

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1015 OF 2017

DISTRICT :KOLHAPUR

Shri Deepak Bhikaji Kamble,)
Age :32 years, Occ.: Nil)
R/O. Dharangrast Vasahat, At Sadoli Dumala,)
Post Sawarde, Dumala Tal. Karvir,)
Dist. Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Water Resources Department, Having)
Office at 15th Floor, New Administrative)
Building, Hutatma Rajguru Chowk,)
Madam Cama Road, Mantralaya,)
Mumbai-400 032.)
2. The Superintendent Engineer,)
Kolhapur Irrigation Circle,)
Tarabai Park, Kolhapur-3.)
3. The Deputy Executive Engineer,)
Doodhganga Canal Division No.10,)
Tarabai Park, Kolhapur-3.)
4. The State of Maharashtra,)
Through Principal Secretary,)
General Administrative Department,)
Having office at Mantralaya,)
Mumbai-400 032.)...**Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

Smt. Kranti S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 29.01.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 22.06.2017 whereby his claim for appointment on compassionate ground stands rejected.

2. Uncontroverted facts for the disposal of the O.A. can be summarised as under:-

(A) The Applicant's father namely Bhikaji Kamble was serving on the post of Peon (Class-IV) on the establishment of Respondent No.3 –Deputy Executive Engineer, Doodhganga Canal Divison No.10, Kolhapur. He died in harness on 03.07.1996 leaving behind widow namely Smt. Shalan Kamble, Son Deepak-present Applicant and two more children.

(B) Smt. Shalan made an application for appointment on compassionate ground in place of her husband on 14.03.1997 (Page No.31 of PB).

(C) As there was no communication to Smt. Shalan for near about ten years, she again sent reminder on 12.12.2006 (Page No.32 of PB) wherein she had requested for appointment to her son-Deepak who had recently attained majority.

(D) Applicant-Deepak also independently made an application for appointment on compassionate ground on 11.01.2007 (Page No.34 of PB) and supplied all necessary documents.

(E) The matter for appointment to Applicant on compassionate ground was placed before the Secretary Level Committee in its meeting on 19.05.2017 to condone the day of three years, three months and ten months. However, Committee rejected the application stating that appointment on compassionate ground is not the matter of succession and much period from date of death of deceased is already over. With this reason, the Secretary Level Committee rejected the application.

3. On the above background, by communication dated 22.06.2017, it was communicated to the Applicant that his claim for appointment on compassionate ground is not acceptable. This order dated 22.06.2017 is challenged in the present O.A.

4. Shri Arvind v. Bandiwadekar, learned Counsel for the Applicant has pointed out that indeed the application made by widow on 14.03.1997 was misplaced by the department and no action was taken thereon to provide her employment or to take her name in the waiting list for the period of ten years. He, therefore, submits that as there was no communication about the claim

made by Smt. Shalan in respect of her application dated 14.03.1997. Smt. Shalan again made an application on 12.12.2006 whereby requesting to provide employment to her son Deepak who had attained majority in 2003. He has further pointed out that Shri Deepak again made an application on 11.01.2007. But he was asked to submit an application in prescribed format, in pursuance of which, he again made an application in prescribed format on 10.01.2008. However, when the matter was placed before Secretary Level Committee, it was rejected on the ground of delay, unmindful of the reality that the application of widow made on 14.03.1997 was itself lost by the department, and therefore, applicant cannot be blamed for delay.

5. Per contra, learned P.O. sought to justify the impugned order dated 22.06.2017 contending that though the Applicant had attained majority on 01.10.2003, he made an application for the first time on 11.01.2007 which was incomplete and later made an application in prescribed format on 10.01.2008. She, therefore, submits that the application made by Deepak being not made within one year from the date of attaining majority, the rejection cannot be faulted with.

6. Thus, admittedly widow of deceased had made an application for appointment on compassionate ground on 14.03.1997 i.e. within one year from the date of her husband. It is appalling to note that near about ten years, there was no communication of any nature to the Applicant in respect of her request for appointment on compassionate ground. Needless to mention that the object of compassionate appointment is to obviate the difficulties of the family, so that family of deceased could survive due to loss of sole earning member of the family. In this behalf, it would apposite to note the observations made by the Hon'ble Supreme Court **AIR 1989 SC 1976 (Smt.Sushma Gosain & Ors. V/s. Union of India)**, wherein 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.”

7. Thus, the Respondents were under obligation to process the application made by widow expeditiously and to take her name in the waiting list. However, regret to note that there is complete negligence on the part of concerned in processing the application made by widow on 14.03.1997. The record shows that the application dated 14.03.1997 itself was lost by the department. In this behalf, letter dated 31.12.2014 is self explanatory which is as follows:-

“३. दुधगंगा धरण विभाग, दुधगंगानगर या विभागांतर्गत कै.श्री.भिकाजी नाना कांबळे, शिपाई या पदावर कार्यरत असताना त्यांचे दि.०३.०७.१९९६ रोजी दुःखद निधन झालेले आहे.

४.त्यांच्या पत्नी श्रीमती शासन भिकाजी कांबळे यांनी दि.१४.०३.१९९७ रोजी अनुकंपा तत्वावर नोकरी मिळण्याबाबत साधा अर्ज दुधगंगा धरण उपविभाग, दुधगंगानगर या कार्यालयास दिलेला होता. सदर अर्ज उपविभागीय कार्यालयाने विभागास त्यांचे पत्र क्र.२९८, दि.२३.०३.१९९७ अन्वये विभागास पाठविला होता. त्यापुढील कार्यवाहीबाबतची कोणतीही कागदपत्र उपलब्ध असल्याचे दिसून येत नाही. त्यामुळे मागील प्रतिक्षा यादीवर त्यांचा नावांचा समावेश झाल्याचे दिसून येत नाही.

५.याबाबत संबंधित कालावधीमधील सदर प्रकरण हाताळणा-या अधिकारी/कर्मचारी यांची जबाबदारी निश्चित करण्याबाबतचा प्रस्ताव मागणी करण्यात आला आहे.

६.आता श्रीमती शासन भिकाजी कांबळे यांनी त्यांच्या नावाऐवजी त्यांच्या मुलाच्या नावाचा (दिपक भिकाजी कांबळे) समावेश होण्याबाबतचा प्रस्ताव सादर केलेला आहे.

तरी कृपया विषयांकित प्रकरण श्रीमती शासन भिकाजी कांबळे यांच्या दि.१४.०३.१९९७ रोजीच्या विनंती अर्जाच्या अनुषंगाने त्यांचा मुलगा श्री.दिपक भिकाजी कांबळे याच्या नावाचा चालू प्रतिक्षायदीवर समावेश करावा किंवा कसे? याबाबत कृपया शासन स्तरावरून मार्गदर्शन/आदेश प्राप्त व्हावेत, ही विनंती.’’

8. It is thus obvious that application made by widow on 14.03.1997 itself was lost by the department, and therefore, now they cannot take technical plea of limitation in respect of the claim made by the Applicant. Indeed, when application dated 14.03.1997 was lost by the department, it was expected that the Respondents on their own should have accepted the mistake and should have considered the application made by Applicant in proper prospective. However, the Respondents have rejected the application made by Applicant on

the ground of delay by adopting hyper technical approach forgetting that department itself is responsible for creating this chaotic situation and delaying appointment either to widow or her son Deepak.

9. As Application made by widow on 14.03.1997 was lost and there was no communication to her for ten years, she was constrained to send one more application on 12.12.2006 (Page 32 of PB) wherein she had requested to consider the name of her son Deepak for appointment on compassionate ground. Along with an application, she had submitted all necessary documents. However, here again the department was too rigid for technical compliance and asked Deepak to make application in prescribed format. In pursuance to it Deepak again made an application in prescribed format on 10.01.2008. The Respondents are counting limitation till 10.01.2008 and raised the plea of limitation which is totally unsustainable in facts and circumstances of the case.

10. Date of birth of Applicant is 01.10.1985. He attained 18 years of age on 01.10.2003. Material to note that his mother Smt. Shalan made an application on 12.12.2006 requesting to provide appointment to her son because of no communication to her in respect of application dated 14.03.1997. Thus, application made by widow on 12.12.2006 itself ought to have been considered as an application of the Applicant Deepak for appointment on compassionate ground. True, as Applicant had become major on 01.10.2003, he was required to make an application on or before 01.10.2004. Whereas, his mother made an application for Deepak on 12.12.2006. As such, it was delayed by two years and two months which should have been considered sympathetically by the Respondents but no such action was taken on application made by widow on 12.12.2006.

11. The Applicant, therefore, again made an application on 11.01.2007 which was handwritten application supported by requisite documents. However, he was again asked to submit an application in prescribed format and accordingly, he made an application in prescribed format on 10.01.2008.

In such situation, it cannot be said that Applicant is guilty of negligence or lapses much less to deny the appointment on compassionate ground having regard to aim and object of the scheme.

12. It is really appalling to note that when the matter was placed before the Secretary Level Committee headed by Chief Secretary, it mechanically rejected the application on the ground of delay stating that much period from the date of death of the employee is over. The Committee referred to decision of Hon'ble Supreme Court and recorded the decision as follows:-

“ अनुकंपा तत्वावर नियुक्ती हा वारसा हक्क होत नाही तसेच अनुकंपा नियुक्ती ही विशिष्ट कालावधिनंतर अनुज्ञेय ठरत नाही. याबाबतचा निर्णय मा.सर्वोच्च न्यायालयाने दिलेला आहे. कै.भिकाजी नाना कांबळे (शिपाई) हयांच्या निधनास २० वर्षांपेक्षा जास्त कालावधि झालेला आहे ही बाब विचारात घेता प्रस्तुत प्रकरणी श्री.दिपक कांबळे यांना अनुकंपा नियुक्तीसाठी विहित नमून्यात अर्ज सदर करण्यास झालेला विलंब क्षमापित करून त्यांचे नाव अनुकंपा नियुक्तीच्या प्रतीक्षासुचीवर घेण्याबाबतच्या प्रस्तावास शिफारस न करण्याबाबतचा निर्णय समितीने घेतला आहे.”

Indeed, perusal of file tendered by learned P.O. reveals that detail note was placed before the Secretary Level Committee making it clear that the application made by widow dated 14.03.1997 was misplaced by the department itself and recommendation was made to condone the delay in making application by the son of widow i.e present Applicant. However, regret to note that Committee completely ignored the factual background and mechanically rejected the application adopting hyper technical approach. The Committee was expected to see that department itself was responsible for pitiable condition of the Applicant because of loss of misplacing application made by widow. The Department itself was responsible for the same. Insofar as lapse of period in between date of death of the deceased employee and appointment is concerned, only because the period of eleven years was over that itself could not have been the ground to reject the claim made by Applicant particularly when the negligence as well as inaction on the part of department was writ at large in view of loss of original application dated 14.03.1997 made by widow. It would be apposite to take note of the judgment of the Hon'ble Supreme Court in **2018 (4)SLR 771 (Supriya Patil V/s State of Maharashtra)** wherein the

Hon'ble Supreme Court had observed that only because family had managed to survive for ten years, it cannot be assumed that there was no immediate necessity of job and it cannot be reason for rejection. Suffice to say, the decision of Secretary Level Committee is totally erroneous and unsustainable in law.

13. Apart, perusal of the minutes of the Committee (page no.38 to 45, 71 to 75) reveals that in some matters delay up to six years has been condoned. Whereas, in the matter of Applicant, he was subjected to discrimination and delay which is in fact of two years and two months was not condoned.

14. Significantly, there is no reference of the claim made by widow through application dated 14.03.1997 in the impugned order dated 22.06.2017, as if no such application was made by Smt. Shalan. It appears from the letter dated 31.12.2014 (Page 49 of PB) that some administrative/departmental action was initiated to fix responsibility of the employee/official for loss of application dated 14.03.1997 made by Smt. Shalan. However, no further step in this regard was taken to fix the responsibility about loss of record. Be that as it may, the Respondents ought to have considered this aspect while considering the application made by the Applicant that department itself is responsible for the delay, negligence and lethargy. However regretfully, Respondents adopted hyper technical approach and rejected the application on the point of delay summarily without taking into consideration the antecedents of the matter.

15. The totality of the aforesaid decision leads me to conclude that the impugned order dated 22.06.2017 is arbitrary and not at all sustainable in law and facts and deserves to be quashed.

16. In view of obvious and culpable negligence on the part of department to process the application made by widow on 14.03.1997 and inaction for near about ten years some cost needs to be imposed while allowing the present application. It is because of carelessness on the part of concerned officials to maintain the record properly the mother of Applicant was deprived of

appointment on compassionate ground. The Applicant has been constrained to knock the doors of law. I am, therefore, inclined to allow O.A. with cost of Rs.10,000/-. Hence the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 22.06.2017 is quashed and set aside.
- (C) Respondents are directed to consider the application of the Applicant for appointment on compassionate ground and his name be included in the waiting list for issuance of appointment order subject to fulfilment of eligibility criteria in accordance to rules.
- (D) This exercise be completed within two months from today.
- (E) No order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J

Place :Mumbai

Date : 29.01.2020

Dictation taken by : VSM

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