

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.779/2016

DISTRICT: - NANDED

Mohammad Munawar Gulam Dastgir,
Age : Major, Occu. : Nil,
R/o. House No.4-6-98,
Dhobi Gally, Gadipura, Nanded.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Secretary,
Water Resource Department,
Mantralaya, Mumbai-32.
- 2) The Superintending Engineer,
Vigilance & Quality Control Circle,
Aurangabad.
- 3) The Executive Engineer,
Quality Control Division,
Irrigation Department (Water Resources),
Chaitanya Nagar, Nanded. ...RESPONDENTS

APPEARANCE :Shri S.D.Dhongde Advocate for Applicant.
:Shri B.S.Deokar Presenting Officer for the
respondents.

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

DATE : 3rd August, 2018

J U D G M E N T
[Delivered on 3rd day of August 2018]

1. By filing the present original application the applicant has sought direction to the respondents to appoint him as Clerk in pursuance of his application for appointment on compassionate ground.

2. Deceased Gulam Dastgir was father of the applicant. He was serving as Senior Clerk with the respondents. He died on 30-06-1999 while in service. After his death respondents neither orally nor in writing communicated the applicant or family members of the deceased Gulam Dastgir about the scheme of appointing of legal heirs of deceased on compassionate ground in view of the G.R. dated 26-10-1994. Therefore, the applicant could not able to file application for appointment on compassionate ground in time.

3. The applicant was minor at the time of death of his father. After attaining age of majority, on 26-02-2016, he submitted application to get appointment on compassionate ground to respondent no.3 Executive Engineer, Quality Control Division, Irrigation Department (Water Resources),

Chaitanya Nagar, Nanded. On 29-03-2016, respondents informed him that his application dated 26-02-2016 cannot be considered as it was not filed within stipulated time. It was further informed to the applicant that the application was not filed within one year on attaining age of majority by the minor member of the family and on that ground also the application came to be rejected. It is contention of the applicant that the process of appointment on compassionate ground is regulated by the G.R. dated 26-10-1994 issued by the Government. As per clause 6 of the said G.R. the duty is casted upon the concerned establishment officer to provide information about the scheme of appointment on compassionate ground to the legal heirs of the deceased Government employee within 15 days from the date of death of the Government employee but no such information has been given to the applicant or to any other family member. Not only this but the concerned authorities had also not informed them at the time of submission of family pension papers. Therefore, the applicant could not able to file application in time. It is contention of the applicant that respondent has not considered his application properly and rejected it.

Therefore, he prayed to direct the respondents to appoint him as Clerk on compassionate ground by allowing the O.A.

4. Respondents resisted the contentions of the applicant by filing their affidavit in reply. They have admitted the fact that the deceased Gulam Dastgir was serving as Senior Clerk with them. They have not disputed the fact that the applicant filed the application dated 26-02-2016 for appointment on compassionate ground and they had informed him about rejection of his claim by communication dated 29-03-2016. It is their contention that the G.Rs. dated 15-04-1994 and 20-05-2015 are not applicable in the instant case. It is their contention that the date of birth of the applicant is 04-08-1992. After attaining age of majority he has not filed the application within stipulated time as provided in the G.R. Therefore, his application is not maintainable. It is their contention that wife of deceased Gulam Dastgir submitted heirship certificate on 21-07-1999 for extending retiral benefits. In the said heirship certificate she herself, Parvin Dastgir her daughter, applicant i.e. her son and Sabiya Farjana Sade Khan her married daughter, were shown as legal heirs of the deceased. It is their contention that neither unmarried

daughter of Gulam Dastgir namely Parvin Dastgir nor the applicant moved the application for appointment on compassionate ground within the prescribed period of limitation as per the Government policy. It is their contention that the applicant attained age of majority on 04-08-2010 but he filed the application for getting appointment on compassionate ground on 26-02-2016 i.e. after 6 years, and therefore, the same is not maintainable. It is their contention that as the application was not moved in time, respondents have rightly rejected the application and they have supported the communication issued by the respondents in that regard. It is their contention that the applicant is not entitled to get appointment on compassionate ground as has not complied the required criteria, and therefore, he is not entitled to get directions as per his claim. On these grounds they have prayed for dismissal of the O.A.

5. I have heard Shri S.D.Dhongde Advocate for Applicant and Shri B.S.Deokar Presenting Officer for respondents. Perused documents produced on record by the parties.

6. Admittedly, deceased Gulam Dastgir was serving as Senior Clerk with the respondents. He died on 30-09-1999

while in service leaving behind his widow, viz. Sherbano Gulam Dastgir, unmarried daughter Parvin Dastgir, minor son Mohommad Munawar Gulam Dastgir i.e. the applicant and married daughter Sabiya Farjana Sade Khan as his legal heirs. Admittedly, she produced legal heirship certificate before the respondents on 21-07-1999 for extending retiral benefits to them. Admittedly, the date of birth of the applicant is 04-08-1992. Applicant attained age of majority on 03-08-2010. Admittedly, applicant moved an application for appointment on compassionate ground with the respondents on 26-02-2016. Respondents rejected the application by communication dated 29-03-2016 on the ground that it was not filed within stipulated time.

7. Learned Advocate for the applicant has submitted that the father of the applicant, viz. Gulam Dastgir was serving as Senior Clerk with the respondents and he died on 30-06-1999. At the time of death of Gulam Dastgir, the applicant was minor. He has submitted that the respondents or any other responsible officer of the respondents had not informed mother of the applicant or the applicant about the scheme of appointment on

compassionate ground in view of Clause-6 of the G.R. dated 23-08-1996 and the similar provisions in the G.R. dated 20-05-2015. He has submitted that as the applicant and his family members were not aware about the said scheme, they could not able to file the application in time for getting appointment on compassionate ground.

8. Learned Advocate for the applicant has further submitted that the mother of the applicant was suffering from disease since the year 2007 till her death. The applicant was taking her care, and therefore, he could not able to file the application for appointment on compassionate ground in time. Mother of the applicant died on 08-10-2013 after prolonged illness. After her death, the applicant came to know about the scheme of compassionate appointment, and therefore, he applied for the same with the respondents. He approached respondents by filing the application dated 26-02-2016 for appointment on compassionate ground. He has submitted that it was mandatory on the part of the establishment officer of the concerned department to inform the eligible heirs or family members of the deceased Government employee about the scheme immediately within 15 days

from the date of death of deceased employee or at the time of sending family pension papers but the respondents had not complied with the said conditions. Therefore, delay on the part of the applicant is caused for filing the application for appointment on compassionate ground. He has submitted that due to the said just reason delay has been caused. Respondents ought to have considered the said reasons and condoned the delay but they rejected the application on the ground that it was not submitted within stipulated time, which is illegal. Therefore, he prayed to quash the impugned communication by allowing the O.A.

9. Learned Advocate for the applicant has placed reliance on the judgment of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad delivered on 10-12-2015 in **Writ Petition No.7005/2015** in the case of **Hrishikesh Yeshwantrao Shinde V/s. The State of Maharashtra and Others** and in the case of **Ku. Seema Hiralal Pawar V/s. The State of Maharashtra & Ors.** in **Writ Petition No.11235/2015** decided on 08-07-2016. He has argued that similar issue was involved in both the matters and it has been specifically held that if the establishment officer of the concerned department fails to

inform the family members of the deceased Government employee, the delay has to be condoned and on that ground opportunity to the heir of the deceased to get appointment on compassionate ground cannot be rejected. Therefore, he prayed to allow the O.A.

10. Learned P.O. has submitted the deceased Gulam Dastgir died on 30-06-1999. Thereafter, his widow submitted heirship certificate on 21-07-1999 wherein names of the heirs of the deceased Gulam Dastgir have been mentioned. It includes name of the applicant as well as his mother, sister Parvin and another married sister Sabiya Farjana Sade Khan. He has submitted that neither Parvin nor the applicant moved an application for appointment on compassionate ground within prescribed period of limitation after attaining age of majority. He has submitted that date of birth of the applicant is 04-08-1992. He attained age of majority on 03-08-2010. Thereafter, he ought to have filed application within a year but he filed the application on 26-02-2016 i.e. after approximately 6 years. He has submitted that as the applicant had not moved the application within stipulated time, his application came to be rejected by communication dated 29-03-2016. He has

submitted that there is no illegality in the impugned order issued by the respondents, and therefore, he supported the order and prayed to reject the O.A.

11. On perusal of record, it reveals that the Government introduced the revised scheme for appointment on compassionate ground by issuing G.R. dated 26-10-1994 wherein it has been specifically mentioned that the application for appointment on compassionate ground has to be filed within 5 years from the date of death of deceased Government servant. In the G.R. dated 23-08-1996, it has been mentioned that establishment officer of the concerned department has to inform the family members of the deceased Government employee about the scheme within 15 days of death of the Government servant or at the time of sending family pension papers. By the G.R. dated 21-09-1996, the provision has been made that the eligible minor heir of the applicant can make application for appointment on compassionate ground on attaining age of majority within one year.

12. By the G.R. dated 22-08-2005, period of 5 years for filing application for appointment on compassionate ground has been reduced to 1 year. On 20-05-2015 Government

issued G.R. wherein the provisions mentioned in the G.R. dated 23-08-1996 by which establishment officer of the concerned department has to inform the family members of the deceased Government servant about the scheme within 15 days from the date of death of Government servant or at the time of processing family pension papers has been reiterated. It is also made incumbent upon the concerned establishment officer to inform the minor heir of the deceased Government employee in respect of the scheme after attaining age of majority to his family members at the time of processing family pension papers. In the said G.R., it has been further mentioned that in case the eligible heir of the deceased Government servant happens to be minor at the time of death of the Government servant then he/she can make application for appointment on compassionate ground within a period of 1 year on attaining age of majority. However, as per clause "D" of the G.R. dated 20-05-2015 further period of 2 years (i.e. 3 years from the date of death of Government employee) can be condoned by the Administrative Head of the Department.

13. In this case, Government employee Gulam Dastgir had died on 30-06-1999. At that time, the applicant was

minor. Applicant attained age of majority on 03-08-2010. He ought to have filed application for getting compassionate appointment within 1 year i.e. on or before 03-08-2011. In view of the G.R. dated 20-05-2015 further delay of 2 years could have been condoned by the Administrative Head of the Department but the applicant has not moved the application during that period also. He moved application on 26-02-2016 i.e. about 6 years after attaining age of majority. There was inordinate delay in filing the application for appointment on compassionate ground. Therefore, respondents have rightly rejected the application.

14. I have gone through the decision referred to by the learned Advocate for the applicant. Facts in the case of **Hrishikesh Yeshwantrao Shinde V/s. The State of Maharashtra and Others in Writ Petition No.7005/2015** decided on 10-12-2015 by the judgment of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad are not identical with the facts in the present case, and therefore, said decision is not much useful to the applicant in this case.

15. In the case of **Ku. Seema Hiralal Pawar V/s. The State of Maharashtra & Ors. in Writ Petition**

No.11235/2015 decided on 08-07-2016 by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad, provisions of the G.Rs. have been considered. Facts in that case and facts in the present case are identical. In that case also, petitioner moved the application for appointment on compassionate ground after about 6 years of attaining the age of majority. No reasons have been assigned for condoning the delay, and therefore, his application came to be rejected and the Hon'ble High Court dismissed the Writ Petition. While dismissing the Writ Petition, Hon'ble High Court has observed as follows:

"10. The date of birth of the petitioner is 15th May, 1991. She attained the age of majority on 14th May, 2009. The petitioner submitted the application for her appointment on compassionate ground on 13th July, 2015 i.e. after about six years and two months of her attaining the age of majority. Undisputedly, the father of the petitioner died on 24th June, 1998. It is well settled that the object of granting compassionate appointment is to enable the family members of the deceased Government servant to tide over the sudden crisis and to relieve it from financial destitution due to untimely death of their bread winner. The compassionate appointment cannot be

granted after a lapse of reasonable period. It is not a vested right which can be exercised at any time in future. An application for compassionate employment must be preferred without undue delay. The present petitioner is claiming appointment on compassionate ground after about 17 years of the death of her father. Moreover, she did not make the application for such appointment within one year of her attaining the age of majority. The delay of more than six years in making an application for such appointment after her attaining the age of majority, has remained unexplained. In the circumstances, respondent No. 2 cannot be said to have committed any mistake in rejecting the application of the petitioner for appointment on compassionate ground."

16. The principle laid down in the abovesaid decision is most appropriately applicable in the instant case. In this case also there is an inordinate and unreasonable delay of about 6 years in filing the application for appointment on compassionate ground by the applicant after attaining age of majority and the delay has not been properly explained by the applicant.

17. Therefore, in view of the above said discussion, in my opinion, there is no illegality on the part of the respondents

while rejecting application of the applicant. Respondents have rightly rejected the application of the applicant for appointment on compassionate ground. Therefore, I do not find merit in the contentions raised by the applicant. Consequently, O.A. deserves to be dismissed.

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

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 03-08-2018.