

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**DISTRICT-PARBHANI**

**ORIGINAL APPLICATION NO.641/2012**

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Smt. Pratima w/o Pradip Dahale,  
Age : 42 years, Occ : Nil,  
R/o. C-25, Bhagyanagar,  
Shikshak Colony, Behind Vithal Temple,  
Koregaon Road, Parbhani,  
Dist. Parbhani.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,  
Through its Secretary,  
Water Conservation Department,  
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,  
Minor Irrigation (Local Sector),  
Maharashtra State, Pune.
- 3) The Superintending Engineer,  
Minor Irrigation (Local Sector),  
Circle Aurangabad, Aurangabad.
- 4) The Executive Engineer,  
Minor Irrigation (Local Sector),  
Division Jalna, Dist. Jalna.
- 5) The Sub Divisional Engineer,  
Minor Irrigation (Local Sector),  
Sub Division Parbhani,  
Dist. Parbhani.

...RESPONDENTS

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APPEARANCE : Shri Gajanan Kadam learned Advocate for  
the Applicant.

Shri I.S.Thorat, learned Presenting Officer  
for respondents.

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CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman and  
Hon'ble Shri J.D.Kulkarni, Member (J)  
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DATE: 15<sup>th</sup> December, 2016.  
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**O R D E R**

**[PER: VICE-CHAIRMAN]**

Heard Shri Gajanan Kadam learned Advocate for the Applicant and Shri I.S.Thorat, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant seeking restoration of her name in the waiting list meant for compassionate appointment in the original place, from where it was deleted.

3. This O.A. was earlier dismissed in default. The Applicant fled Misc. Application No.246 of 2013 which was dismissed by this Tribunal by order dated 24-11-2014. The Applicant filed Writ Petition No.7416 of 2015 in Hon'ble Bombay High Court (Aurangabad Bench) and by order dated 23-07-2015, this O.A. was restored on the file of this Tribunal.

4. Learned Advocate for the Applicant argued that the Applicant's husband was in Government service in a Group

'C' post, when he died on 14-11-2005. The Applicant applied to the Respondents for compassionate appointment on 25-09-2006. The Applicant was not given compassionate appointment in the recruitment drive of 2008. Though the Applicant made various representations to the Respondents seeking inclusion of her name in the waiting list, no reply was forthcoming. As the Applicant was not given compassionate appointment, she filed O.A.No.828 of 2011 before this Tribunal. This Tribunal disposed of the O.A. as pre-mature as no person junior to the Applicant from the waiting list was appointed. Learned Advocate for the Applicant contended that the Applicant's name was deleted from the list of candidates eligible for compassionate appointment as she completed age of 40 years on 21-08-2010. However, this was not brought to the notice of this Tribunal when the order in M.A.No.499/2011 in O.A.No.828/2011 was passed on 28-11-2011. As per G.R. dated 06-12-2010, the age for compassionate appointment is enhanced to 45 years. The Applicant's name should not have been deleted from the waiting list. Learned Counsel for the Applicant relied on the judgment of Hon'ble Bombay High Court (Aurangabad Bench) dated 28-02-2012 in Writ Petition No.7832 of 2011

and prayed that the Respondents may be directed to give compassionate appointment to the Applicant.

5. Learned Presenting Officer (PO) argued on behalf of the Respondents that the Applicant applied for compassionate appointment on 25-09-2006. As per G.R. dated 22-04-2008, those who were on the waiting list on or before 22-08-2005 were to be given compassionate appointment within 3 years upto 2010-11. The Applicant's case was not covered under that G.R. The Applicant's name remained on the waiting list and till she reached the age of 40 years on 21-08-2010, she could not be appointed. After she reached the age of 40 years, her name was deleted from the waiting list. Learned P.O. argued that the G.R. dated 06-12-2010, enhancing the age of compassionate appointment to 45 years is applicable from 06-10-2010, while the Applicant's name was removed from the list on 21-08-2010, before that date. She is, therefore, not eligible for any benefit under G.R. dated 06-12-2010.

6. We find that the Applicant had applied for compassionate appointment on 25-09-2006. As per G.R. dated 22-04-2008, all the persons on the list of eligible

candidates for compassionate appointment on or before 22-08-2005 were required to be given appointment within three years. However, the Applicant was not covered by G.R. dated 22-04-2008. The Applicant had filed O.A.No.828/2011 before this Tribunal. In paragraph 4 of the judgment dated 28-11-2011, this Tribunal had noted as below:

*“4. Thus, this is not a case wherein application of the applicant is rejected by the respondents. Applicant has not come with a case that someone below her in the waiting list is given appointment ahead of her. As at present it is also not case of the applicant that, her name is deleted from the waitlist.”*

7. From this, it is clear that the name of the Applicant was continued in the waiting list and no person junior to her in the waiting list was given compassionate appointment. However, it seems that the name of the Applicant was removed from the list with retrospective effect from 21-08-2010, when she reached the age of 40 years. The Respondents have claimed that she was not entitled to be continued in the waiting list by virtue of G.R. dated 06-12-2010, which enhanced the age for compassionate appointment to 45 years, as the G.R. was effective from 06-10-2010, and the

Applicant had already reached the age of 40 on 21-08-2010. However, Hon'ble High Court in Writ Petition No.7832 of 2011 has held that such persons are entitled to continue in the waiting list till they reach the age of 45 years. The Applicant was entitled to be in the waiting list till 21-08-2015.

8. We, therefore, direct the Respondents to restore the Applicant to the waiting list in the place from which her name was deleted. Her case may be examined till 21-08-2015 and if any person junior to her was given compassionate appointment in a Group 'C' post before that date, she should be given appointment from the same date, though she will not be eligible for any back wages. This should be done within a period of 3 months from the date of this order. This O.A. is allowed in these terms with no order as to costs.

**(J. D. Kulkarni)**  
**MEMBER (J)**

**(Rajiv Agarwal)**  
**Vice-Chairman**