

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.444 OF 2018
IN
ORIGINAL APPLICATION NO.795 OF 2018**

Shri Vaibhav Namdev Ghatge.)
Age : 27 Yrs., Occu.: Education,)
R/o. Ambavne, Tal. : Bhudargad,)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Irrigation Department, Mantralaya,)
Mumbai - 400 032.)
2. The Secretary.)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)
3. The Executive Engineer & Director,)
Irrigation Research & Development)
Directorate, Pune, having office at 8,)
Meledina Marg, Pune – 411 001.)
4. The Soil Inspection Officer.)
Irrigation Research & Development)
Directorate, Pune, having office at 8,)
Moledina Marg, Pune – 411 001.)
5. The Executive Engineer.)
Irrigation Research Department,)
Having office at Kalwa, District : Thane.)...**Respondents**

Mr. A.S. Patil, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : **SHRI A.P. KURHEKAR, MEMBER-J**

DATE : **12.04.2019**

JUDGMENT

1. Heard Shri A.S. Patil, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officers for the Respondents.

2. Shortly stated facts giving rise to this application are as under :-

Shri Namdev S. Ghatge was Junior Engineer in Irrigation Department of State of Maharashtra. He died in harness on 25th August, 2000. After his death, his widow Ranjanabai made an application for appointment on compassionate ground on 25th September, 2000. However, her application was rejected by order dated 29th March, 2011 on the ground that the Scheme for appointment on compassionate ground is applicable only to Group 'C' and 'D' employees and deceased being Group 'B' employee, she was not entitled to the appointment on compassionate ground. Admittedly, this rejection dated 29.03.2011 was communicated to the Applicant.

3. Thereafter, the Applicant (son of deceased employee) made applications for appointment on compassionate ground on 08.02.2016 and 27.06.2016. However, the Respondents by communication dated 1st February, 2018 communicated to the Applicant that the application is made after 15 years from the death of the deceased employee, and therefore, the Applicant is not entitled to the appointment on compassionate ground. In the said order, the Department stated that the application made by Applicant's mother on 25.09.2000 is not on record. However, the fact remains that the claim of Applicant for appointment on compassionate ground has been turned down by order dated 1st February,

2018. Thereafter, the Applicant obtained information under Right to Information Act, wherein the copy of application was supplied to him on 25.10.2017.

4. It is on this background, the Applicant has filed O.A.No.795/2018 for grant of appointment on compassionate ground along with the application for condonation of delay.

5. The Respondents opposed the M.A. as well as O.A. on the ground that the claim of the Applicant has been hopelessly barred by limitation, as he failed to make an application for appointment on compassionate ground within one year from the date of attaining majority in terms of G.R. dated 11.01.1996. In respect of mother's claim, the Respondents contend that her claim too, was rejected by order dated 29.03.2011. The Respondents, therefore, prayed to dismiss the O.A. as well as M.A.

6. The learned Advocate for the Applicant sought to contend that his application should be treated and construed as a continuous cause of action in view of his mother's application dated 25.09,2000 and secondly, the rejection to his claim is by order dated 01.02.2016 is concerned, the limitation for filing O.A. starts from 1st February, 2016. He, therefore, prayed to condone the delay of two years and 207 days caused in filing the present O.A. counting the limitation from order dated 01.02.2016.

7. Whereas, Shri A.J. Chougule, learned P.O. for the Respondents urged and pointed out that mother's application was already rejected by order dated 29th March, 2011, and therefore, the question of continuous cause of action does not survive. As regard Applicant's claim, he submits that he attained the majority in 2010, and therefore, in terms of G.R. dated 11.01.1996, the then applicable G.R, the Applicant ought to have filed application before Competent Authority for

grant of compassionate appointment within one year on attaining majority, which he failed to do so. He has pointed out that the Applicant has filed applications on 08.01.2016 and 27.06.1996 which are not in accordance to the G.R. dated 11.01.1996. He, therefore, sought to justify the rejection of the claim of the Applicant. He, therefore, contends that, on merit also, the Applicant has no case.

8. The following factors are uncontroverted :-

- (a) Deceased employee died on 25.08.2000.
- (b) His widow filed an application for appointment on compassionate ground on 25.09.2000.
- (c) Mother's application was rejected by order dated 29.03.2011 which was admittedly served upon the mother of the Applicant.
- (d) Applicant's birth date is 13.06.1992 and he attained majority on 13.06.2010.
- (e) Applicant had made applications for appointment on compassionate ground for the first time on 08.01.2016 and 27.06.2016.
- (f) Respondents by order dated 5th February, 2016 rejected the claim of the Applicant being made after lapse of period of 15 years from the date of death of the deceased.

9. Admittedly, the deceased employee was in Group 'B' and on the date of his death, the Scheme for appointment on compassionate ground was applicable to all the cadres irrespective of their classification. It is for the first time, in Circular dated 09.10.2006, the Government has clarified that the benefit of appointment on compassionate ground will be available to Group 'C' and 'D' employees only onward 28.03.2001. The Applicant's father died on 25.08.2000. Therefore, his wife was obviously entitled to the appointment. This being the

position, the rejection by order dated 29.03.2011 on the ground that the benefit of Scheme is not applicable to Group 'C' and 'D' employees is obviously incorrect. However, later, during the pendency of this O.A, in pursuance of the order passed by this Tribunal, the Department has again examined the entitlement of the widow and found that she had already crossed the age of 40 years on 02.06.2007, and therefore, not eligible for appointment on compassionate ground in view of G.R. dated 22nd August, 2005. As such, even if the ground of rejection mentioned in the communication dated 29.03.2011 was incorrect, the ultimate position emerges that she had already crossed the age of 40 years in 2007 and thereby became ineligible for appointment on compassionate ground. Therefore, the question of employment to the widow is set at rest.

10. Now, turning to the Applicant's claim, admittedly, his date of birth is 13th June, 1992 and he attained majority on 13th June, 2010. This being the position, he ought to have applied for appointment within one year from attaining majority in terms of G.R. dated 11.01.1996, which was then applicable G.R. at the time of death of his father. Later by G.R. dated 21st September, 2017, the period of one year is made extendable by two years and the powers for condonation of delay are vested with the Competent Authority. As such, in case of minority, such person can apply for appointment within three years from the date of attaining the majority and the Competent Authority in Government is empowered to condone the delay on the merit of the case.

11. Whereas, in the present matter, the Applicant has admittedly made an application for appointment on compassionate ground on 08.01.2016 i.e. after six years and five months from the date of attaining the majority. This being the position, the rejection of his claim by impugned order dated 01.02.2016 cannot be faulted with. Suffice to say, on merit also, the Applicant having not made application within one year in terms of G.R. dated 11.01.1996, he cannot seek

appointment on compassionate ground. He himself is guilty of lapses and inaction.

12. As regard application for condonation of delay of two years and 207 days from the date of impugned order dated 1st February, 2016, except the statement that the Applicant was collecting documents under RTI, and therefore, it caused delay, there are no other grounds to condone the delay. In fact, the information collected under RTI was pertaining to his mother's application and it has nothing to do with the challenge to the impugned order dated 1st February, 2016. There is absolutely no explanation for condonation of delay of two years and 207 days, and therefore, the application for condonation of delay is also liable to be rejected.

13. As discussed above, even examining the Applicant's claim on merit, then also his claim for appointment on compassionate ground is not maintainable as he failed to file application before the Competent Authority for appointment on compassionate ground within one year from the date of attaining majority in terms of the then applicable G.R. dated 11.01.1996. Even some latitude is given to the Applicant in terms of subsequent G.R. dated 21.09.2017, then also he was required to make an application within three years from the date of attaining majority. However, he had made an application on 08.01.2016 i.e. after the delay of five years and six months from attaining majority.

14. At this stage, the learned Advocate for the Applicant submits that the Applicant want to make an application before the Competent Authority with application for condonation of delay. He is at liberty to do so and Competent Authority is free to take decision in accordance to Rules.

15. For the aforesaid discussion, I conclude that the M.A. as well as O.A. deserve to be dismissed and accordingly, are hereby dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.04.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\4 April, 2019\M.A.444.18 in O.A.795.18.w.4.2019.Delay.doc