

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.979 OF 2016**

**DISTRICT : NASHIK**

Shri Rahul Valmik Ahire. )  
M.P. Pawar Galli, Malegaon Camp, )  
Tal.: Malegaon, District : Nashik. )...**Applicant**


**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya Annexe, Mumbai - 32. )
2. The State of Maharashtra. )  
Through the Secretary, General )  
Administration Department, )  
Mantralaya Annexe, Mumbai - 32. )
3. The District Collector, Nashik. )  
Office of District Collector, Near )  
Old C.B.S, Nashik - 422 002. )...**Respondents**

**Mr. Ruturaj Pawar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**



**DATE : 07.08.2017**

**JUDGMENT**

1. The late Mr. Valmik Ahire, who was working as Talathi died in harness on 25.06.2000. The Applicant is his son who at the time of the death of his father was a minor. He seeks appointment on compassionate ground.

2. I have perused the record and proceedings and heard Mr. Raturaj Pawar, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents. The 1<sup>st</sup> Respondent is the State in Revenue and Forest Department, the 2<sup>nd</sup> Respondent is the State in GAD and the 3<sup>rd</sup> Respondent is the District Collector, Nashik.

3. The Applicant was born on 8.6.1987. After the demise of his father, his mother made an application on 6.7.2000 for her own appointment on compassionate ground. In 2005, she was at Serial No.6. She, however, had cardiac problem and on 22.11.2005, the Applicant made an application requesting for the substitution of his name in place of his mother's and he had annexed thereto, the 'No Objection' from his mother. He had annexed

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documents to show that the said Applicant held the requisite qualification, etc. The Application Form in its proper proforma is there at Page 35 of the Paper Book (PB)). As in 2005, the mother of the Applicant was at Serial No.6. In 2013, the Applicant was at Serial No.1. On 21.10.2013, the Applicant addressed a communication to Respondent No.3 setting out the facts hereinabove discussed and also stating that, at that point in time, he was at Serial No.1 and he, therefore, requested that, he be expeditiously appointed.

4. There are a few documents to show that, at some level, the authorities were favourable to the application of the Applicant. However, at Page 60 of the PB (and 61), there is an official noting which *inter-alia* mentions (in Marathi) that, there was no provision to substitute the name of one heir for the other and there should be no objection in rejecting the request of the Applicant for being appointed on compassionate ground. At annexure 'A-15' (Page 63 of the PB), there is a communication from the State - Respondent No.1 to the Collector, Nashik - Respondent No.3 intimating that the request for compassionate appointment made by the Applicant was rejected. The 3<sup>rd</sup> Respondent informed the Applicant vide Exhibit 'A-16', dated 22.7.2015 (Page 64 of the PB) that his

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name was deleted from the waiting list and these are the orders that are impugned herein and directions are sought to appoint the Applicant on compassionate ground.

5. The Affidavit-in-reply is filed by S.D.O. Mr. Ajay S. More, who has denied the case of the Applicant.

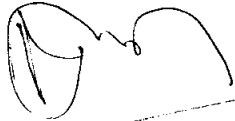
6. It quite clearly appears that, there is no other hitch in the matter of granting compassionate appointment to the Applicant except that according to the Respondents, his name cannot be substituted for that of his mother. Mr. Raturaj Pawar, the learned Advocate for the Applicant submitted that, this controversy is now fully covered by at least two Judgments of this Tribunal rendered by me. The first one is **OA 606/2016 (Shri Ashish R. Kharat Vs. The Superintending Engineer and 2 others, dated 31.1.2017)** and **OA 636/2016 (Shri Sagar B. Raikar Vs. The Superintending Engineer, Thane Irrigation Circle and 2 others, dated 21.3.2017)**. A number of earlier Judgments of this Tribunal came to be referred to therein. They were also the matters where the mothers wanted their names to be substituted by the names of their sons and the official position was that, such a move was unknown in the realm of the relevant Rules. As I mentioned just now, a number of earlier Judgments were referred to and relied



upon and it was held that, such a substitution cannot be an undoing of the claimant of compassionate appointment. **OA 21/2013 (Smt. Archana R. Badmanji and one another Vs. Superintending Engineer, Sangli Irrigation Circle, dated 20.8.2014)** was relied upon wherein I took guidance from a Judgment of the Hon'ble Supreme Court in **Smt. Sushma Gosain Vs. Union of India : AIR 1976 SC 1976**. The Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7793/2009 (Vinodkumar K. Chavan Vs. State of Maharashtra and others, dated 9.12.2009)** and **Writ Petition No. 8915 of 2011 (The Executive Engineer, PWD, Solapur Vs. Jijabai, dated 14.11.2011)** was also relied upon by me in **Kharat's** matter. I also held that the slight delay on the part of the heirs, especially in the circumstances like these could be glossed over.

7. In **Sagar Raikar's** OA, I relied upon a few earlier Judgments of this Tribunal and a Judgment of the Hon'ble Bombay High Court. Para 6 from that particular Judgment can be fully reproduced herein for facility.

"6. In fact, this issue is now fully concluded by a few Judgments of this Tribunal and at least two Judgments of the Division Bench of the Hon'ble Bombay



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High Court. In **OA 503/2015 (Piyush M. Shinde Vs. State of Maharashtra and 2 others, dated 5.4.2016)** which Judgment was rendered by me, I took guidance from the Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7832/2011 (names of the parties not there, dated 28.2.2012)**. Para 11 from **Piyush Shinde's** case was fully quoted by me in another Judgment in **OA 3880/2016 (Smt. Sangita R. Doijad and 1 another Vs. The State of Maharashtra and 3 others, dated 14.3.1997)**. That particular Para also extracted a significant passage from the Judgment in **Writ Petition No.7832/2011** (supra). It will be most advantageous to reproduce Para 11 from **Piyush Shinde** (supra).

“11. The above discussion must have made it clear that, initially the mother of the Applicant applied for compassionate appointment and her claim remained pending for years on. She then addressed a communication based on 2010 G.R. seeking for all practical purposes reconsideration of her claim. It is quite possible that if I have correctly understood the Respondents, they do not dispute the fact that under the 2010 G.R, the age of reckoning has been increased from 40 years to 45 years. What most probably is their

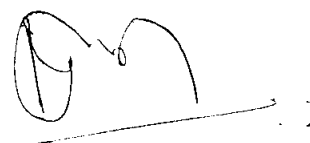


case is that in as much as in the year 2008 itself, the name of the mother of the Applicant had been deleted, she would not be eligible or entitled for being considered or more appropriately put reconsidered for compassionate appointment. Now, as to this submission of and on behalf of the Respondents, I find that the order of Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in **Writ Petition No.7832/2011 (names of the parties not there), dated 28.2.2012** is a complete answer to all the questions that the Respondents would like to throw up. A copy of that order of the Hon'ble High Court is at Exh. 'H' (Page 37). I am not too sure if this order has been reported in any journal, and therefore, it will be most appropriate to reproduce it entirely.

“1. Rule. Rule made returnable forthwith and heard finally.

2. Petition arises out of peculiar facts. Petitioner's husband, who was employee of the Respondent-Zilla Parishad expired on 7.4.2006. The petitioner, therefore, made an application to the Respondent for appointment on compassionate ground.

3. Accordingly, her name was included in the waiting list. However, by order dated



24.5.2010, name of the petitioner was deleted from the waiting list, on the ground that she completed 40 years of age. The said communication was challenged before this Court by way of Writ Petition No.1585 of 2011.

4. In the meanwhile, by Govt. Resolution dated 6.12.2010, policy of the Respondent underwent a change and a decision was taken by the Government to increase the upper age limit from 40 to 45 for appointment on compassionate ground.

5. However, it is the contention of Respondent-Zilla Parishad that the said Government Resolution dated 6.12.2010 has been given effect from 6.10.2010 and since the petitioner's name is deleted from the waiting list, she is not entitled to appointment on compassionate ground.

6. Petitioner's date of birth is 2.5.1968 and as such, she would be completing 45 years of age only on 2.5.2013. Even if it is considered that the effect of the said Govt. Resolution dated 6.12.2010 is given from 6.10.2010, still the petitioner would certainly be entitled to be appointed on compassionate ground till 2.5.2013 when she will be completing 45 years of age. We, therefore, find that the petitioner's case deserves to be considered in terms of the Govt. Resolution dated 6.12.2010.

7. We, therefore, allow the petition and direct the Zilla Parishad to consider the claim of the petitioner for appointment on





compassionate ground by restoring her position in the waiting list as it stood prior to the order dated 24.5.2010 deleting her name from the list. The respondent-Zilla Parishad shall issue appointment order to the petitioner in accordance with the said Govt. Resolution and as per law. The same shall be done within six weeks from today.

8. Petition stands disposed of. Rule is made absolute, in aforesaid terms.

Sd/-  
(Sunil P. Deshmukh, J)

Sd/-  
(B.R. Gavai, J)"

Having reproduced the entire Paragraph from the order of the Hon'ble High Court, I do not think, I have to add anything of my own."

8. **Archana Badmanji, Sushma Gosain, Vinodkumar Chavan** relied upon in **Raikar's** case.

9. The foregoing would, therefore, make it very clear that the impugned orders are unsustainable and that the Applicant is entitled to be favourably considered to be appointed on compassionate ground as a result of the demise of his father. The orders herein impugned are, therefore, quashed and set aside. The Respondent No.3 is hereby directed to process the matter of the Applicant within a period of six weeks from today and since he was already at Serial No.1 and there is no other objection to his appointment, if he is fit to be appointed, he be appointed.



The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**07.08.2017**

07-08-17

Mumbai

Date : 07.08.2017

Dictation taken by :

S.K. Wamanse.

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