

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.246/2017

DISTRICT: - NANDED

Deepak s/o. Laxmanrao Shere,
Age : 33 years, Occu. : Nil,
R/o. H.No.160, Near Mahatma Kabir Vidyalaya,
Works Shop Road, Sahayognagar,
Nanded-431 605.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.
- 2) The Executive Engineer,
Irrigation Department, Nanded,
Vishnu Bhawan, Near Jangamwadi,
Nanded.

...RESPONDENTS

APPEARANCE :Shri K.M.Nagarkar Advocate for Applicant
:Shri V.R.Bhumkar Presenting Officer for
respondent no.1.
:Shri Shamsundar B. Patil Advocate for
respondent no.2.

CORAM : B. P. Patil, Member (J)

DATE : 26th June, 2018

J U D G M E N T
[Delivered on 26th day of June 2018]

1. The applicant has challenged the communication dated 27-04-2016 issued by respondent no.2, Executive Engineer, Irrigation Department, Nanded rejecting the claim of the applicant for appointment on compassionate ground in place of his mother by filing the present O.A.

2. Deceased Laxman Mariba Shere was father of the applicant. He was serving as Clerk in the office of respondent no.2. He died on 28-09-1992. After his death, his widow Tulsabai filed an application on 10-08-1993 with respondent no.2 to appoint her on compassionate ground on the post of Peon. Respondent no.2 communicated her by letter dated 04-09-1993 that her claim will be considered for appointment on the post of Peon. It is further contention of the applicant that on 10-01-2009 mother of the applicant, namely, Tulsabai filed application with respondent no.2 and thereby requested to appoint the applicant on compassionate ground on the post of Clerk in place of her, since the applicant became major and eligible. It is contention of the applicant that after death of Laxman Shere there was no fit person to take care of his family

members and there was no earning member in the family. His family members are facing starvation. It is contention of the applicant that on 27-04-2016 respondent no.2 issued communication and informed the applicant that his mother Tulsabai has crossed age of 40 years, and therefore, her name cannot be maintained in the waiting list and his name cannot be recorded in the waiting list in place of his mother in view of the G.R. dated 22-08-2005 as there is no provision in that regard. It is contention of the applicant that said decision of the respondent no.2 is against the provisions of G.R. and Government policy. Therefore, he challenged said communication by filing the present O.A.

3. Respondent no.2 filed affidavit in reply and resisted contention of the applicant. It is his contention that the applicant has suppressed material facts and filed the false application. It is his contention that deceased Laxman was working as Pump Operator on Converted Regular Temporary Establishment (CRTE) w.e.f. 14-02-1974 to 30-06-1986 under Executive Engineer, Minor Irrigation Division, Nanded. It is his contention that as per record by an order dated 17-06-1986, Executive Engineer, Minor Irrigation Division, Nanded terminated

services of Laxman Shere from CRTE w.e.f. 30-06-1986 and he has been paid compensation as per Government rate then prevailing and as per Section 25-F(a) of the Industrial Disputes Act, 1947, six months' salary at the rate of 15 days' emoluments for every year had been paid to Laxman Mariba Shere vide office order dated 18-06-1986 of the Executive Engineer, Nanded Minor Irrigation Division, Nanded.

4. It is contention of the respondent no.2 that widow of Laxman Shere, namely Smt. Tulsabai Laxman Shere had made several representations to the State Government and claimed ex-post sanction to the so called leave of Laxman Shere from 01-05-1985 to 30-06-1986, to give appointment to her (Tulsabai) on compassionate ground, to grant family pension, to pay amount of GIS, and to make payment of salary from 01-02-1987 to 31-08-1987. Superintending Engineer, Nanded Irrigation Circle, Nanded by letter dated 05-04-1995 informed her that deceased Laxman was removed from service by way of punishment and has been paid compensation as per Section 25 of the Industrial Disputes Act, and therefore, no question of giving family pension to Smt. Tulsabai arises. It is further informed to

Smt. Tulsabai that as the deceased Laxman had died after removal from service, appointment on compassionate basis cannot be given to his family members. It is further informed to her that extraordinary leave (leave without pay) for the period from 01-05-1985 to 30-06-1986 had been granted by order dated 30-06-1986 and if contribution towards GIS had already been paid then that amount would be paid to Smt. Tulsabai as per rules. He has informed that Laxman Shere died after removal from service, and therefore, appointment on compassionate ground cannot be given to any family member of deceased Laxman.

5. It is contended by the respondent no.2 that as per application of mother of the applicant, her name had been entered in waiting list at Sr. No.23. However, as per communication dated 05-04-1995 her name had been deleted from the list as she was not entitled to get appointment on compassionate ground by order dated 03-05-1995. It is contention of the respondent no.1 that Smt. Tulsabai continued to make representations with the Government claiming appointment on compassionate ground. The Desk Officer, Irrigation Department of Government of Maharashtra by letter dated 24-05-1996

informed the Superintending Engineer to communicate Smt. Tulsabai that decision has already been taken by the Government on the representation/s made by her. Accordingly, the Executive Engineer, Nanded Minor Irrigation Division Nanded by a letter dated 15-07-1996 had informed to Smt. Tulsabai regarding decision in that regard. She was also informed that, henceforth her request for appointment on compassionate ground will not be entertained and replied.

6. In the year 1996, Smt. Tulsabai was informed about final decision of the Government in the matter. In spite of that on 10-01-2009/09-02-2009, she filed an application to record name of her son Deepak in her place and give appointment to him on compassionate ground. Said application was made after about 7 years. Respondent no.2 by communication dated 27-04-2016 informed the applicant that in view of the provisions of G.R. dated 22-08-2005, his application cannot be entertained. It is his contention that there is no illegality in the said communication. Therefore, he prayed to reject the O.A.

7. The applicant has filed affidavit in rejoinder and resisted contentions of the respondents and contended that

his mother had immediately filed the application for appointment on compassionate ground. By communication dated 09-04-1993, the respondents had informed her that her application has been forwarded for further consideration to appropriate authority. It is his contention that in the year 2009 his mother filed application to substitute his name in her place. Thereafter, also he filed application on 18-01-2016 but the respondent no.2 rejected it on 27-04-2016 without considering it. It is his contention that earlier decision of the Government had not been communicated to his mother. It is his contention that the impugned order is illegal. Therefore, he prayed to allow the O.A.

8. I have heard Shri K.M.Nagarkar Advocate for Applicant, Shri V.R.Bhumkar Presenting Officer for respondent no.1 and Shri Shamsundar B. Patil Advocate for respondent no.2. Perused documents produced on record by the parties.

9. Learned Advocate for the applicant has submitted that father of the Applicant Laxman Shere died on 28-09-1992 when he was serving with respondent no.2. Thereafter, on 10-08-1993 his mother filed an application

for appointment on compassionate ground and it was forwarded to the higher authorities by the respondent no.2 by letter dated 04-09-1993. He has submitted that name of the mother of the applicant had been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground. In the year 2009 his mother filed an application with the respondent no.2 and requested to give appointment to the applicant in her place. Thereafter, he has also moved one application dated 18-01-2016 but the respondent no.2 rejected the same by impugned communication dated 27-04-2016. He has submitted that reasons mentioned in the communication dated 27-04-2016 are against the Government policy and against the provisions of G.Rs. issued by the Government from time to time. He has submitted that for the first time respondent no.2 has come with a case that father of the applicant had been removed in the year 1986 and he was not in service at the time of his death. He has submitted that respondents never informed him or his mother in that regard. On the contrary, they have included name of his mother in the waiting list and thereafter they removed name of the mother of the applicant on completion of age of 40 years. He has submitted that reasons recorded in the impugned order are

not legal. Therefore, he prayed to quash the impugned order.

10. Learned P.O. and learned Advocate for respondent no.2 have submitted that the Government had taken policy decision and decided to appoint eligible heir of the deceased Government employee on compassionate ground if the Government employee dies while in service. They have submitted that deceased Laxman Shere was serving as Pump Operator on CRTE during the period from 14-02-1974 to 30-06-1986. He has been removed from the service by way of punishment by order dated 17-06-1986 w.e.f. 30-06-1986. One month's salary was paid to him before termination of the services, and thereafter, compensation at the Government rate then prevailing as per Section 25-F(a) of the Industrial Disputes Act, 1947 and six months' salary at the rate of 15 days' emoluments for every year had been paid to him.

11. They have submitted that thereafter the mother of the applicant moved several representations claiming ex-post sanction to the leave of Laxman Shere from 01-05-1985 to 30-06-1986, to give appointment to her (Tulsabai) on compassionate ground, to grant family pension, to pay

amount of GIS, and to make payment of salary from 01-02-1987 to 31-08-1987. It is submitted on behalf of the respondents that said representations had been decided by the respondents and decision had been communicated to the mother of the applicant by letter dated 03-05-1995 by the Superintending Engineer. Thereafter again on 15-07-1996, respondent no.2 informed her about the decision of the Government. They have submitted that name of mother of the applicant had never been entered in the waiting list of the eligible candidates. Her name was entered in the list and it was removed from the list in view of the said decision of the Government. They have submitted that neither mother of the applicant nor applicant challenged the said decision of the Government. They kept mum and thereafter in the year 2009 mother of the applicant moved an application for recording name of the applicant in her place and thereafter another application was moved by the applicant with a request to appoint him on compassionate ground.

12. They have further submitted that respondent no.2 has passed impugned order and informed the applicant that there is no provision in that regard, and therefore, his request has been rejected. They have submitted that

neither mother of the applicant nor the applicant is entitled to claim appointment on compassionate ground as deceased Laxman Shere was not in services when he died. It is submitted that Laxman Shere was removed from the service in the year 1986, and therefore, the applicant cannot take benefit of the scheme of compassionate appointment. They have submitted that respondent no.2 has rightly rejected application of the applicant and there is no illegality in the impugned order. Therefore, they have prayed to reject the O.A.

13. On perusal of documents on record, it reveals that deceased Laxman Mariba Shere was serving as Pump Operator with respondent no.2. His services had been terminated by the respondent no.2 w.e.f. 30-06-1986 by order dated 17-06-1986 by way of punishment. One month's salary was paid to him before termination of the services, and thereafter, compensation at the Government rate then prevailing as per Section 25-F(a) of the Industrial Disputes Act, 1947 i.e. six months' salary at the rate of 15 days' emoluments for every year had been paid to him. His entire claims had been settled by the respondents immediately. In the year 1993, mother of the applicant

made several representations and requests to give her appointment on compassionate ground. Her request was rejected by the respondents in the year 1995 and the decision was communicated to her by letter dated 05-04-1995 issued by the Desk Officer, Government of Maharashtra. Thereafter, by order dated 03-05-1995, Superintending Engineer, Nanded Circle Office issued another order and informed the Chief Engineer about the said decision of the Government and removal of her name from the list. Said decision has been communicated to the mother of the applicant by Deputy Executive Engineer, Nanded by letter dated 15-07-1996. Said order has not been challenged by the mother of the applicant, therefore, the same has attained finality. The applicant has suppressed the said facts and without disclosing the said facts he has approached the Tribunal.

14. In the year 2009, mother of the applicant moved one application with the respondent no.2 with a request that name of the applicant be recorded in the waiting list in her place. Again the applicant moved an application and requested the respondent no.2 to appoint him on compassionate ground. In fact, mother of the applicant

was aware of the earlier decision of the Government rejecting her claim for appointment on compassionate ground but she has suppressed the material facts and approached the respondent no.2 by making false claim that her name has been recorded in the waiting list and prayed to record name of the applicant in her place. Since there is no provision to record name of the applicant in place of her (mother) name, respondent no.2 rejected the same by the impugned communication dated 27-04-2016 by citing provision of G.R. dated 22-08-2005. Therefore in my opinion, there is no illegality in the impugned order.

15. In fact, on perusal of record it reveals that no right accrued in favour of the applicant or his mother or any of the heirs of the deceased Laxman Shere to claim appointment on compassionate ground as Laxman Shere was not in Government service when he died on 28-09-1992. He was removed from service long back in 1986 i.e. from 30-06-1986. Father of the applicant i.e. deceased Laxman Shere was not in service when he died, and therefore, his heirs are not entitled to claim appointment on compassionate ground. Therefore, the applicant as well as his mother is not eligible to claim

appointment on compassionate ground. Not only this but claim of the applicant's mother made in that regard had been rejected by respondent no.2 and the Government authorities long back in the year 1996. In spite of this, mother of the applicant started making applications and claiming same relief. Therefore, respondent no.2 by the impugned communication dated 27-04-2016 has rightly rejected the application of the applicant.

16. In these circumstances, in my view, there is no illegality in the impugned order. Therefore, no interference is called for in the impugned order. I do not find merit in the O.A. Consequently, it deserves to be dismissed.

17. In view of the above discussion, O.A. stands dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 26-06-2018.