiry about the need of the family for appointment on compassionate ground and appointed one Committee (Bi-level Committee). The said Committee enquired and submitted its report. Accordingly, the report has been placed with an Affidavit of Shri Dnyandev S.

Bhagat, Dy. Director (Admn.), Office of Commissioner, ESIS, Mumbai. In the said Affidavit, the Respondents admit that the elder son of Applicant No.2 Abhishek is not living with them. He is living in Gujrat separately. The Respondents further specifically admits that he is not supporting the Applicant's family financially. As such, there is no controversy about bad financial condition of the Applicant's family.

7. Heard Shri A.A. Desai, learned Advocate for the Applicant in O.A.No.427/2016, Shri R.M. Kolge, learned Advocate for Applicant in O.A.No.509/2018, Ms. N.G. Gohad, learned Presenting Officer for the Respondents in O.A.No.427/2016 and Shri S.D. Dole, learned Presenting Officer for Respondents in O.A.No.509/2018.

8. At the very outset, some of the admitted facts need to be stated which are as follows :

- (a) The deceased Suresh B. Gaikwad died in harness on 09.03.2006.
- (b) On 29th May, 2006, the Applicant No.2 Smt. Rekha made an application for appointment on compassionate ground (Page No.17 of P.B.).
- (c) The Respondent No.4 by his letter dated 25th September, 2006 made recommendation for inclusion of the name of Applicant No.1 in waiting list (Page No.18 of the P.B.).
- (d) On 16.06.2009, the Respondent No.4 rejected the application of the Applicant on the ground that she has completed 40 years of age, and therefore, not eligible for the appointment.
- (e) The Applicant No.1 Mr. Aniket made an application for appointment on compassionate ground on 17.02.2011 (Page No.23 of P.B.)

- (f) On 07.05.2015 (Impugned Order), the Respondent No.3 rejected the request of Applicant No.1 on the ground that mother had crossed 40 years of age and rendering her ineligible for the appointment in terms of G.R. dated 22.07.2005, and therefore, the application for substitution and appointment on compassionate ground is rejected.

9. Shortly stated facts giving rise to O.A.No.509/2018 are as under :

The Applicant is the son of deceased employee viz. Sunil Dhondiba Kumbhar. He was working as Peon in the office of Sub-Division Office, Hiranyakashi Irrigation Branch, Gadhinglaj, District Kolhapur under the administrative control of the Respondents. Unfortunately, he died on 01.10.2011 in harness. Thereafter, his widow Smt. Kamal (mother of Applicant) made an application for appointment on compassionate ground in place of deceased on 05.12.2011 on the ground that, after the demise of husband, there is no earning member in the family and they are in financial crises. After necessary compliance, her name was included in the waiting list at Serial No.13. When she made an application, the Applicant was minor. As mother was to attain the age of 45 years on 06.03.2018, the Applicant in anticipation that her mother could not be appointed due to age bar, in advance, he made an application on attaining majority i.e. on 28.02.2018 for appointment on compassionate ground in place of mother. However, the Respondent No.2 by impugned order dated 05.03.2018 informed his mother that, as she had completed 45 years of age, her name has been deleted from waiting list in terms of G.R. dated 22.08.2005. Consequently, the application made by the Applicant on 28.02.2018 has been also rejected by communication dated 09.04.2018 informing that, as the name of her mother was deleted from waiting list, she was not entitled to the appointment in place of mother. The Applicant has challenged the impugned orders dated 05.03.2018

and 09.04.2018 in the present O.A. contending that the rejection of his application for substitution is arbitrary and unsustainable in law.

10. The Respondents resisted the application by filing Affidavit-in-reply (Page No.34 of P.B.) *inter-alia* denying the entitlement of the Applicant for inclusion in waiting list. The Respondents contend that, as the name of mother has been deleted on attaining 45 years of age in terms of G.R. dated 22.08.2005, the substitution cannot be made, as there is no provision to that effect in Rules/G.R. The Respondents, therefore, prayed to dismiss the application.

11. So far as the facts of O.A.No.509/2018 is concerned, the following are the admitted factors.

- (a) The Applied died in harness on 01.10.2011.
- (b) The Applicant's mother applied for appointment on compassionate ground on 05.12.2011 (Page Nos.11 to 18 of the P.B.).
- (c) The name of mother of the Applicant was included in waiting list at Serial No.13.
- (d) The Applicant in anticipation made an application on 28.02.2018 for substitution of his name stating that his mother would be completing 45 years of age on 06.03.2018, and therefore, his application be considered for appointment on compassionate ground in Class-IV (Page 22 of the P.B.).
- (e) The Respondent No.2 by letter dated 05.03.2018 rejected the application of Applicant's mother on the ground of attaining 45 years of age.
- (f) The application made by the Applicant on 28.02.2018 came to be rejected on 09.04.2018 (Page 22 of P.B.) on the sole ground of absence of provision in G.R. for substitution.

12. Heard Shri R.M. Kolge, the learned Advocate for Applicant in O.A.No.509/2018 and Shri S.D. Dole, learned Presenting Officer for Respondents.

13. Thus, what transpires from the pleadings in O.A.509/2018 that, even before the communication of the decision dated 09.04.2018 deleting the name of Applicant's mother from waiting list, the Applicant well in advance and in anticipation of deletion of name of his mother from the waiting list, made an application on 28.02.2018 for the appointment on compassionate ground. There is reference of this application dated 28.02.2018 in impugned order dated 09.04.2018. Thus, there is no denying that, in anticipation, the Applicant had applied for substitution i.e. before actual deletion of name of his mother, but it was not considered and later, he was communicated that as his mother's application has been rejected on account of age bar, he too is not entitled to the appointment on compassionate ground. Thus, in the facts and circumstances of this matter, the application made by the Applicant, in fact, ought to have been considered as a continuation of mother's application. Admittedly, the Applicant had made an application within one year after attaining majority. In other words, on the date of filing of his application, till date, there was no rejection or deletion of the name of his mother from waiting list. This being the position, there could have been no hurdle much less legal one to refuse the substitution of the application. It appears that the Respondents deliberately kept the application of the Applicant pending for one month, waiting that her mother should complete 45 years of age and then to reject the same. Such attitude is deplorable and not expected from the executive.

14. Shri Desai, learned Advocate for the Applicant vehemently urged that the name of Applicant No.2 was already included in the waiting list for the appointment on compassionate ground, but could not get the appointment till she reaches the age of 40 years for no fault on her part, and therefore, after deletion of her name from waiting list, the name of Applicant No.1 ought to have

been substituted in her place for appointment on compassionate ground, keeping in mind the object of the Scheme to provide job to the distressed family. He also referred to additional Affidavit filed by Respondent (Page No.40 of P.B.) wherein the Respondent admits about the weak financial condition of the family. He, therefore, submitted that, keeping in mind the spirit and object of the Scheme, the Respondents ought to have substituted the name of the Applicant No.1 in place of his father.

15. Per contra, the learned P.O. submitted that the name of Applicant No.2 was deleted on attaining 40 years of age in terms of G.R. dated 22.05.2005 and there being no provision for substitution of heir in G.R, the rejection of the application for substitution cannot be faulted with.

16. Shri Desai, learned Advocate for the Applicant in support of the submission placed reliance on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.13932/2017 (State of Maharashtra & Ors. Vs. Smt. Anusaya V. More & Anr.) decided on 18.07.2018***, wherein the decision of this Tribunal passed in O.A.No.604/2016 decided on 24.10.2016 was challenged. In similar situation in O.A.604/2016, this Tribunal by order dated 24.10.2016 directed that where the name of mother which was taken on waiting list has been deleted on account of reaching 40 years' of age, then the name of son could be considered for inclusion in the waiting list. The said decision has been confirmed by Hon'ble High Court in Writ Petition No.13932 of 2017 with modification that the name of son be entered in waiting list according to seniority from the date of application made by the son.

17. As regard the aim and object of the Scheme for appointment on compassionate ground where deceased employee died in harness, the learned Advocate for the Applicant referred the Judgment of 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.”

18. The learned Advocate for the Applicant also referred to the Judgments of Hon’ble Madras High Court in **(2007) 6 MLJ 1011 (Superintending Engineer Vs. V. Jaya)**, **(2013) 8 MLJ 190 (P. Satharaman Vs. Secretary to Government)** and in **Writ Petition No.15658/2012 (S. Nagarajan Vs. The Superintending Engineer) decided on 04.04.2014** in support of his submission. It is not necessary to deal with the facts and circumstances of these matters. In these decisions, the Hon’ble Madras High Court highlights the importance and object of the appointment to the heir of deceased on compassionate ground. It would be useful to reproduce the ratio in **Superintending Engineer, Madurai Electricity Distribution Circle, Madurai’s** case which is as follows :

“In a case of request for appointment on compassionate ground, the Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependent of an employee/government servant dying in harness, in preference to anybody else. The concept of compassionate employment is intended to alleviate the distress of the family. Any rigid approach or too technical objections may defeat the very object of the scheme. While considering the request for appointment on compassionate ground, the authorities are expected to act as a Good Samaritan over-looking the cobwebs of technicalities.”

19. Per contra, the learned P.O. referred to the decision of this Tribunal rendered in **O.A.No.381/2017 (Mr. Amanulla S. Mahaldar Vs. The State of Maharashtra & Ors.) decided on 06.11.2017**. In this matter, the application of the

Applicant was rejected by this Tribunal as it was the second round of litigation. In first round of litigation, the directions were given to the Respondents to consider the name of the Applicant for inclusion of the name in waiting list by way of substitution. However, the said application was rejected by the Respondents and it was again challenged before the Tribunal. In so far as this Judgment is concerned, it was second round of litigation. Furthermore, the said Judgment has not attained the finality and it is challenged before the Hon'ble High Court. Therefore, this Judgment in O.A.No.381/2017 is of little assistance to the Respondents.

20. As regard point of limitation raised by the Respondents in reply in O.A.No.427/2016, in fact, in the circumstances of the present matter, the application made by Applicant No.1 on 17.02.2011 deserves to be treated in continuation of the application made by Applicant No.2 on 29.05.2006. The husband of Applicant No.2 died in harness on 09.03.2006 and his widow had admittedly applied on 25.09.2006 that is well within limitation. Her application came to be rejected on 16.06.2009, as she had crossed 40 years of age. Whereas, the Applicant No.1 applied on 17.02.2011 for taking his name in waiting list in view of deletion of name of mother from the waiting list. This being the position, the application made by Applicant No.1 has to be treated in continuation of the application made by his mother.

21. Apart, it is quite clear from the record that, when the mother of Applicant No.1 made an application, he was minor. The date of birth of Applicant No.1 is 29.02.1992 as per Birth Certificate produced later. As such, he became 18 years old on 29.02.2010. Whereas, he had applied on 17.02.2011 i.e. within one year on attaining majority.

22. Admittedly, in case of minority, the Rule permits for filing of application within one year from the date of attaining majority. The Rule also permits for

condonation of delay of two years as seen from G.R. dated 20.05.2015. Suffice to say, the objection raised by Respondents on the point of limitation is devoid of merit.

23. Now, question comes whether substitution is permissible. The Respondents have rejected the application solely on the ground that there is no provision in G.R. dated 22.08.2005 for substitution of another heir of the deceased where the name of earlier heir is deleted from waiting list on attaining the age of 40 years.

24. The learned P.O. sought to contend that, as per G.R. dated 22.05.2007, it is only in case of death of heir whose name is taken on waiting list, the substitution is permissible. True, there is no provision of substitution of heir in G.R. dated 22.08.2005. However, having regard to aim and object of the Scheme of appointment on compassionate ground for providing immediate financial assistance to the distressed family, judicious approach is expected from the executive. Where in case of death, the substitution is permissible, then denial of right and substitution in the case of deletion of name on account of crossing particular age is certainly arbitrary and illogical. In the present case, the name of Applicant No.2 in O.A.427/2016 was taken on waiting list, but no appointment was issued for three years and thereafter, her name was deleted for no fault on her part. In fact, as per mandate of Judgment of Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra), the Respondents were expected to provide immediate remedy to the family in distress by appointing Applicant No.2 on compassionate ground. The Hon'ble Apex Court held that, where there is no suitable post for appointment, the supernumerary post should be created to accommodate the Applicant. Had this mandate of Hon'ble Supreme Court been followed by the executive, the Applicant No.2 in O.A.427/2016 would have got appointment on compassionate ground. Having not done so, and thereafter, rejecting the application of the Applicant No.2 having crossed 40 years of age and

on that ground reject the request made by her son for substitution is certainly contrary to spirit of the Judgment of Hon'ble Supreme Court as well as the scheme of the appointment on compassionate ground.

25. In fact, the issue about the substitution of the name of another heir because of deletion of the name of heir from waiting list on account of age bar in terms of G.R. dated 22.08.2005 has been subject matter of various O.As decided by this Tribunal and some of which have been confirmed by the Hon'ble High Court.

26. In this behalf, Shri Kolge made reference to the decisions passed by this Tribunal in the following cases.

- (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.

27. It is thus quite clear that the consistent view has been taken by this Tribunal in various O.As, some of which are referred to above, that having regard to the spirit and object of the Scheme of providing employment to the heir of deceased employee on compassionate ground, so as to mitigate and obviate the difficulties faced by the family of the deceased due to loss of the only bread earner of the family, the State / employer is under obligation to consider the application for substitution in proper perspective, and accordingly, directions were issued to consider the application for substitution and inclusion of the name in waiting list.

28. Thus, the totality of aforesaid discussion in both the O.As leads me to sum-up that the action on the part of Respondents to reject the applications for substitution is arbitrary and not sustainable in law and facts. They ought to have considered the applications made by the Applicant in O.a.No.509/2018 and Applicant No.1 in O.A.No.427/2016 in proper perspective in view of the Judgments by this Tribunal earlier and the law laid down by Hon'ble High Court and Hon'ble Supreme Court. The O.As, therefore, deserve to be allowed partly. Hence, the following order.

ORDER

O.A.No.427/2016

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 07.05.2015 is quashed and set aside.
- (C) The Respondents are directed to consider the application of the Applicant No.1 for appointment on compassionate ground and it is

equitable that his name be included in the waiting list for the issuance of appointment order, subject to fulfillment of eligibility criteria in accordance to Rules.

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

O.A.No.509/2018

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 09.04.2018 is quashed and set aside.
- (C) The Respondents are directed to consider the application of the Applicant for appointment on compassionate ground and it is equitable that his name be included in the waiting list for the issuance of appointment order, subject to fulfillment of eligibility 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 : 21.01.2019

Dictation taken by :

S.K. Wamanse.