

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
REVIEW APPLICATION NO. 13 OF 2019
IN
ORIGINAL APPLICATION NO 35 OF 2019**

DISTRICT : THANE

Shri Yogesh Laxman Dharavane,)
Occupation : Farmer,)
Residence at : Khaire, Post-Shenave,)
Tal-Shahapur, Dist-Thane.)...**Applicant**

Versus

1. The Superintending Engineer,)
Thane Irrigation Circle, Sinchan)
Bhavan, 3rd floor, Kopri Colony,)
Thane [E] 400 603.)
2. The Executive Engineer,)
Bhatsa Dam Department no. 1,)
Bhatsanagar, Tal-Shahapur,)
Dist-Thane.)
3. The Principal Secretary,)
Maharashtra State,)
Water Resources Department,)
Mantralaya, Mumbai.)
4. The Addl. Chief Secretary,)
Maharashtra State,)
General Administration Dept,)
Mantralaya, Mumbai.)...**Respondents**

Shri U.V Bhosle, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

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

DATE : **18.12.2019**

ORDER

1. Heard Shri U.V Bhosle, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. In this Review Application, the applicant has made following prayers:-

“13(a) The judgment and order dated 17th July, 2019 may kindly be reviewed and the Review Application may kindly be allowed.

(b) The Respondents may kindly be directed to include the name of the applicant in wait-list effective from the date of his application, i.e. 29.1.2009 and be further pleased to direct the Respondents to consider his name and pass necessary order to appoint the Applicant to a Group ‘C’ post.”

(Quoted from page 13 & 14 of R.A)

3. By this Review Application, the applicant has prayed to modify the judgment in O.A 35/2019 dated 17.7.2019. As there is no provision for including the name of another heir in the waiting list in the G.R dated 20.5.2015 after deleting the name of one dependent in the waiting list, the prayer by the applicant to include his name was rejected.

4. The applicant admits that the G.R does not have any provisions to replace the name of his mother which was rejected as she became over aged. He has relied on two judgments of this Tribunal. These are as under:-

“i) O.A 239/2016 decided on 21.10.2016. Swati P. Khatavkar & Anr Vs. The State of Maharashtra & Anr. (Pages 33 to 40 of the O.A)

Para 6 of the judgment reads as under:-

“6. In my view, it will be erroneous to contend that the G.R of 20.5.2015 places difficulty and it is not as if unless enlisted heir was to die another heir cannot be enlisted. In my view, the said G.R in that behalf incorporates only an enabling provision to take care of a particular contingency, i.e. death. It is, therefore, very clear from the foregoing that the issue involved herein as already mentioned above is fully governed by the above referred cases and the respondents will have to act in accordance with that. I reject their case that so called substitution is impermissible and I hold that the applicant No. 2’s name will have to be enlisted in place of the applicant no. 1 and consider him for appointment on compassionate ground.”

- (ii) O.A 427/2016 : Aniket S. Gaikwad & Anr Vs. State of Maharashtra & O.A 509/2018 : Prasad Sunil Kumbhar Vs. State of Maharashtra. Both decided on 21.1.2019 (pages 106 to 120 of the O.A).

Para 27 of the said judgment reads as under:-

“27. It is thus quite clear that the consistent view has been taken by this Tribunal in various O.As, some of which are referred to above, that having regard to the spirit and object of providing employment to the heir of deceased employees 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, direction were issued to consider the application for substitution and inclusion of the same in waiting list.”
(Quoted from pages 3 & 4 of the R.A)

5. The applicant has also relied on other judgments which are as under:-

- “i) AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors Vs. Union of India), paras 8 & 9 of the said judgment 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.*

(ii) Writ Petition No. 13932/2017 (State of Maharashtra & Ors Vs. Smt Anusaya V More & Anr.

In this matter, the Hon. Bombay High Court has confirmed the order of the Hon. Maharashtra Administrative Tribunal passed on 24.20.2016 in O.A 604/2016 and has allowed the substitution in place of mother by son of the deceased.

(iii) O.A 432/2013 (Shivprasad U. Wadnere, Vs. State of Maharashtra & 2 ors) decided on 1.12.2014.

“8. *Having heard the arguments on both sides and after going through the record, we find that it is undisputed that vide G.R dated 22.8.2005, a candidate once he/she reaches the age of 40 years become ineligible for appointment on compassionate ground and the name of such a candidate is required to be deleted from the wait list. It is undisputed that applicant’s mother had already reached the age of 40 years when she had applied on 14.10.2005. For this reason, being ineligible, the respondent no. 2 should not at all have accepted or entertained her application for compassionate appointment. Thus, as the mother’s application was ab-initio non-maintainable, the application of the son for the compassionate appointment cannot be deemed to be substitution in place of mother. 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. We, therefore, hold that the impugned order dated 31.5.2013 had no legal basis and is required to be struck down."

(iv) O.A 184/2005 (Smt Nirmala Doijad Vs. State of Maharashtra) decided on 3.5.2006.

In this matter, while allowing the substitution, the Hon. Tribunal has inter alia held as under at para 9 of the judgment:-

"It is true that there is no provision, which would empower the respondents to change the name of the candidates whose name appears in the waiting list. When there is no rule in existence, a judicious view will have to be taken in such matters."

(Quoted from pages 5, 6 & 7 of R.A)

6. The applicant further points that the judgment relied upon in O.A has not yet reached finality. He, therefore, states as under:-

"6. The applicant submits that at para 6 of the judgment dated 17.7.2019 in the present O.A, the Respondents have relied on the judgment viz. O.A no. 381/2017 (Mr. Amanulla S. Mahaldar Vs. State of Maharashtra & Ors) decided on 6.11.2017. (Copy of the judgment is annexed hereto and marked as Exhibit A-5). The Applicant humbly states that this judgment was not tendered in the Court at the time of final hearing, but was subsequently submitted by the Respondents. Hence the Applicant did not get an opportunity to argue on this judgment. It is significant to note that the same judgment was tendered in the No. 427/2016 and O.A no 509/2018. This Hon'ble Tribunal has observed as follows at Para 19 of the judgment dated 21.2.2019 in O.A no. 427/2016 and O.A no. 509/2018 (Page 115 of the O.A).

"19. Per contra, the learned P.O referred to the decision of this Tribunal rendered in O.A no. 381/2017 (Mr. Amanulla S. Mahaldar Vs. The State of Maharashtra & Ors) decided on 6.11.2017. In this matter, the application of the applicant

was rejected by this Tribunal as it was the second round of litigation. In first round of litigation, the directions were given to the Respondents to consider the name of the Applicant for inclusion of the name in waiting list by way of substitution. However, the said application was rejected by the Respondents and it was again challenged before the Tribunal. In so far as this judgment is concerned, it was second round of litigation. Furthermore, the said judgment has not attained the finality and it is challenged before the Hon. High Court. Therefore, this judgment in O.A 381/2017 is of little assistance to the Respondents.”

(Quoted from paged 10 & 11 of R.A)

7. According to the applicant, the decision in O.A 381/2017 by this Tribunal is under challenge before the Hon'ble High Court in W.P 13889/2017.

8. The Respondents have filed their affidavit in reply. According to the Respondents, the judgment is as per the provisions of the G.R dated 20.5.2015 and in the event of death of the first applicant, name of the second legal heir can be substituted. However, there is no provision in the G.R dated 21.9.2017 to substitute the name of first applicant. According to the Respondents there is no factual error or legal error in the judgment and therefore, the Review Application needs to be rejected.

9. I have examined the provisions of the G.R dated 21.9.2017. As per the G.R there is no provision to substitute the name of first applicant, in case the same is rejected on the ground of over age. However, the judgments delivered by this Tribunal as well as by the Hon. High Court have upheld replacement of the name of the first heir in the waiting list in view of the peculiar circumstances of the case.

10. The main criteria for compassionate appointment is to meet the hardships of the legal heir as the heir has claimed to be in indigent situation. The present applicant submitted an extract of his economic

resources at Exh. A-10, page 143. According to the same, along with 11 others, he has 3.87 hectares of farm land on which he has to depend and finds it very difficult. Secondly, as per the various judgments, substitution of heir has been allowed to meet peculiar circumstances.

11. In view of the above, and for the reasons and circumstances stated above, the judgment dated 17.7.2019 in O.A 35/2019 is modified as under:-

(a) The Respondents are directed to include the name of the applicant as per rules in the waiting list within a period of eight weeks, from this order;.

(b) Inform the applicant accordingly within a period of two weeks thereafter.

12. The Review Application is therefore allowed and the prayer at para 13(a) & (b) succeeds. No order as to costs.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Place : Mumbai
Date : 18.12.2019
Dictation taken by : A.K. Nair.