

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**DIST : PUNE**

**ORIGINAL APPLICATION NO.910 OF 2017**

Shri Prajwal Adinath Misal )  
Aged 25 years, Occ. Nil )  
R/o. 213, Anand Complex, Savedi Naka, )  
Ahmednagar. ).....**Applicant**

**Versus**

1. The Superintending Engineer and )  
Administrator, Kukdi Irrigation Command )  
Area Development Authority (CADA), Pune )  
O/at. Sinchan Nhavan, Mangalwar Peth, Barve )  
Road, Pune – 11. )
2. The State of Maharashtra, through Principal )  
Secretary, Water Resources Department, )  
O/at. Mantralaya, Mumbai 400 032. ) **...Respondents**

Shri A. V. Bandiwadekar, Advocate for the Applicant.

Shr A. J. Chougule, Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 23.09.2019.

**ORDER**

1. The Applicant has challenged the impugned order dated 16.05.2015 whereby his request application dated 11.03.2015 for grant of appointment on companionate ground has been rejected.

In nutshell, the facts giving rise to the O.A. are as follows:-

2. The deceased Adinath Misal was serving on the post of Surveyor Class-III employee on the establishment of Respondent No.1 – Superintendent Engineer and Administrator, Kukdi Irrigation Command Area development Authority, Pune. He died on 07.06.2006 in harness, living behind widow, son (Applicant) and two daughters. After the death of husband, widow namely Smt. Sindhu Misal made an application for grant of appointment on companionate ground on 27.07.2006. Accordingly, her name was entered in waiting list. However, she died on 20.02.2012 at the age of 44 years. Her date of birth is 02.06.1968 and she had attended 40 years of age on 02.06.2008. However, during life time, she was never informed about her application for appointment on companionate ground. The Applicant, after the death of his mother being not aware, approached the then Hon'ble State Minister by application dated 21.12.2012 and also approached Sri Chandrashekhar Ghule-Patil, the then Hon'ble MLA and requested him to look into the matter. In turn, Shri Chandrashekhar Ghule-Patil forwarded the recommendation letter 21.01.2013 to the Respondent No.1. However, nothing was communicated to him. Then again, he made an application on 11.03.2015 to Respondent No.1 informing that his mother died on 20.02.2012 and requested for grant of appointment on compassionate ground being only earning member of the family consist of grandparents and two unmarried sisters. However, the Respondent No.1 rejected his application by communication dated 16.05.2015 stating that there is no provision for substitution of heir, and therefore, no employment can be provided to him. Being aggrieved by communication dated 16.05.2015, the Applicant has filed the present O.A.

3. The Respondent No.1 resisted the application by filing reply (Page 34 to 39 of Paper Book) *inter-alia* contending that the name of the Applicant's mother was taken in waiting list at Sr. No.38 but her name was deleted from waiting list

having attend the age of 40 years in terms of G.R. dated 22.08.2005. The Respondents further contend that the request of the Applicant which was received through Minister as well as MLA was already rejected by communication dated 26.03.2013. Whereas the Applicant has filed present O.A. after four years from the order dated 26.03.2013, and therefore, barred by limitation. In these pleadings, the Respondents contend that once the name of mother was deleted from the waiting list in absence of any provision of substitution of heir, the Applicant's name cannot be considered for appointment on compassionate ground and prayed to dismiss the O.A.

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

5. In so far as the point of limitation is concerned, M.A. No.429/2017 filed by the Applicant for condonation of delay is already allowed on 24.01.2018.

6. Indeed, in the present matter, challenge is to the order dated 26.05.2015. Learned Counsel has pointed out that order dated 26.03.2013 was never communicated to the Applicant or his mother during her life time. Though, the Respondent has produced the copy of letter dated 26.03.2013 (page 26 of PB), no further documentary evidence is produced that it was really served upon the Applicant. As a matter of fact, the Applicant's mother admittedly died on 20.02.2012. Be that as it may, the Respondents have not produced any documentary evidence to establish that during life time any communication was made to Applicant's mother. For the first time, it is by letter dated 26.03.2013, on persuasion of the Applicant through Hon'ble Minister and MLA, he was informed that name of his mother is deleted from waiting list on attending the age of 40 years and in absence of provision of substitution of heir, he is not entitled to appointment. As stated above, there is no documentary evidence about the service of latter dated 26.03.2013.

7. Now, turning to absence of provision for substitution of heir, the facts of the present case are peculiar as there was no communication of deletion of name for waiting list to the Applicant's mother in her life time, and therefore, naturally the Applicant was not aware about the result of application made by his mother for appointment. True, the Applicant had attained majority in 2010. However, as stated above, till impugned order dated 16.05.2015 there was no communication to the Applicant or his mother about rejection of their claim, and therefore, the Applicant approached the Hon'ble Minister and MLA and thereafter only by communication dated 16.05.2015 he was informed to be not entitled for appointment in view of deletion of name of his mother from waiting list.

8. Needless to mention that the concept of compassionate employment is intended to alleviate to distress of the family and rigid or too technical approaches should be avoided, as it would defeat very object of this scheme. As such, the Courts cannot ignore the very purpose of providing employment on compassionate ground to the dependent of Government servant died in harness. Only because after the death of deceased Government servant, his family managed to survive for long period, that should not be the reason for rejection.

9. As regard the aim and object of this 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 for appointment supernumerary post should be created to accommodate the applicant."*

10. The learned Advocate for the Applicant referred to various decisions, 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 7<sup>th</sup> 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 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.

11. As such in view of these decisions issue of substitution is not open to challenge. The Respondents have rejected the application solely on the ground that there is no provision in G.R. dated 22.08.2005 for substitution of another heir of the deceased. The learned P.O. sought to contend that, as per G.R. dated 22.05.2007, it is only in case of death of heir whose name is taken on waiting list, the substitution is permissible. True, there is no specific provision for substitution of heir in G.R. date 22.08.2005. But having regard to the aim and object of this scheme of appointment to provide financial assistance to the distressed family, the judicial approach is expected from the executive. As such, in view of Judgment of Hon'ble Supreme Court in **Sushma Gosain's** case, it was unjust on the part of Respondents to keep the issue of issuance of appointment order pending for years together. In fact, the Hon'ble Apex Court held that, if there is no suitable post for appointment, then supernumerary post should be created to accommodate the heir of the deceased. Had this mandate of Hon'ble Supreme Court was followed by the executive, the Applicant's mother would have got appointment on compassionate ground within time. Having not done so, thereafter, rejected the application of the Applicant on the ground that substitution is not permissible is contrary to the spirit and mandate of the

Judgment of Hon'ble Supreme Court as well as scheme for the appointment on compassionate ground.

12. As such consistent view has been taken by this Tribunal in various O.As referred to above as well as by Hon'ble High Court that having regard to spirit and object of this scheme for providing employment to the heir of the deceased employee on compassionate ground is to mitigate and obviate the difficulties faced by the deceased family due to loss of only earning member of the family and the State is under obligation to consider the application for substitution in proper perspective. Accordingly, directions were issued to consider the application for substitution and inclusion of the name in waiting list.

13. True, the Applicant's father died in 2006 and the period of 13 years is over till but in my considered opinion only because family had managed to survive for period of 13 years it cannot be assumed that there is no proximity in the claim and need of the employment had eclipsed. The mother of the Applicant had made an application within one year from the date of husband and after her death, the Applicant was also pursuing the claim. In this behalf reference can be made to decision to the Hon'ble Supreme court in **2018 (4) SLR 771(Supriya S. Patil V/s. State of Maharashtra)**, wherein it was held that only because family had managed to survive for 10 years it cannot be said that necessity is over.

14. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the request of Applicant by impugned order dated 16.05.2015 for taking his name on the waiting list in place of his mother is arbitrary and not sustainable in law and fact and the same, therefore, deserves to be quashed and set aside. The Respondents ought to have considered the request of the Applicant in view of consistent decisions rendered by this Tribunal referred to above as well as law laid down by Hon'ble High Court as well as Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 16.05.2015 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application of the Applicant dated 11.03.2015 afresh 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.
- (D) This exercise be completed within three months from today.
- (E) No order as to costs.

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

Place : Mumbai

Date : 23.09.2019.

Dictation taken by : VSM

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