

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.738 OF 2017

DISTRICT : SOLAPUR

Shri Amol Bajirao Mane.)
Age : 27 Yrs., Occu.: Nil,)
R/o. A/P. Village Wangi No.1, Tal.: Karmala,)
District : Solapur.)...**Applicant**

Versus

1. The Superintending Engineer &)
Administrator, Command Area)
Development Authority, Solapur.)
2. The District Collector.)
Solapur.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.04.2019

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Only limited issue posed for consideration in the present O.A. is about the seniority of the Applicant in waiting list for the appointment on compassionate ground.

3. Factual matrix is as follows :-

The Applicant Amol is the son of deceased Bajirao Mane, who died in harness on 22.02.1994. At the time of his death, the Applicant was three years old. Applicant's date of birth is 19.06.1990. As the Applicant was minor at the time of death, he could not make application for appointment on compassionate ground immediately. He applied for appointment on compassionate ground after attaining the majority within a year on 24.12.2008 along with necessary documents in terms of G.R. dated 11.09.1996, which *inter-alia* provides that, in case of minor, he can apply for appointment on compassionate ground within one year on attaining majority. Consequently, his name was taken in waiting list w.e.f.29.09.2016. The Applicant is aggrieved by the decision of giving seniority w.e.f.28.09.2016, and therefore, approached this Tribunal. The Applicant contends that the persons who applied later were taken in waiting list earlier to him, and therefore, the action on the part of Respondents to give seniority in waiting list w.e.f.28.09.2016 is illegal.

4. The Respondents resisted the claim of the Applicant by filing Affidavit-in-reply (Page Nos.62 to 66 of Paper Book) *inter-alia* contending that the application made by the Applicant on 24.12.2008 itself was not within limitation. According to the Respondents, the application for appointment on compassionate ground ought to have been made within one year from the date of death of the deceased employee. However, the Respondents admit that the name of Applicant has been taken in waiting list w.e.f.28.09.2016 and seniority was given to him w.e.f.28.09.2016.

5. In view of above, the only question posed is whether the Applicant is entitled to seniority in the waiting list w.e.f.28.09.2016 ?

6. Though the Respondents sought to contend that there was delay on the part of family members of the deceased to apply for the appointment on compassionate ground, the fact remains that in pursuance of the application made by the Applicant on 24.12.2008, his name was included in the waiting list. Undisputedly, the Applicant was minor at the time of death of his father and has made an application within one year on attaining majority. In this behalf, it would be useful to refer G.R. dated 20.05.2015, which *inter-alia* provides that, in case of minority, such person can apply for appointment on compassionate ground within one year from the date of attaining majority and the said period of one year can be relaxed upto two years. That means, minor can apply within three years from the date of attaining majority and the Competent Authority is empowered to condone the delay. This being the position, the contention raised by Respondents that the application was not made within time is fallacious and erroneous. In fact, the Respondents have entered the name of Applicant in waiting list, but w.e.f.28.09.2016. It is rightly pointed out by the learned Advocate for the Applicant in reference to decision of Hon'ble High Court in ***Writ Petition No.1284/2011 (Aparna Zambre Vs. Assistant Superintending Engineer) decided on 1st August, 2011*** wherein it has been held that, the date of application is the criteria and it ought to be reckoned for the purpose of appointment.

7. The learned Advocate for the Applicant has also pointed out that, one Shri Pratap Singh Kanhere had applied on 05.02.2009 and appointed on compassionate ground by order dated 16.06.2014. The copy of order of appointment of Pratap Singh Kanhere is produced on record. As such, though the Applicant has made an application on 24.12.2008 because of giving effect w.e.f.28.09.2016, he has been deprived of getting the appointment as per

seniority of the applications. Had the application of the Applicant considered with effect from the date of filing of application and placed accordingly in seniority list, he would have got appointment order much earlier. This being the position, the grievance of the Applicant that he is entitled to the seniority list with effect from the date of application i.e. 24.12.2008 being just and legal, deserves to be accepted.

8. Once the Respondents accept the position that the application was made on 24.12.2008 and in pursuance of it, took the name of the Applicant in waiting list, then there is absolutely no reason to give effect to his seniority from 28.09.2016. No justification much less acceptable is forthcoming. Therefore, the decision giving seniority w.e.f.28.09.2016 is nothing but arbitrary and liable to be struck down.

9. For the aforesaid reasons, I have no hesitation to conclude that the action on the part of Respondents to consider the seniority of the Applicant w.e.f.28.09.2016 in the waiting list is illegal and seniority should be given from the date of his application i.e. 24.12.2008. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 19.05.2017 considering seniority w.e.f.28.09.2016 in waiting list is hereby quashed and set aside.
- (C) The Respondents are directed to consider the seniority of the Applicant in waiting list in reference to his application i.e. from 24.12.2008.

- (D) The Respondents are also directed to take further steps for issuance of appointment order considering the seniority of the Applicant w.e.f.24.12.2008.
- (E) No order as to costs.

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

Mumbai

Date : 03.04.2019

Dictation taken by :

S.K. Wamanse.

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