

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.700 OF 2017  
(SUBJECT : COMPASSIONATE APPOINTMENT)**

DISTRICT : NASHIK

1. Shri Swapnil Ambadas Salve, )  
Aged 22 yrs. Occ. Nil. )
2. Smt. Anita Ambadas Salve, )  
Aged 46 yrs. Occ. Household, )  
Both are R/o. Bableshwar, )  
Post Jakhori, Tal & Dist. Nashik )

**.....APPLICANTS.**

**VERSUS**

1. The Commissioner of Police, )  
Nashik. )
2. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Having office at )  
Mantralaya, Mumbai 400 032 )

**.....RESPONDENTS.**

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

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

**CORAM** : SHRI A.P. KURHEKAR, MEMBER(J)

**DATE** : 06.01.2020.

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

1. Applicants have challenged the order dated 15.03.2016 rejecting the application made by the Applicant No.1 (Shri Swapnil A. Salve) for grant of appointment on compassionate ground solely

on the ground that the G.R. dated 20.05.2015 does not provide for substitution of another heir in waiting list.

2. Uncontroverted facts giving rise to the O.A. can be summarized as under :-

(i) The Applicant No.1, Shri Swapnil Ambadas Salve is son and Applicant No.2, Smt. Anita Ambadas Salve is the widow of deceased employee Shri Ambadas Salve who was Police Constable on the establishment of Respondent No.1, Commissioner of Police, Nashik.

(ii) Shri Ambadas Salve was the Group C employee and died in harness on 31.01.2007.

(iii) After his death, Applicant No.2, Smt. Anita Ambadas Salve widow of deceased employee Shri Ambadas Salve, made application on 28.06.2007 for grant of appointment to her on compassionate ground. At that time Applicant No.1, Shri Swapnil Ambadas Salve was minor.

(iv) Applicant No.1, Shri Swapnil Ambadas Salve's birth date is 14.04.1995 and has attained 18 years of age on 13.04.2013. Applicant No.1, Shri Swapnil Ambadas Salve made an application on 28.10.2013 i.e. within one year of attaining majority for grant of compassionate ground (page 21 of the paper book).

(v) In the meantime, Applicant No.2 Smt. Anita Ambadas Salve had also made an application on 17.06.2013 stating that though she had applied for appointment on compassionate ground by application dated 28.06.2007 the

appointment however be given to her son i.e. Applicant No.1 Shri Swapnil Ambadas Salve. (page 66 of the paper book).

3. On the above background, Respondent No.1 by communication dated 15.03.2016 informed to the Applicants that in view of absence of provision for substitution of heir in G.R. dated 20.05.2015, the name of Applicant No.1 Shri Swapnil Ambadas Salve could not be taken in waiting list and accordingly application was rejected. This order is challenged by the applicants in the present O.A.

4. Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant submits that till the filing of O.A. there was no communication to the Applicant No.2 Smt. Anita Ambadas Salve about the deletion of her name from the waiting list. During the course of argument, he has tendered communication dated 23.08.2017 which is taken on record and marked by letter 'X'. Thus, he pointed out that for the first time by communication dated 23.08.2017, Applicant No.2 Smt. Anita Ambadas Salve was informed that her name is deleted from the waiting list. He further pointed out that in terms of G.R. dated 21.09.1996 the Applicant No.1 had made an application within one year from the date of attaining majority and therefore rejection of the application for appointment on compassionate ground is unsustainable in law. He, therefore, urged that having regard to the aim and object of the scheme of providing appointment on compassionate ground, Applicant No.1 is entitled for appointment on suitable post.

5. Par contra, learned P.O. for the Respondents made feeble attempt to justify the impugned order, contending that there is no

provision for substitution of heir and therefore rejection cannot be faulted with.

6. There is no denying that earlier Applicant No.2 made application for appointment on compassionate ground within one year from the date of death of her husband. Material to note that, till the filing of O.A. there is no communication to the Applicants deleting name of Applicant No.2 from the waiting list.

7. Indeed Applicant No.2 by her application dated 17.06.2013 had requested Respondent No.1 to take the name of her son i.e. Applicant No.1 in the waiting list for appointment on compassionate ground. However, it was not responded.

8. Thus, fact remains that till the filing of O.A. there was no communication to the Applicant No.2 about the deletion of her name from the waiting list. This being the position this is not a case of deletion of heir from the waiting list and its substitution by another heir. This is the case where the name of the Applicant No.2 was in waiting list and that time itself she had informed Respondent No.1 that in her place the name of Applicant No.1 for appointment on compassionate ground be substituted.

9. Apart, Applicant No.1 also on attaining majority made the application on 28.10.2013 within one year. This being the situation, there was no reasons much less legally justifiable to reject the application made by Applicant No.2 for grant of appointment on compassionate ground.

10. Needless to mention that the object of appointment on compassionate ground is to alleviate suffering of distressed family by providing financial assistance and if the application is made

within time and the same is in consonance with the policy as framed by the various G.R.s issued by the Government from time to time, then request for appointment on compassionate ground has to be considered sympathetically rather than adopting hyper technical approach.

11. As regards the aim and object of this scheme for appointment of compassionate ground it would be useful to refer observations of Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. Vs. Union of India)**, which are as under :-

*“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. As the Applicant No.2 had admittedly made an application on 26.06.2007 having regard to the object of this scheme, Respondent No.2 ought to have provided appointment to her if necessary by creating supernumerary post in terms of judgment of Hon'ble Supreme Court in **Sushma Gosain's case**. However, Respondent No.1 failed to consider the plight of the deceased family and kept her application pending without communicating to the Applicants. Later again Applicant No.1 has separately applied for grant of appointment on compassionate ground in terms of G.R. dated 21.09.1996 which inter alia provides that minor can apply within one year after attaining majority. However, the same is rejected on technical ground of absence of provision to substitute heir in G.R. dated 20.05.2015.

13. Indeed, perusal of G.R. dated 20.05.2015 stipulates that where the name of one of the heir is taken on record in waiting list and such heir died then in that event the name of another legal heir should not be taken in waiting list. Whereas in present case, there is no question of death of the heir whose name is taken in waiting list. This being position, the reasons mentioned in the impugned order is obviously erroneous and unsustainable in law. Respondent No.1 ought to have considered as Applicant No.1 had already given her willingness and consent for the appointment of the Applicant No.2 when her name was still existing in waiting list and subsequently Applicant No.1 had also independently made application for appointment on compassionate ground within one year from attaining majority. This being the position, rejection of the claim of applicant No.1 for appointment on compassionate ground is totally erroneous and not sustainable in law.

14. Respondent No.1 ought to have considered the request of Respondent No.2 in view of consistent decisions rendered by this Tribunal in following Original Applications :-

- (i) O.A.No.432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 Ors.) decided on 01.12.2014.
- (ii) O.A.No.184/2005 (Smt. Nirmala Doijad Vs. State of Maharashtra, decided on 03.05.2006.
- (iii) O.A.No.503/2015 (Piyush Shinde Vs. State of Maharashtra), decided on 05.04.2016.
- (iv) O.A.No.604/2016 (Anusaya More Vs. State of Maharashtra), decided on 24.10.2016.
- (v) O.A.No.327/2017 (Smt. Vanita Shitole Vs. State of Maharashtra), decided on 07.08.2017.
- (vi) O.A.No.636/2016 (Sagar B. Raikar Vs. Superintending Engineer), decided on 21.03.2017.

- (vii) O.A.No.239/2016 (Swati Khatavkar Vs. State of Maharashtra), decided on 21.10.2016.
- (viii) O.A.No.884/2016 (Mayur Gurav Vs. State of Maharashtra), decided on 30.03.2017.
- (ix) O.A.No.1126/2017 (Siddesh N. Jagde Vs. State of Maharashtra), decided on 04.06.2018.
- (x) O.A.No.645/2017, Shri Manoj Ashok Damale Vs. Superintending Engineer & Administrator, decided on 02.04.2019.

The conspectus of all these decision is that even if there is no specific provision for substitution of heir, having regard to the aim and object of the scheme even after deleting the name of the one of the heir on attaining the age of 40/45 years, the name of another heir deserves to be substituted to provide employment to the family who is in financial difficulties due to loss of sole earning member of the family.

15. The necessary corollary of the aforesaid discussion leads me to sum up that the rejection of the applicant made by Applicant No.1 is arbitrary and not sustainable in law and facts and impugned order being totally indefensible deserves to be quashed.

### **O R D E R**

- (a) The O.A. is allowed partly.
- (b) The impugned order dated 15.03.2016 is hereby quashed and set aside.
- (c) Respondents are directed to consider the application of the Applicant No.1 dated 28.10.2013 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 on suitable post subject to fulfillment of eligibility criteria in accordance to rules.

- (d) This exercise be completed within a period of three months from today.
- (e) No order as to costs.

SD/-

**(A.P. Kurhekar)**  
**Member (J)**

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