

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 806 OF 2016

DISTRICT: - NANDURBAR.

Ranjeeta Somnath Patil,
Age 29 years, Occu. Household,
R/o. Taloda,
Tq. Taloda, Dist. Nandurbar

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
Through its Principal Secretary,
Water Conservation Department
Mantralaya, Mumbai-32.
2. The Superintendent Engineer
Minor Irrigation, (Water Conservation)
Nashik, Trimbak Road,
Bhavani Chowk, Nashik.
3. The Assistant Executive Engineer
Minor Irrigation (Water Conservation)
Nashik, Trimbak Road,
Bhavani Chowk, Nashik.
4. The District Collector,
Office of District Collectorate,
(Compassionate Appointment Department)
Dhule, Dist. Dhule.
5. The Executive Engineer,
Minor Irrigation, (Water Conservation),
Department, Dhule,
Dist. Dhule..

.. RESPONDENTS

APPEARANCE : Shri Vinod P. Patil – learned
Advocate for the applicant.

: Shri I.S. Thorat – learned Presenting
Officer for the respondents.

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)

DATE : **31ST AUGUST, 2017.**

ORDER

1. By filing the present Original Application, the applicant has prayed to quash and set aside the communications dated 15.6.2016 and 23.6.2016 issued by the Assistant Executive Engineer, Minor Irrigation (Water Conservation) Department, Nashik deleting name of her mother and she herself from the waiting list to appoint on compassionate ground and also prayed to issue direction to the respondent authorities to consider her claim being married daughter of deceased Government employee viz. Somnath Patil, for appointment on compassionate ground.

2. One Shri. Somnath Tumba Patil (father of the applicant) was serving as a Driver in the office of Executive Engineer (Minor Irrigation), Dhule under Sub-Division Dhadgaon. He served for 25 to 27 years continuously. On 7.1.2010, he died due to the illness while in service. There was no earning member in the family of the deceased Somnath Tumba Patil, except him. After his death, mother of the applicant viz. Smt. Mangala Somnath Patil had filed an application with the respondents for giving her appointment on compassionate ground in Class-III or Class-IV cadre, as per her qualification. After scrutiny, the respondents included the name of the mother of the applicant in the waiting list of compassionate appointment and informed her vide communication dated 7.3.2011 and 11.8.2014. Mother of the applicant was waiting for her claim since 2010 for appointment on compassionate ground, but her name was not considered by the respondent authorities. Therefore, she approached the respondent authorities and requested them to consider the claim of the applicant, who is her daughter for appointment on compassionate ground, in

her place stating her inability to do work on medical reasons and health problems and because of her old age.

3. The respondents asked the applicant to comply with some formalities for appointment on compassionate ground. Accordingly, applicant had complied with formalities and submitted all the requisite documents. The applicant has also requested to the respondents to include her name in place of name of her mother viz. Smt. Mangala Somnath Patil, as her mother is unable to join service due to her health problem. The proposal was forwarded by the concerned authority for inclusion of her name in the list in place of name of her mother. Accordingly, her name was included in place of her mother's name. Thereafter, respondent No. 2 forwarded communication to the District Collector as well as Principal Secretary and sought guidance in respect of inclusion and exclusion of name of the applicant in the waiting list. The respondent No. 3 issued communication on 15.06.2016 to the mother of the applicant and informed that she had completed 45 years of age and,

therefore, her name is deleted from the waiting list. Thereafter, respondent No. 3 had issued communication dated 23.6.2016 to the applicant and intimated her that she cannot be considered for the appointment on compassionate ground because she is married daughter and her father is expired in the year 2010 and the Government Resolution dated 26.2.2013 has been passed in the year 2013 for considering the claim of the married daughter. They also informed her that there is no provision for changing the name of the person in the waiting list and, therefore, they informed her that her claim for including her name in the waiting list in place of her mother's name, cannot be considered. It is contention of the applicant that the decision taken by respondent No. 3 and communicated to her is not as per the provisions of Government Resolution and they are perverse to the provisions of Government Resolution.

4. It is her contention that the respondents had not considered the facts that her mother's name was included in the waiting list, but she could not get employment till

the year 2014. Therefore, she requested the respondent No. 3 to include her name as she is her married daughter and she is the only legal heir / person to take care of her mother & other family members. It is her contention that the respondent No. 3 has made haste in rejecting her claim. Therefore, she challenged the impugned communications dated 15.6.2016 and 23.6.2016 by filing the Original Application.

5. The respondents have filed their affidavit in reply and resisted the contention of the applicant. They have not disputed the fact that deceased Somnath Tumba Patil was working as a Driver on the basis of Converted Temporary Regular Basis Establishment w.e.f. 17.08.1984 and he died because of illness on 07.01.2010. They have contended that widow of deceased Somnath viz. Mangala Somnath Patil filed an application for giving her appointment on compassionate ground in the cadre of Class-IV as she passed 7th standard examination. She filed application on 4.8.2010. She had completed 40 years' of age. Therefore, respondent No. 5 informed her by

communication dated 18.11.2010 that she was not eligible to get appointment as she had crossed the age of 40 years, in view of the Government Resolution dated 22.08.2005.

6. It is their further contention that thereafter Smt. Mangala Somnath Patil had again filed application dated 03.02.2011, in view of the provisions of subsequent Government Resolution dated 06.12.2010 as the age limit has been extended to 45 years from 40 years. Respondent No. 5 forwarded the documents to respondent No. 2 by outward No. Est-1/1010/2011 dated 07.03.2011. Respondent No. 2 then included the name of the applicant Smt. Mangala Somnath Patil, in the waiting list for Class-IV post in view of the Government Resolution dated 06.12.2010 and forwarded the proposal to the District Collector, Dhule vide letter dated 13.04.2011 for including the name of Smt. Mangala Somnath Patil in the waiting list. As per the seniority list 10% candidates had been appointed as Class-IV employees on compassionate ground and, therefore, two candidates had been accommodated. The name of Smt. Mangala Somnath Patil

was at Sr. No. 5 and, therefore, she had not received appointment on compassionate ground.

7. Thereafter, she attained the age of 45 years on 31.05.2015. In view of the provisions of Government Resolution, as soon as the person attains the age of 45 years his or her name is automatically got deleted from the waiting list of the candidates eligible for the appointment on compassionate ground and, therefore, her name has been removed from the waiting list. The said fact was informed to her by the letter dated 23.06.2016. Meanwhile the mother of the applicant viz. Mangala Somnath Patil moved an application for replacing name of the applicant in her place. Accordingly, the name of the applicant was included in the waiting list on 30.07.2017, but thereafter the respondents realized their mistake that there was no such provision for change or replace the name of the legal heir of the deceased from the waiting list. It is their contention that the proposal for including the name of the applicant in the waiting list has been forwarded to the Government on humanitarian ground,

but no reply has been received from the Government. As there was no provision to replace the name of the legal heir from the waiting list, the applicant was informed accordingly by the communication dated 23.08.2016. It is their contention that they have acted as per the provisions of Government Resolution and there was no illegality in the decision taken by them and, therefore, they prayed to reject the Original Application.

8. Heard Shri Vinod P. Patil – learned Advocate for the applicant and Shri I.S. Thorat – learned Presenting Officer for the respondents. I have perused the affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record on behalf of both the sides.

9. Admittedly, Shri. Somnath Tumba Patil, was serving as a Driver on the establishment of Executive Engineer (Minor Irrigation), Dhule under Sub-Division Dhadgaon. He served for about 25 to 27 years continuously. On 7.1.2010, he died due to the illness while in service leaving behind the applicant viz. Ranjeeta Somnath Patil, his widow viz. Smt. Mangala Somnath Patil and one more

daughter Shrudha as his legal heirs. Admittedly, the applicant is married daughter of the deceased Somnath Patil. There is no dispute about the fact that after death of Somnath Patil his widow viz. Smt. Mangala S. Patil filed application dated 4.8.2010 with the respondents for giving employment on compassionate ground stating that she passed 7th standard examination and, therefore, she sought employment on Class-IV post. Her application was rejected by respondent No. 5 on the ground that she had already completed age of 40 years and she is not eligible for getting appointment in view of the Government Resolution dated 22.8.2005. Accordingly she was informed by the communication dated 18.11.2010. Admittedly, thereafter Government Resolution dated 6.12.2010 came to be issued. By the said Government Resolution the age for getting employment on compassionate ground has been extended to 45 years from 40 years. The applicant's mother Mangala then filed another application dated 3.2.2011 for getting appointment on compassionate ground in view of the Government Resolution dated 6.12.2010. Respondent No.

5 forwarded the application along with the documents to respondent No. 2 by letter dated 7.3.2011. Respondent No. 2 then included the name of Smt. Mangala Patil in the waiting list for Class-IV post and forwarded the said proposal to District Collector, Dhule vide letter dated 13.4.2011.

10. Admittedly, Smt. Mangala Patil had not received appointment till the year 2014 and the candidates, who were senior to her, had received appointment on compassionate ground. Admittedly, the name of Smt. Mangala Patil was at Sr. No. 5, but she could not be appointed as there were no vacancies. Admittedly, Smt. Mangala Patil had attained her age of 45 years on 31.5.2015. As she has completed 45 years of age, her name has been removed from the waiting list and she was informed accordingly by the communication dated 15.6.2016. It is not much disputed that on 7.12.2013 Smt. Mangala Patil, filed one application with the respondent No. 2 and requested to replace name of her daughter viz. Ranjeeta i.e. applicant in her place.

Admittedly, thereafter the applicant has filed another application with the same request and her mother Smt. Mangala Patil has given no objection to record her name in her place. Admittedly, respondent No. 5 included the name of the applicant in the waiting list on 3.7.2014 though there was no provision and when he realized the mistake he sought guidance from the Government in that regard whether the name should be continued or it should be deleted. Admittedly, no decision has been taken by the Government on the application. Admittedly, respondent No. 2 rejected the application of the applicant on 23.6.2016 on the ground that there is no provision to replace her name in place of her mother, whose name has been already maintained in the wait list.

11. Learned Advocate for the applicant has submitted that Smt. Mangala Patil, who is mother of the applicant, was suffering from various ailments. She was not able to do the work due to her ill-health. Therefore, she requested the respondents to replace name of the applicant in her place. He has submitted that the

applicant is a married daughter of deceased Shri Somnath and Smt. Mangala Patil and she is the only fit person to take care of her mother viz. Smt. Mangala Patil and her minor sister viz. Shrudha. He has submitted that in view of the G.R. dated 26.2.2013 the applicant is eligible to be appointed on compassionate ground. He has submitted that the applicant has completed necessary requirement and, therefore, her name has been included in the waiting list, but subsequently, her request has been rejected. He has submitted that the decision of the respondent No. 2 rejecting her application by communication dated 23.6.2016 is illegal and, therefore, he prayed to allow the present Original Application.

12. Learned Presenting Officer has submitted that the impugned communication dated 23.6.2016 issued by respondent No. 2 is as per the provisions of the Government Resolution. He has submitted that once name of legal heir of deceased employee is enlisted in the wait list then there is no provision to replace it by another heir of the deceased employee and, therefore, the

respondent No. 2 has rightly rejected the request of the applicant by communication dated 23.6.2016. He has submitted that on the date of death of deceased Somnath Patil on 7.1.2010, the G.R. dated 26.2.2013 was not in existence and, therefore, the applicant was not eligible to get employment on compassionate ground on that date and, therefore, no question of replacing the name of Smt. Mangala, arises. He has submitted that the respondent No. 2 has rightly rejected the application and, therefore, he prayed to reject the Original Application.

13. On going through the documents on record, it is crystal clear that the deceased employee Somnath died on 7.1.2010 leaving back his widow viz. Mangala Patil and two daughters viz. Ranjeeta S. Patil and Shrudha S. Patil. Smt. Mangala had filed application to get appointment on compassionate ground. Initially, her application was rejected as she has completed her age of 40 years. But thereafter, her name was included on her application in view of the subsequent G.R. dated 6.12.2010. Her name was at Sr. No. 5 in the wait list prepared by the

respondents. Only two candidates, who were senior to Smt. Mangala Patil as per the wait list maintained by the respondents received the appointment. Smt. Mangala Patil could not get the appointment till she completed the age of 45 years. On completion of 45 years, her name has been removed from wait list in view of the provisions of G.R. dated 22.08.2005. Meanwhile, Smt. Mangala Patil filed application for inserting name of the applicant in her place in the wait list on the basis of G.R. dated 26.2.2013. Initially, the name of the applicant was recorded in the wait list prepared by the respondents, but the respondents realized their mistake and they sought guidance from the Government in respect of inclusion and deletion of the name of the applicant in the waiting list, but they had not received any reply from the Government. Hence, respondents have issued the impugned order dated 23.6.2016 and informed the applicant that she cannot be accommodated as she is not eligible to get appointment on compassionate ground in view of the G.R. dated 26.2.2013, as there is no provision to replace the name of heir of the deceased employee, whose name has already

been enlisted in the waiting list. On going through the said GRs, it reveals that there is no such provision to replace the name of heir of the deceased which has been already recorded in the wait list. Therefore, the respondent No. 2 has rightly rejected the request of the applicant in that regard.

14. Moreover, G.R. dated 26.2.2013 provides that the married daughter must be sole child of the deceased employee or the family must be depending on the married daughter only. Only sole married daughter or the married daughter on whom the family of the deceased employee is depending is eligible to be appointed on compassionate ground after death of deceased Government employee. The applicant is not fulfilling the said requirement. Therefore, she cannot claim appointment on compassionate ground.

15. After death of Shri Somnath Patil, the name of his widow Smt. Mangala Patil has been entered in the waiting list prepared by the respondents and it continued till completion of her age of 45 years. Unfortunately, she

could not get appointment till completion of 45 years of age. Therefore, her name has been removed from the waiting list. Therefore, the applicant cannot seek employment on compassionate ground as name of her mother has already been included in the wait list and as there is no provision to replace the name of the heir of the deceased employee. Therefore, I do not find any fault in the communication dated 23.6.2016 issued by the respondent No. 2 in that regard. There is no illegality in the impugned communication. Therefore, no interference is called for in it. There is no merit in the present Original Application. Consequently, it deserves to be dismissed. Resultantly, the present O.A. stands dismissed with no order as to costs.

MEMBER (J)

O.A.NO.806-2016(SB)-HDD-2017-
Compassionate appointment