

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.9 OF 2018**

DISTRICT : KOLHAPUR

1. Shri Vijay Ganpati Lakade,)
Age 23 years, occ. Nil, R/o At Muslewadi,)
Post: Shirgaon, Tal. Radhanagari, Dist. Kolhapur)

2. Shri Ravindra Ganpati Lakade,)
Age 23 years, occ. Nil, R/o At Muslewadi,)
Post: Shirgaon, Tal. Radhanagari, Dist. Kolhapur)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary, Irrigation Department,)
Mantralaya, Mumbai 400032)

2. The Superintending Engineer,)
Mechanical Circle (Right Canal), Warana Bhavan)
Tarabai Park, Kolhapur-3)

3. The Executive Engineer,)
Chief Gate Erection Unit No.3, Pune-37)..Respondents

Shri R.M. Kolge – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 5th August, 2019
PRONOUNCED ON : 8th August, 2019

J U D G M E N T

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts:

2. This is a case for compassionate appointment in place of his father who died in harness while working as Helper in Group D on 23.2.2003. The name of his mother was included in the waiting list by the respondents. On 30.7.2010 her name was deleted since she completed the age of 40 years as per the GR dated 23.4.2008. Accordingly, on 30.7.2010 she was informed that there is no provision to include the name of any other family member in place of a person whose name has been deleted since she has completed 40 years (page 32 of OA). The same was reiterated on 28.6.2016 (page 34 of OA) and on 20.10.2016 rejecting his representation (page 38-39 of OA).

Submissions by the Applicant:

3. The applicant has prayed to quash the impugned orders and include his name in the waiting list. The Ld. Advocate for the applicant has relied on the following judgments:

(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. The relevant portion reads as under:

“3. We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment.”

(ii) Smt. Sushma Gosain & Ors. Vs. Union of India, AIR 1989 SC 1976. The relevant portion reads as under:

“8. We heard counsel on both sides and gave our anxious consideration to the Problem presented. It seems to us that the High Court has made the order in a mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid Government Memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.

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.

(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 wherein the substitution was permitted because his representation was rejected on the ground that the petitioner did not apply within one year from the date of his attaining majority (para 7).

(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 by which the Hon'ble High Court permitted substitution in place of mother by son of the deceased.

(v) OA No.427/2016 Shri Aniket Suresh Gaikwad Vs. State & OA No.509/2018 Shri Prasad Sunil Kumbhar Vs. State decided by this Tribunal on 21.1.2019. The relevant portion reads as under:

“27. It is thus quite clear that the consistent view has been taken by this Tribunal in various OAs, some of which are referred to above, that having regard to the spirit and object of the scheme of providing employment to the heir of deceased employee on compassionate ground, so as to mitigate and obviate the difficulties faced by the family of the deceased due to loss of the only bread earner of the family, the State/employer is under obligation to consider the application for substitution in proper perspective, and accordingly,

directions were issued to consider the application for substitution and inclusion of the same in waiting list.”

(vi) OA No.1126 of 2017 Shri Siddhesh N. Jagde Vs. Government of Maharashtra & Ors. decided by this Tribunal on 4.6.2018. Relevant portion reads as under:

“8. Considering the ratio of aforesaid decisions and the facts that the petitioner is in dire need of compassionate appointment as the father as well as the mother of the petitioner expired and there is no other person to look after other siblings, the respondents are directed to consider the request made by the petitioner for inclusion of his name in the list maintained for compassionate appointment.”

(vii) OA No.503/2015 Shri Piyush Mohan Shinde Vs. The State of Maharashtra & Ors. decided by this Tribunal on 5.4.2016. The relevant portion reads as under:

“17. In Writ Petition No.7793/2009 Vinodkumar K. Chavan Vs. State of Maharashtra, dated 9th December, 2009 also, the facts were that after the demise of a Class IV employee, his widow made an application for appointment on compassionate ground. Correspondence took place. After a few years, she made an application requesting for substitution for the name of her son. She was informed that her name had already been deleted because she had crossed the age of 40 years which was the cut-off at that point of time, and therefore, her request could not be considered. Their Lordships, however, directed that her request be considered and made a clear observation that the request of the lady could not have been rejected.”

(Quoted from page 57-58 of OA)

(viii) OA No.432/2013 Shivprasad Umakant Wadnere Vs. The State of Maharashtra & Ors. decided by this Tribunal at Aurangabad Bench on 1.12.2014. In this case the Tribunal had observed that as the mother of the applicant has become ineligible since she reached the age of 40 years her application was not maintainable ab initio and hence application of the son cannot be deemed to be substitution in place of his mother. The Tribunal observed in para 8 that, "The respondents, in our view, have clearly erred in holding that the applicant's case for compassionate appointment is not tenable as it amounts to substitution."

4. In addition the Ld. Advocate for the applicant has relied on the following judgments:

(i) OA No.645 of 2017 Shri Manoj Ashok Damale Vs. The State of Maharashtra & Anr. decided by this Tribunal on 2.4.2019.

(ii) OA No.370/2017 Smt. Vanita Popat Shitole & Anr. Vs. State of Maharashtra & Ors. decided by this Tribunal on 7.8.2017.

(iii) OA No.636/2016 Mr. Sagar Baliram Raikar Vs. The State of Maharashtra & Ors. decided by this Tribunal on 21.3.2017.

(iv) OA No.239/2016 Swati P. Khatavkar & Anr. Vs. The State of Maharashtra & Anr. decided by this Tribunal on 21.10.2016.

(v) OA No.21 of 2013 Smt. Archana Ramkrishna Badmanji & Anr. Vs. The State of Maharashtra & Ors. decided by this Tribunal on 20.8.2014.

(vi) OA No.184/2005 Smt. Nirmala Bharat Doijad Vs. The State of Maharashtra & Ors. decided by the Aurangabad Bench of this Tribunal on 3.5.2006.

Ld. Advocate for the applicant submits, there is dire need for the applicant to have appointment as there is no other alternative to survive.

Submissions by the Respondents:

5. The respondents have filed affidavit in reply and contested the claim of the applicant. Differing with the earlier judgments the respondents have submitted, “there was no delay in keeping his mother on waiting list for appointment on compassionate ground”. The name of the mother was maintained in the seniority list but excluded on 23.6.2008. There is no provision in GR for substituting once deleted name to be restored. Para 6(i) of the reply reads as under:

“6(i) I submit to Hon’ble Tribunal that there is a similar case i.e. OA No.381 of 2017 Amanulla Mahaldar Vs. State of Maharashtra & Ors. in which Hon’ble Tribunal of Mumbai has dismissed the applicants (Amanulla Mahaldar) claim of considering his application for taking his name on behalf of his mother for compassionate appointment.”

(Quoted from page 67 of OA)

6. The respondents have relied on the following judgments:

(i) OA No.35 of 2019 Shri Yogesh Laxman Dharavane Vs. The State of Maharashtra & Ors. decided by this Tribunal on 17.7.2019 wherein it is held that GR does not approve substitution in place of the person who has completed prescribed age limit for compassionate appointment.

(ii) OA No.381 of 2017 Shri Amanulla S. Mahaldar Vs. The State of Maharashtra & Ors., decided by this Tribunal on 6.11.2017.

Both these judgments mention, as per provisions of GR, substitution in the waiting list is not permissible.

7. Issue for determination:

(i) Whether the name of the substitute is permissible in place of name of the mother who is removed from the waiting list because of completion of prescribed age limit, when there are peculiar circumstances?

The reply is affirmative on following grounds.

Discussion and findings:

8. The government servant, father of the applicant, died in 2003 and name of the mother of the applicant was included in the waiting list for appointment. Her son completed age of 18 years on 9.9.2006. On 23.6.2008 name of the mother was excluded from the waiting list as she completed age of 40 years. On 2.7.2010 mother requested to include the name of her second son as substitute because of the economic difficulties. The representation was rejected on 30.7.2010 as per GR dated 23.4.2008.

9. As per the settled legal provisions the purpose of compassionate appointment is to mitigate the sufferings of the family of the deceased. In the present case the government employee died in 2003 and the name of the widow was included in waiting list, but deleted as per the GR on completion of 40 years of age in 2008. She applied for substitution. As the substitution in place of deleted name was not permissible as per the

existing GR and provisions of the GR, her request was rejected. Various judgments cited by the applicant have peculiar circumstances and to mitigate the sufferings; various courts have given orders permitting substitution.

10. In view of the foregoing, the respondents are directed to consider the name of the applicant for compassionate appointment at appropriate place in the waiting list after satisfying through enquiry that the applicant and family of the deceased have no other source of living and are surviving in extreme economic hardships. The impugned orders are quashed and set aside. This order should be complied in two months from the date of receipt.

11. With the above directions the Original Application is partly allowed in terms of relief sought in prayer clause 9(a). No order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
8.8.2019

Dictation taken by: S.G. Jawalkar.