

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.917/2017

DISTRICT: - BEED

Deepika d/o. Deepakrao Chavan,
Age : 30 years, Occu. : Nil,
R/o. C/o. Dr. B.G. More,
Bardapur, Tq. Ambajogai,
Dist. Beed.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Industries, Energy and Labour Department,
M.S., Mantralaya, Mumbai-32.
- 2) The Deputy Director,
Industries (Establishment),
Directorate of Industries,
New Administrative Building,
Oppo. Mantralaya, Mumbai-32.
- 3) The Joint Director of Industries,
Aurangabad Division, Aurangabad.
- 4) The General Manager,
District Industries Centre,
Hingoli.
- 5) The Collector,
Hingoli.

...RESPONDENTS

APPEARANCE :Shri A.S.Deshmukh Advocate for
Applicant.

:Smt. Priya Bharaswadkar Presenting
Officer for the respondents.

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

DATE : 19th July, 2018

J U D G M E N T
[Delivered on 19th day of July 2018]

1. The applicant has challenged the communication dated 13-11-2017 issued by respondent no.1 rejecting her claim for appointment on compassionate ground by filing the present O.A. and also prayed to direct the respondent no.1 to reconsider her claim for compassionate appointment on the basis of G.R. dated 20-05-2015 and to condone the delay of 3 months caused for filing the application for compassionate appointment.

2. Deceased Deepak Sadashivrao Chavan was serving as Industries Inspector in the Industries Department of Government of Maharashtra. He died in harness on 21-02-2006. On 20-03-2006 the mother of the applicant, namely, Shobha Deepakrao Chavan submitted an application to respondent no.3 through respondent no.4 seeking appointment on compassionate ground. At the

time of filing application she had completed age of 43 years. Therefore, she was not eligible to be appointed on compassionate ground in view of the G.R. dated 22-08-2005. Respondent nos.3 and 4 ought to have rejected her claim initially without considering her application but the respondent no.3 and 4 wrongly entertained her application and included her name in the list of compassionate appointment seekers. The very action of respondent nos.3 and 4 was wrong. On 17-05-2006, respondent no.3 issued communication to the mother of the applicant and informed that her name has been deleted from the list of compassionate appointment seekers. Because of the said wrong act done by respondent nos.3 and 4, some period was wasted, and therefore, the applicant could not able to file application immediately. On 18-05-2007, the applicant filed an application to respondent no.3 through respondent no.4 for appointment on compassionate ground. But in the year 2010-2011 she was informed by the respondent no.3 that her application for compassionate appointment has been submitted after lapse of one year from the date of death of her father. Therefore, the same cannot be considered.

3. It is contention of the applicant that only 3 months' delay was caused for filing her application for appointment on compassionate ground but the respondents had not considered the said delay with a proper perspective. Meanwhile, Government issued a G.R. dated 20-05-2015 and thereby conferred power of condoning delay up to the period of 2 years upon the concerned Administrative Head of the Department. On 26-04-2016, respondent no.3 sent a proposal to respondent no.2 on the basis of G.R. dated 20-05-2015 regarding compassionate appointment of the applicant but on 13-11-2017 respondent no.3 issued a communication dated 10-06-2016 received from respondent no.1 and communication dated 12-09-2017 received from the respondent no.2 informing that her request for compassionate appointment has been rejected by the Government. It is her contention that respondents have wrongly rejected her request for appointment on compassionate ground. They have not considered provisions of G.R. dated 20-05-2015 in proper perspective, and therefore, she prayed to quash communication dated 13-11-2017 received to her from respondent no.3 and to direct respondent no.1 to give her appointment on

compassionate ground on the line of G.R. dated 20-05-2015 by allowing the present O.A.

4. Respondent nos.1 to 5 have filed affidavit in reply and resisted contention of the applicant. They have not disputed the fact that deceased Deepak Chavan was serving as Industrial Inspector and he died on 21-02-2006 while in service. It is their contention that after death of Deepak Chavan his widow Shobha Deepak Chavan filed an application for compassionate appointment on 20-03-2006. As per the G.R. dated 22-08-2005, the applicant seeking appointment on compassionate ground must be below 40 years of age at the time of filing application. At the time of filing application for compassionate appointment, Shobha wd/o Deepak Chavan was 43 years and 1 month old. Therefore, Joint Director of Industries, Aurangabad by his letter dated 17-05-2006 informed her about removal of her name from the list of compassionate appointment seekers. Not only this but he had also informed the applicant by letter dated 26-09-2011 that once name of the applicant is listed then it cannot be replaced with another person. They have also informed her that her application was not filed in time, and therefore, she is not entitled to claim

appointment on compassionate ground. It is their contention that applicant Deepika filed an application dated 18-05-2007 for appointment on compassionate ground with Joint Director, Industries Department, Aurangabad through General Manager, District Industries Centre, Hingoli but she has not moved an application within a period of one year from the date of death of her father. Therefore, she was not eligible to be appointed on compassionate ground in view of the G.R. dated 22-08-2005. Joint Director of Industries, Regional Office, Aurangabad informed her about it by his letter dated 26-09-2011. But the applicant again submitted another application, and therefore, the respondent no.3 sought guidance of the respondent no.2 in that regard by sending proposal. However, Government by its letter dated 10-06-2016 informed that action taken by the respondent nos.2 and 3 was according to the G.R. dated 22-08-2005 and 20-05-2015 and there is no need to take different action at Government level.

5. Respondents have further contended that the date of birth of the applicant is 24-05-1987. At the time of filing the application she was more than 19 years of age, and therefore, provisions of G.R. dated 20-05-2015 are not

applicable to her. It is their contention that applicant was not fulfilling eligibility criteria as per the G.R., and therefore, her application was rejected by the impugned communication and she was informed accordingly by the said communication. It is their contention that there is no illegality in issuing the impugned order, and therefore, they have prayed to reject the O.A.

6. I have heard Shri A.S.Deshmukh Advocate for Applicant and Smt. Priya Bharaswadkar Presenting Officer for respondents. Perused documents produced on record by the parties.

7. Admittedly, Deepak Chavan was father of the applicant and he was serving as Industries Inspector in the Industries, Energy and Labour Department of Government of Maharashtra. He died on 21-02-2006 while in service. After his death his widow Shobha Deepak Chavan filed an application dated 20-03-2006 seeking appointment on compassionate ground. She had crossed age of 40 years, therefore, her application came to be rejected in view of the G.R. dated 22-08-2005, and accordingly, respondent no.3 informed her by communication dated 17-05-2007. Admittedly, thereafter the applicant moved an application

dated 18-05-2007 with the respondent no.3 through respondent no.4 seeking appointment on compassionate ground. It came to be rejected as she had not filed application within one year from the date of death of her father. Thereafter, applicant had filed another application dated 21-12-2015 after issuance of the G.R. dated 20-05-2015 seeking benefit of the said G.R. but the said application came to be rejected by the respondents by the impugned communication dated 13-11-2017. Admittedly, the applicant was born on 24-05-1987. She attained age of majority on 24-05-2005. At the time of death of her father she was major.

8. Learned Advocate for the applicant has submitted that after death of Deepak Chavan his widow Smt. Shobha Deepak Chavan filed an application on 20-03-2006 seeking appointment on compassionate ground. At that time, she crossed age of 40 years. Therefore, she was not entitled to get appointment on compassionate ground in view of the G.R. but the respondents entered her name in the list and thereafter by communication dated 17-05-2006 informed her that her name has been deleted from the list as she was not eligible to be appointed as she crossed age of 40 years.

He has submitted that because of the wrong decision or action taken by the respondent no.3, applicant could not able to file her application seeking appointment on compassionate ground within time. He has submitted that some time has been consumed while deciding the application of mother of the applicant, and therefore, delay caused in filing the application by the applicant ought to have been condoned by the respondent no.3. He has submitted that respondents rejected the application of the applicant dated 18-05-2007 on the ground that applicant has not filed application within one year from the date of death of her father. He has submitted that thereafter G.R. dated 20-05-2015 had been issued by the Government wherein there is provision to condone delay up to the period of 2 years. Therefore, applicant has filed another application dated 21-12-2015 seeking appointment on compassionate ground by extending benefits of G.R. dated 20-05-2015. He has submitted that respondents have not considered said G.R. and applications of the applicant and rejected her claim and informed her by communication dated 13-11-2017. He has submitted that the decision of the respondents rejecting claim of the

applicant is not in accordance with the G.R. dated 20-05-2015. Therefore, he prayed to allow the O.A.

9. Learned P.O. has submitted that in view of the G.R. issued by the Government on 22-08-2005 the eligible heir of the deceased Government servant must file application for appointment on compassionate ground within a period of one year from the date of death of the Government servant. She has submitted that the applicant was more than 19 years of age at the time of death of her father Deepak Chavan. She ought to have filed the application seeking appointment on compassionate ground within one year from the date of death of her father. She ought to have filed application on or before 21-02-2007 but she moved the application for getting appointment on compassionate ground on 18-05-2007 and she submitted required documents by filing another application dated 05-11-2007. She has submitted that both the applications filed by the applicant were beyond the period stipulated in the G.R., and therefore, it came to be rejected. She has submitted that thereafter again applicant moved an application after issuance of the G.R. dated 20-05-2015 but the same has been rejected by the impugned communication dated

13-11-2017. She has submitted that G.R. dated 20-05-2015 came into force with effect from the date of its issuance i.e. from 20-05-2015, therefore, same is not applicable in the instant case. She has further submitted that said G.R. does not have retrospective effect and does not provide for the condonation of delay caused for filing an application by legal heir of the deceased employee, and therefore, the applicant cannot claim benefit of the said G.R. She has submitted that respondents have rightly rejected the applications of the applicant and there is no illegality in the same. Therefore, she prayed to reject the O.A.

10. Learned P.O. has further submitted that the mother of the applicant, namely, Shobha Chavan filed an application dated 20-03-2006 for appointment on compassionate ground. At that time, she was 43 years and 1 month old. Therefore, her claim was not considered and she was informed accordingly by respondent no.3 by communication dated 17-05-2006. She has submitted that applicant ought to have filed the application immediately after receiving communication dated 17-05-2006 but she had not moved application in time and she moved the application beyond

the stipulated period, and therefore, respondents have rightly rejected her applications. Therefore, learned P.O. has prayed to reject the O.A.

11. On perusal of the record, it reveals that initially mother of the applicant moved an application seeking appointment on compassionate ground by filing on 20-03-2006. As she crossed age of 40 years, she was not eligible for appointment on compassionate ground, and therefore, her application came to be rejected and she was informed accordingly by communication dated 17-05-2006 by the respondents. On perusal of the said letter dated 17-05-2006, it reveals that while scrutinizing her application it was revealed to the authority that she crossed age of 40 years and she was 43 years and 1 month only on the date of filing of the application. Therefore, she was not eligible to be appointed on compassionate ground in view of the provisions of G.R. dated 22-08-2005. It means that the applicant and ultimately members of her family were aware of the fact of the rejection of application of the mother of the applicant when communication dated 17-05-2006 was issued. The applicant is one of the heirs of the deceased Deepak Chavan. She had not filed the application seeking

appointment on compassionate ground within a year from the date of death of her father as per G.R. dated 22-08-2005. The applicant has not filed the application immediately but she moved applications seeking appointment on compassionate ground on 18-05-2007 and 05-11-2007. Her application came to be rejected on 31-12-2007 and the decision was communicated to the applicant accordingly. This fact is evident from the last paragraph of the communication which is at paper book page 59.

12. In spite of rejection of earlier applications she moved another application on 24-05-2010 but it was also not considered by the respondents and it came to be rejected by communication dated 31-05-2010 (paper book page 59). Thereafter, on 21-12-2015 she moved another application claiming same benefit on the basis of G.R. dated 20-05-2015 (Reference No.3 in paper book page 26). It was forwarded to the respondent no.2 by the respondent no.3 on 26-04-2016 (paper book page no.26). The respondents by communication dated 13-11-2017 informed the decision of the Government in that regard to the applicant. On perusal of the said communication dated

13-11-2017 (page 31) it reveals that the Government took decision in the matter on 10-06-2016 and held that no further action is needed in the matter in view of the earlier communication by which applicant was informed that she is not eligible to be appointed on compassionate ground. This shows that the applicant had not challenged the earlier decision of the respondents by which her claim had been rejected in the year 2007. She moved the application on 21-12-2015 on the basis of G.R. dated 20-05-2015.

13. On perusal of the G.R. dated 20-05-2015 it reveals that the Government has taken decision to confer power on the administrative head of the concerned department to condone the delay up to 2 years to file application for compassionate appointment by minor heir of the deceased Government servant, who attained age of majority and the delay caused for filing the application by such heir can be condoned. The delay can be condoned in cases of heirs who are minor at the time of death of deceased employee and who attained the age of majority subsequently. In the instant case, the applicant was major when her father died. Therefore, no question of extending benefits of the said G.R. to the applicant arises. Therefore, no question of condoning

delay caused in filing the application by the applicant seeking appointment on compassionate ground arises. The respondents have rightly rejected the applications of the applicant on the ground that the applicant has not moved application within one year after death of her father as provided in G.R. dated 22-08-2005. Therefore, I do not find substance in the submission advanced by the learned Advocate for the applicant in that regard.

14. Applicant has not moved the application for compassionate appointment within stipulated period, therefore, respondents have rightly rejected her claim for appointment as per rules. There is no illegality in the impugned communication dated 13-11-2017 issued by the respondents. Therefore, no interference in the impugned communication is called for. There is no merit in the O.A. Consequently, it deserves to be dismissed.

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

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 19-07-2018.