

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.796 OF 2018

DISTRICT : THANE

Shri Sunil Vishwanath Mohite.)
Age : 32 Yrs., Occu.: Unemployed,)
Residing at Valdhuni, Shivaji Nagar,)
Beside Vijay Vandana Apartment,)
Kalyan, District : Thane.)...**Applicant**

Versus

1. The Deputy Director of Land Records)
Konkan Division, Mumbai, D.D.)
Building, 1st Floor, Old Custom)
House, Fort, Mumbai – 400 023.)
2. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. D.S. Pagare, Advocate for Applicant.

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

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

DATE : 22.11.2021

JUDGMENT

1. The Applicant has challenged the communication dated 19.03.2014 issued by Respondent No.1 – Deputy Director of Land Record, Konkan Division, Mumbai thereby informing the mother of the Applicant that Applicant is not entitled to appointment on compassionate

ground stating that there is no provision for substitution of heir in policy for appointment on compassionate ground.

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

(i) Deceased Vishwanath was Peon on the establishment of Respondent No.1 and died in harness on 04.04.2007 leaving behind widow viz. Vimal and three sons viz. Kishor, Sunil (present Applicant) and Rakesh (deceased).

(ii) After the death of father, the Applicant's elder brother Kishor applied for appointment on compassionate ground on 19.10.2007.

(iii) The name of Kishor was taken in waiting list for providing appointment on compassionate ground. However, no such appointment order was issued in his name for a long time.

(iv) Kishor unfortunately died on 18.06.2012 before getting any order of appointment on compassionate ground.

(v) Applicant, therefore, made application on 08.01.2014 for himself claiming appointment on compassionate ground on the ground that family is financially distressed and he has no means to maintain the family. Applicant's mother also requested Respondent No.1 by application dated 08.01.2014 to provide job to the Applicant.

3. It is on the above background, the Respondent No.1 by impugned order dated 19.03.2014 rejected the claim solely on the ground that there is no provision for substitution of heir once the name of heir is taken in waiting list.

4. Shri Pagare, learned Advocate for the Applicant sought to assail the impugned order dated 09.03.2014 *inter-alia* contending that *ex-facua* it is bad in law in view of G.R. dated 20.05.2015 issued by Government

recognizing entitlement of another heir for appointment on compassionate ground in case of death of heir whose name is already taken in waiting list. He further submits that in view of aim and object of scheme for appointment on compassionate ground, the Respondent No.1 ought to have appointed the Applicant on compassionate ground.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer for the Respondent sought to support impugned order on the ground that there is no provision for substitution of heir in the scheme for appointment on compassionate ground. He further contends that G.R. dated 20.05.2015 has been issued subsequent to the impugned order dated 19.03.2014 without retrospective effect, and therefore, Applicant's claim for appointment on compassionate ground is not maintainable.

6. As such, in view of submission advanced and facts adverted to above, the crux of the matter is whether the name of the Applicant can be substituted in place of deceased Vishwanath.

7. Needless to mention that the very object of providing appointment on compassionate ground is alleviate the financial difficulties of the distressed family and in such matter if the applicant is found eligible then appointment needs to be provided immediately, so as to mitigate hardship faced by the family due to death of the sole earning member in the family.

8. As regard to aim and object of the scheme 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 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 the appointment supernumerary post should be created to accommodate the applicant.”

9. Till the issuance of G.R. dated 20.05.2015 there was no provision for substitution of another heir, where the heir who is empanelled in waiting list dies. It is for the first time by issuance of G.R. dated 20.05.2015, the Government has taken decision to substitute the name of another heir so that the very object of this scheme of compassionate appointment is fulfilled.

10. Material to note that by the said G.R. limitation for making application for appointment on compassionate ground is also extended up to three years subject to condonation of delay. Besides, in case of minor heir also the period of limitation has been extended upto three years on attaining majority, subject to condonation of delay by the Head of the Department in Mantralaya.

11. Material to note that the G.R. dated 20.05.2015 is silent about the period of limitation for making application by another heir where the heir who is already empanelled in waiting list die before getting appointment on compassionate ground. All that G.R. provides that in case of death of heir his name can be substituted by another legal heir. Furthermore, there is no specific stipulation in G.R. dated 20.05.2015 about the date of its enforcement.

12. It would not be out of place to mention here that till date there is no provision in scheme for substitution of heir in case the name of heir who is empanelled in waiting list is deleted having crossed the age of 40/45 years. However, the Tribunal has taken consistent view in various Original Applications that keeping in mind the object of the scheme even if there is no specific provision to substitution of heir the name of another heir deserves to be considered for substitution and most of the decisions are implemented by the Government.

13. True, at the time of impugned order dated 19.03.2014, there was no such policy or G.R. substituting the name of another heir where a heir whose name is waiting list dies. However, the fact remains that though the name of Applicant's elder brother was taken in waiting list in 2007, he was not provided appointment on compassionate ground for five years and unfortunately died on 18.06.2012. Indeed, the Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra) held that appointment on compassionate ground should be provided immediately to redeem the family in distress even by creating supernumerary post and it would be highly unjust and improper to keep such matters pending for years together. If Applicant would not appointment within reasonable time, it would frustrate the very aim and object of the scheme. Had Respondents followed the dictum in **Sushma Gosain's** case, the Applicant's brother would have got appointment in his life time.

14. Be that as it may, now Government in its wisdom rectified the situation by issuing G.R. dated 20.05.2015 whereby substitution of name of heir is permissible where heir dies before getting appointment on compassionate ground. Clause No.(c) of G.R. dated 20.05.2015 in this behalf is material is as under :-

“अनुकंपा तत्त्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचित करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही.

परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र उमेदवाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्षे पूर्ण होतील त्या दिनांकास घेण्यात यावे.”

15. Thus, it is explicit that the name of another heir deserves to be taken in waiting list maintaining the seniority of heir who dies before getting an appointment on compassionate ground.

16. Only because G.R. dated 20.05.2015 has been issued subsequent to the decision, it cannot be said that the Applicant is not entitled to the benefit of the said G.R. Having regard to the aim and object of the scheme for appointment on compassionate ground, the said G.R. will have to be applied to the matters which are pending before the Tribunal for judicial review of the orders passed by the Government. Therefore, the technical ground raised by the learned P.O. holds no water.

17. The totality of aforesaid discussion leads me to conclude that the impugned order is not sustainable in law and facts and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 19.03.2014 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the claim of Applicant for appointment on compassionate ground and it would be equitable as well as judicious that his name is included in the waiting list in terms of G.R. dated 20.05.2015, 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 : 22.11.2021
Dictation taken by :
S.K. Wamanse.

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