

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.52 OF 2021

DISTRICT : SOLAPUR

Shri Akshay D. Nagane.)
Age : 29 Yrs., Occu.: Nil,)
R/o. Meendapur, Tal.: Pandharpur,)
District : Solapur – 413 304.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)
2. The Executive Engineer.)
MKVDC, Pune, Bhima Canal)
Irrigation Circle, Sinchan Bhawan,)
Opp. Solapur Club, Final Plot No.31,)
Solapur – 413 003.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 27.08.2021

JUDGMENT

1. In the present Original Application, the Applicant has sought directions to the Respondents to consider his application dated 16.05.2010 and to provide appointment on compassionate ground invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

Applicant's father viz. Dattatraya [now deceased] was Madatnis on the establishment of Respondent No.2 and died in harness on 21.10.2002. Admittedly, deceased Dattatraya was Group 'C' employee and his heirs were entitled for appointment on compassionate ground, subject to fulfillment of other eligibility criteria. Smt. Pushpa (Widow of deceased), therefore, applied for appointment on compassionate ground on 11.07.2006 and in pursuance of it, her name was taken in waiting list. However, thereafter, nothing was communicated to her. The Applicant's date of birth is 05.06.1991 and attained majority on 05.06.2009. Since there was no response to the claim of mother, the Applicant on attaining majority independently made an application for appointment on compassionate ground on 16.05.2010 which was within one year from attaining majority in terms of policy for appointment on compassionate ground. The Deputy Superintending Engineer, Bhima Kalva Mandal, Solapur had forwarded proposal to Respondent No.1 (Government) on 30.04.2012 seeking guidance in the matter of taking the name of Applicant in waiting list. However, nothing happened thereafter. It is on this background, since there was no response to the application as well as proposal forwarded by Deputy Superintending Engineer being no option, the Applicant has approached this Tribunal by filing present O.A. for direction to the Respondents to provide employment on compassionate ground.

3. This O.A. was filed on 18.01.2021 and notices were issued to the Respondents on 25.01.2021. Since then, the matter was adjourned from time to time on the request of learned P.O. for filing Affidavit-in-reply, but the same is not filed despite enough chances. Ultimately, having found that Respondents are least interested in filing Affidavit-in-reply, the Tribunal passed order on 31.05.2021 to proceed O.A. on merit without reply and matter was kept for hearing at the stage of admission. Even

thereafter also, no reply was filed. It is on this background, the O.A. is taken up for hearing today for hearing at the stage of admission.

4. Mrs. A.B. Kololgi, learned Presenting Officer submits that she had sent several letters to Respondents seeking instructions for preparing Affidavit-in-reply, but Respondents did not respond. She has tendred the copies of communication dated 21.01.2021, 27.11.2021, 23.02.2021, 15.03.2021, 12.04.2021, 31.05.2021 and lastly 24.08.2021. It is thus obvious that despite efforts made by the learned P.O, the Respondents did not respond her. This shows total indifferent and insensitiveness of the Respondents.

5. The learned P.O. however on merit sought to contend that though Applicant has made application on 16.05.2010, he approached the Tribunal in 2021, and therefore, there is lapses and latches on the part of Applicant and O.A. is not within limitation. In alternative, she submits that since Deputy Superintending Engineer has already forwarded the proposal, the directions be issued to decide the same on its own merit.

6. Shri R.M. Kolge, learned Advocate for the Applicant submits that the objection raised by learned P.O. on the point of limitation is totally unsustainable, since there is no communication to the Applicant in respect of his claim made by application dated 16.05.2010. He further submits that even if there is no provision for substitution of heir in waiting list in view of consistent decisions rendered by this Tribunal as well as the decision of Hon'ble Supreme Court, the Respondents ought to have taken the name of Applicant in waiting list for providing appointment on compassionate ground.

7. In so far as objection on the post of delay is concerned, though Applicant has made an application on 16.05.2010, till date, there is no communication to the Applicant in either way. Indeed, the Deputy

Superintending Engineer has sent proposal way back on 30.04.2012, but Respondent No.1 did not bother to look into it. Needless to mention, unless there is communication of rejection of the claim, there could be no starting of period of limitation since limitation starts from the date of cause of action. Therefore, the submission advanced by the learned P.O. that O.A. is barred by limitation is devoid of merit.

8. It further appears from the record that Respondent No.2 by communication dated 14.03.2018 has communicated to the mother of Applicant that her name had been deleted from waiting list on completion of 45 years of age in terms of G.R. dated 06.12.2010. Indeed, she waited for appointment on compassionate ground for a long time and having found that there were no chances of getting her employment during her life time, her son i.e. present Applicant made an application on 16.05.2010 which was within one year from attaining majority in terms of policy. At least that time, the Respondent No.2 ought to have realized seriousness of the matter and should have taken further steps in earnest manner. On the contrary, the Respondent No.2 by communication dated 14.03.2018 deleted the name of Pushpa from waiting list which shows total non-application of mind.

9. Now, question comes as to whether after the name of mother was deleted from waiting list, the name of Applicant can be substituted for providing appointment on compassionate ground. True, there is no specific provision of substitution of name in the scheme for appointment on compassionate ground. However, in the present case, notably even before deletion of the name of mother, the Applicant himself on attaining majority, within one year made an application on 16.05.2010, which is still pending without any decision thereon. Apart, the issue of substitution of heir is no more *res-integra* in view of various decisions rendered by this Tribunal where directions are given to consider the name of Applicant where the name of other heir was earlier taken in waiting list but deleted on account of crossing the age of 40/45 years.

10. 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.

11. 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.”

12. 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.

13. 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.”

14. 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.

15. It is really very unfortunate that the claim of Applicant for appointment on compassionate ground which was required to be considered expeditiously, so as to provide financial assistance to the economically distressed family is kept lingering for years together which shows total laxity and insensitiveness of the Respondents which frustrate the very object of the Scheme for appointment on compassionate ground. The delay is on the part of Respondents which is totally unexplainable and no latches can be attributed to the Applicant. The Applicant even sent reminder to the Government on 09.08.2018, but in vain.

16. For the reasons stated above, direction needs to be issued to the Respondents to consider the application dated 16.05.2010 made by the Applicant. Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The Respondents are directed to consider the application dated 16.05.2010 as well as reminder/representation dated 09.08.2018 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 the issuance of appointment order, subject to fulfillment of eligible 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

Mumbai
Date : 27.08.2021
Dictation taken by :
S.K. Wamanse.