

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.77 OF 2019

DISTRICT : SOLAPUR

- 1] Smt. Kusum Prasad Kapse.)
Age : Adult, Occu.: Nil.)
2. Shri Pramod Prasad Kapse.)
Age : 30 Years, Occu.: Education,)
)
Both residing at Telli Galli,)
Tal. : Barshi, District : Solapur.)...**Applicants**

Versus

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

Mr. Arvind V. Bandiwadekar, Advocate for Applicants.

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

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

DATE : 05.10.2021

JUDGMENT

1. The Applicants have challenged the communication dated 10.11.2016 and 10.10.2018 issued by Respondents thereby denying the claim for appointment on compassionate ground raised by Applicant

No.2 after the death of his father invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the undisputed facts giving rise to this O.A.

(i) Deceased Prakash Kapse (Husband of Applicant No.1 and father of Applicant No.2) was Class-IV employee in Irrigation Department on the establishment of Respondent No.2. Unfortunately, he died in harness on 09.09.1999.

(ii) After his death, the Applicant No.1 made an application to Respondent No.1 for appointment on compassionate ground since the family is in economically distressed on account of loss of sole earning member of the family.

(iii) Accordingly, the name of Applicant No.1 was taken in waiting list, but no such appointment was provided to her for years together.

(iv) On 21.11.2005, the Applicant No.1, therefore, applied to Respondent No.1 to provide compassionate appointment to her son i.e. Applicant No.2 instead of her, but it came to be rejected by letter dated 29.11.2005 stating that Applicant No.2 has not attained majority.

(v) The Applicant No.2, therefore, after attaining majority on 30.01.2006 made application afresh in February, 2006 for appointment on compassionate ground in place of mother, but despite this position, Applicant's name was continued in the waiting list.

(vi) By communication dated 26.06.2008, the Respondents informed that Applicant No.1 had attained 40 years of age, and therefore, her name came to be deleted.

(vii) On 02.07.2008, Applicant No.1 requested Respondent No.2 to assign her seniority in the waiting list to her son, but by communication dated 27.02.2009, she was informed that there is no provision for substitution of heir and claim of her son came to be rejected.

(viii) The Applicant, therefore, filed O.A.No.442/2011 before this Tribunal which was disposed of by order dated 22.01.2015 directing Respondents to consider the request of Applicant afresh. This decision was based on the Judgment of Hon'ble High Court in Writ Petition No.8915/2011 decided on 14.01.2011 whereby directions were given by Hon'ble High Court for considering the name of son in place of mother.

(ix) Respondents, however, again by impugned communication rejected the claim of Applicant for appointment solely on the ground that there is no provision for substitution of heir in the scheme for appointment on compassionate ground.

3. In is on the above background, the Applicants have again knocked the doors of the Tribunal for appointment on compassionate ground in this second round of litigation.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicants sought to assail the impugned communication *inter-alia* contending that though the name of Applicant No.1 was taken in the waiting list, no such appointment was given for years together and in 2008, her name came to be deleted having attained the age of 40 years. He has pointed out that even before deletion of her name, the Applicant No.2 by application dated 21.11.2005 requested to take the name of her son in waiting list, but it came to be rejected on the ground that Applicant No.2 had not attained 18 years' age. He, therefore, submits that since Applicant No.2 after attaining majority, again applied on 30.01.2006, his name ought to have been considered but it was again rejected despite the direction given by

the Tribunal in O.A.No.442/2011. On this background, he submits that the stand taken by Respondents that in absence of provision in the scheme for substitution of heir, the name of Applicant No.2 could not be taken in the waiting list is contrary to the scheme for appointment on compassionate ground and defeats its very purpose. He further submits that in view of the decision of Hon'ble Supreme Court in **AIR 1989 SC 1976 [Sushma Gosain & Ors. Vs. Union of India]**, the Respondents ought to have created supernumerary posts for providing immediate relief to the family to mitigate the hardship suffered by the family on account of death of sole earning member, but Respondents rejected the claim arbitrarily. He further pointed out various Judgments rendered by this Tribunal wherein in similar situation, the directions were given to appoint another heir on compassionate ground after deletion of the name of one heir from waiting list on attaining age of 40/45 years.

5. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer for the Respondents sought to justify the impugned communication *inter-alia* contending that in absence of provision of substitution of heir for appointment on compassionate ground, the claim of Applicant No.2 was rightly rejected.

6. Needless to mention that the Scheme of compassionate appointment is intended to alleviate the difficulties of distressed family and efforts are always to be made to provide employment, so as to advance aim and object of the Scheme where a candidate is otherwise eligible. One should avoid too technical or rigid approach in such matter otherwise it would defeat the very object of the Scheme.

7. In this behalf, as regard aim and object of the claim for appointment on compassionate ground, it would be useful to refer the observations made by 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 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.”

8. Apart, the learned Advocate for the Applicants also referred to various decisions rendered by this Tribunal, which are as follows :-

(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.

(iv) 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.

(v) **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.884/2016 (Mayur Gurav Vs. State of Maharashtra) decided n 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.

(vi) **O.A.No.645/2017 [Manoj A. Damale Vs. Superintending Engineer & Administrator, Command Area Development Authority, Nashik] dated on 02.04.2019.** In this O.A, the name of one of the heir was taken on record for appointment on compassionate ground, but after crossing 40 years of age, the name came to be deleted and second heir seeks substitution which was rejected by the Government. However, the Tribunal turned down the defence of the Government in absence of such specific provision that substitution is not permissible and issued direction to consider the name of the Applicant for appointment on compassionate ground.

(vii) **O.A.No.427/2019 (Meena P. Mohite Vs. The Commissioner of Police, Mumbai) decided on 23.07.2021.** In this O.A, the name of one of the O.A. was taken on record for appointment on compassionate ground after crossing 40 years of age, his name came to be deleted and second heir seeks substitution which was rejected by the Department. However, the Tribunal turned down the defence raised by Government about absence of provision in the scheme and issued direction to consider the name of Applicant for appointment on compassionate ground.

(viii) **O.A.No.52/2021 (Akshay D. Nagane Vs. State of Maharashtra) decided on 27.08.2021.** In this case, the name of one of the O.A. was taken on record for appointment on compassionate ground after crossing 40 years of age, his name came to be deleted and second heir seeks substitution which was rejected by the Department. However, the Tribunal turned down the defence raised by Government about absence of provision in the scheme and issued direction to consider the name of Applicant for appointment on compassionate ground.

(ix) **O.A.No.138/2020 (Sunil B. Kumbhar Vs. State of Maharashtra) decided on 28.09.2021.** In this case also, the name of one of the O.A. was taken on record for appointment on compassionate ground after crossing 40 years of age, his name came to be deleted and second heir seeks substitution which was rejected by the Department. However, the Tribunal turned down the defence raised by Government about absence of provision in the scheme and issued direction to consider the name of Applicant for appointment on compassionate ground.

9. In this behalf, reference of one more decision of Hon'ble High Court in **Writ Petition No.877/2015 (Dhulaji Kharat Vs. State of Maharashtra) decided on 12th December, 2018** would be very useful as it is directly on the point involved in the present matter. In this matter, the Government servant died in harness in 2008 and that time, the Petitioner Dhulaji was minor. His mother made an application for appointment to Dhulaji on compassionate ground on attaining the age of majority. However, it was not considered. Then again, the Petitioner Dhulaji made application in 2013 to consider the application made by his mother in 2008. The Government, however, declined to consider the request on the ground that the Applicant Dhulaji had not filed an application within one year from the date of attaining majority. In that context, the Hon'ble High Court held that the request for appointment of Petitioner Shri Dhulaji was already made by her mother well within one year from the death of deceased, and therefore, that application ought to have been considered for giving appointment on compassionate ground to Petitioner Shri Dhulaji and the contention that the application was not made within one year from the date of attaining majority was rejected. Accordingly, directions were issued to consider the application made by mother in 2008 for appointment on compassionate ground.

10. 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.”

11. 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 No.1 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.

12. Turning to the facts of the present case, it is really unfortunate that despite the directions given by the Tribunal in **O.A.No.442/2011 by order dated 22.01.2015**, the Respondents mechanically and arbitrarily rejected the claim of Applicant No.2 unmindful of the object of the scheme. The Respondents ought to have seen that though the name of Applicant No.1 was taken in waiting list, she was not given appointment for 8 to 9 years, which ought to have been given immediately even by creating supernumerary posts but her name was mechanically deleted on attaining the age of 40 years, as if Respondents were waiting for her to cross 40 years of age and then to reject the claim. Importantly, before deletion of name itself, the Applicant No.1 had applied to the Respondents that appointment be provided to her son i.e. Applicant No.2

in place of her, but it was rejected on the ground of minority of Applicant No.2. Later, after attaining majority, the Applicant No.2 again applied afresh, but it was rejected on the ground of absence of provision in scheme.

13. Suffice to say, the rejection on the ground of absence of provision in scheme is totally arbitrary rather it shows total disregard of the aim and object of the scheme for appointment on compassionate ground. The impugned communication rejecting the claim of Applicant No.2 is, therefore, totally unsustainable in law and deserves to be quashed.

14. The totality of aforesaid discussion leads me to sum-up that the impugned communications are devoid of merit and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 10.11.2016 and 10.10.2018 are hereby quashed and set aside.
- (C) The Respondents are directed to include the name of Applicant No.2 in the waiting list for appointment on compassionate ground on suitable post, subject to fulfillment eligibility criteria within three months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 05.10.2021
Dictation taken by :
S.K. Wamanse.

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