

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.1116 OF 2018**

**DISTRICT : OSMANABAD**

Sheetal Shivaji Dudhbhate, )  
Age 27 years, occ. Household, R/o Gulhalli, )  
Post Shahapur, Tq. Tuljapur, District Osmanabad )..Applicant

Versus

1. The State of Maharashtra, )  
Through its Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )
2. The Collector, )  
Mumbai Suburban District, )  
Administration Department, 10<sup>th</sup> Floor, )  
Bandra (E), Mumbai )..Respondents

Shri M.D. Giri – Advocate for the Applicant

Shri S.D. Dole – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

DATE : 5<sup>th</sup> September, 2019

## J U D G M E N T

1. Heard Shri M.D. Giri, learned Advocate for the Applicant and Shri S.D. Dole, learned Presenting Officer for the Respondents.

2. Father of the applicant died on 6.5.2006 in harness while working as Driver in the office of respondent no.2. The name of son of the deceased Driver was taken on waiting list for compassionate appointment. However, on 6.11.2010 he died in an accident. The respondent no.2 submitted a proposal to take the name of daughter of the deceased Driver on waiting list. Respondent no.1 has informed respondent no.2 by letter dated 16.10.2017 (Annexure J page 33 of OA) that name of the substitute is not admissible since the provisions of GR issued on 20.5.2015 are not available retrospectively. Following the same, respondent no.2 cancelled the name of applicant from the waiting list and informed the applicant accordingly by impugned order dated 8.1.2018 (Annexure I page 32 of OA). The GR issued on 20.5.2015 reads as under:

“क) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नांव आनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्रवारसदारांचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नांव बदलण्याची तरतूद साध्याच्या धोरणात नाही.

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

(Quoted from page 35-36 of OA)

3. The applicant has prayed that the impugned order may be quashed and set aside and include name of the applicant in waiting list for compassionate appointment (prayer clause 8(b) page 8 of OA).

4. The Ld. Advocate for the applicant submits that the applicant has no other source of living and looking at his economic situation his prayer may be considered favourably.

5. Ld. Advocate for the applicant relies on the order passed by this Tribunal on 19.8.2019 in OA No.897 of 2018 and on 20.8.2019 in OA No.440 of 2018. He further submits that the applicant may be considered in view of the following judgments given by the Hon'ble Supreme Court and Hon'ble High Court:

(i) *Supriya Suresh Patil @ Sow Supriya Pratik Kadam Vs. State of Maharashtra & Ors., Civil Appeal No.5216 of 2018 decided by the Hon'ble Supreme Court on 12.5.2018.*

(ii) *Smt. Sushma Gosain & Ors. Vs. Union of India, AIR 1989 SC 1976.*

(iii) *W.P. No.8771 of 2015 Shri Dhulaji Shrimant Kharat Vs. State of Maharashtra & Ors. decided by the Hon'ble Bombay High Court on 12.12.2018.*

(iv) *W.P. No.13932 of 2017 State of Maharashtra & Ors. Vs. Smt. Anusaya V. More & Anr. decided by the Hon'ble Bombay High Court on 18.7.2018.*

6. The respondent no.2 has filed affidavit and contested the submissions made by the applicant. The relevant portion of the same reads as under:

*“13. With reference to contents of para no.4(VIII), I say that the Under Secretary, GAD vide letter dated 16.10.2017 communicated to respondent no.2 that the provisions in the GR dated 20.5.2015 will be applicable from the date of issuance of the GR and they cannot be made applicable retrospectively. Therefore, the name of the applicant Sheetal Shivaji Dudhbhate cannot be included in the waiting list for appointment on compassionate ground.*

(Quoted from page 48-49 of OA)

7. In view of the settled legal provisions referred above, the Hon'ble Supreme Court and Hon'ble High Court as well as this Tribunal has directed the respondents to consider the name of the substitute in case of death of the person whose name has been included in the waiting list for compassionate appointment because of peculiar circumstances. The relevant judgments are as under:

(i) *Supriya Suresh Patil @ Sow Supriya Pratik Kadam Vs. State of Maharashtra & Ors., Civil Appeal No.5216 of 2018 decided by the Hon'ble Supreme Court on 12.5.2018.*

(ii) *Smt. Sushma Gosain & Ors. Vs. Union of India, AIR 1989 SC 1976.*

(iii) *W.P. No.8771 of 2015 Shri Dhulaji Shrimant Kharat Vs. State of Maharashtra & Ors. decided by the Hon'ble Bombay High Court on 12.12.2018.*

(iv) *W.P. No.13932 of 2017 State of Maharashtra & Ors. Vs. Smt. Anusaya V. More & Anr. decided by the Hon'ble Bombay High Court on 18.7.2018.*

8. In view of the above, prayer clause 8(b) is partly conceded. The respondent no.2 is directed to consider name of the applicant in waiting

list from the date of issue of this order within a period of four weeks. OA is disposed off with the above directions. No order as to costs.

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**5.9.2019**

Dictation taken by: S.G. Jawalkar.

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