

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.863 OF 2017
(SUBJECT : APPOINTMENT ON COMPASSIONATE APPOINTMENT)**

DISTRICT : MUMBAI

- 1) Smt. Chhaya Vishwas Bhosale,)
Aged : 47 years, Occ. Nil,)
- 2) Shri Abhijeet Vishwas Bhosale,)
Aged : 26 years, Occ. Nil,)
Both R/o. A/P. Kolhar (Kh),)
Tambere Road, Tal. Rahuri,)
Dist. Ahmednagar,)
C/o. Mr. Amit Naresh Wagh,)
Siddharth Colony, Bandra (E),)
Mumbai 51.) **.....APPLICANT.**

VERSUS

1. The Superintending Engineer and Administrator,))
Command Area Development Authority (CADA),)
Nashik.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Water Resources Department,)
Having office at Mantralaya, Mumbai 400 032) **.....RESPONDENTS.**

Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicants.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 23.01.2020.

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J U D G M E N T

1. In present Original Application the challenge is to the impugned order dated 30.05.2015, whereby the claim of the Applicants for the appointment on compassionate ground stands rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal, 1985.

2. The uncontroverted facts giving rise to this Original Application can be summarized as follows :-

(a) Deceased employee namely Shri Vishwas Bhosale who was Mazdoor (Class IV employee) on the establishment of Respondent No.1, died in harness on 06.09.2005 leaving behind Applicant No.1 (Smt. Chhaya Vishwas Bhosale - widow) and Applicant No.2 (Shri Abhijeet Vishwas Bhosale - son).

(b) The date of birth of widow (Smt. Chhaya Vishwas Bhosale) is 05.10.1969 and date of birth of son (Shri Abhijeet Vishwas Bhosale) is 22.01.1991.

(c) On 17.05.2006, Applicant No.1 (Smt. Chhaya Vishwas Bhosale) applied for grant of appointment on compassionate ground to her son Applicant No.2 (Shri Abhijeet Vishwas Bhosale) and it was forwarded by the Department to the Executive Engineer (Irrigation), Ahmednagar on 18.05.2006 (page 16 of P.B.)

(d) The application made by the Applicant No.1 (Smt. Chhaya Vishwas Bhosale) was rejected by order dated 16.06.2006 on the ground that the Applicant No.2 (Shri Abhijeet Vishwas Bhosale), for whom employment was sought, is below 18 years of age and there is no provision to take his name in the waiting list till he attains majority (page 17 of P.B.). Thereafter, Applicant No.1 (Smt. Chhaya Vishwas

Bhosale) again applied on 31.08.2006 and sought appointment on compassionate ground for herself.

(e) The application of Applicant No.1 (Smt. Chhaya Vishwas Bhosale) was enrolled in waiting list and her name was taken in waiting list at serial no.50.

(f) However, by order dated 30.05.2015 (page 15 of P.B.) the name of the Applicant No.1 (Smt. Chhaya Vishwas Bhosale) was deleted from the waiting list on the ground that she had already crossed 40 years of age on 05.10.2009 and therefore in terms of Government Resolution (G.R.) dated 22.08.2005 she is not entitled for appointment on compassionate ground which is challenged by the Applicant in the present O.A.

3. The Original Application was filed along with Miscellaneous Application for condonation of delay vide M.A.No.400/2017 which came to be allowed on 05.10.2017.

4. The applicant made representation to the Government on 21.07.2015 against the communication dated 30.05.2015 and again requested to consider his claim sympathetically, but the same was no responded.

5. Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant assailed the impugned order dated 30.05.2015 contending that indeed the application made by Applicant No.1 (Smt. Chhaya Vishwas Bhosale) for appointing her son, made on 17.05.2006, being during minority of Applicant No.2 (Shri Abhijeet Vishwas Bhosale), his application ought to have kept alive till he attains majority and therefore the rejection of his claim is illegal. He further submits that the application made by Applicant No.1 (Smt. Chhaya Vishwas Bhosale) latter on 31.08.2006 for appointing her has been erroneously rejected relaying upon G.R. dated 22.08.2005. He further



submits that keeping in mind the object of providing appointment to heir of the deceased of the employee on compassionate ground Respondents were indeed obliged to provide appointment to the heir of the deceased immediately and by creating supernumerary post if the post is not available so that the object of scheme is fulfilled and the family in distress could survive. He has pointed out that even if there is no provision of substitution of heir in G.R. dated 22.08.2005 in the fact and circumstances of the case at least claim of the Applicant No.2 (Shri Abhijeet Vishwas Bhosale) could have been allowed by the Respondents.

6. Par contra, learned P.O. for the Respondents submits that the name of the Applicant No.1 (Smt. Chhaya Vishwas Bhosale) was taken in waiting list but she having crossed 40 years of age her name was deleted in terms of G.R. dated 22.08.2005. As there is no provision for substitution of heir, impugned order to substitute the name of Applicant No.2 (Shri Abhijeet Vishwas Bhosale) cannot be accepted and there is no illegality in the impugned order.

7. In view of the above, issue posed for consideration is whether the name of Applicant No.2 (Shri Abhijeet Vishwas Bhosale) can be substituted in place of Applicant No.1 (Smt. Chhaya Vishwas Bhosale) in the waiting list for appointment on compassionate ground.

8. Needless to mention, that the object of compassionate appointment is to alleviate the difficulties of the distressed family so that the family of deceased could survive in view of loss of sole earning member of the family. As regards, the aim and object of the scheme for appointment on compassionate ground, it will be useful to refer to the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. V/s. Union of India**, hereinafter referred as **Sushma Gosain's case** wherein paragraph 9 it has been held as follows :-

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

9. Furthermore, learned Advocate for the Applicant has also referred various judgments delivered by this Tribunal wherein in the event of deletion of name of one of the heir from waiting list directions were given to include the name of other legal heir. He referred to following judgments :-

- (i) **O.A.No.432/2013 (Shivprasad U. Wadnere V/s. State of Maharashtra & 2 Ors.) decided on 01.12.2014.**
- (ii) **O.A.No.184/2005 (Smt. Nirmala Doijad V/s. State of Maharashtra) decided on 03.05.2006.**
- (iii) **O.A.No.503/2015 (Piyush Shinde V/s. State of Maharashtra) decided on 05.04.2016.**
- (iv) **O.A.No.604/2016 (Anusaya More V/s. State of Maharashtra) decided by this Tribunal on 24.10.2016.**
- (v) **O.A.No.327/2017 (Smt. Vanita Shitole V/s. State of Maharashtra) decided on 07.08.2017.**
- (vi) **O.A.No.636/2016 (Sagar B. Raikar V/s. Superintending Engineer) decided on 21.03.2017.**
- (vii) **O.A.No.239/2016 (Swati Khatavkar V/s. State of Maharashtra) decided on 21.10.2016.**
- (viii) **O.A.No.884/2016 (Mayur Gurav V/s. State of Maharashtra) decided on 30.03.2017.**
- (ix) **O.A.No.1126/2017 (Siddhesh N. Jagde V/s. State of Maharashtra) decided on 04.06.2018.**

10. Now turning to the facts of the present case, most important and distinguishing feature in favour of the Applicants is that within one year from the date of death, Applicant No.1 made application i.e. on 17.05.2006 requesting Respondents to provide appointment to her son i.e. Applicant No.2 (Shri Abhijeet Vishwas Bhosale) who was that time minor. However, it was rejected by the Respondents by order dated 16.06.2006 on the sole ground that the name of the minor could not be taken in waiting list.

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Applicant No.2 was born on 22.01.1991 and admittedly minor, when his mother applied for his appointment. Later, in view of rejection of appointment of Applicant No.2 (Shri Abhijeet Vishwas Bhosale), Applicant No.1 (Smt. Chhaya Vishwas Bhosale) herself made an application and accordingly her name was taken in the waiting list. However, by the order dated 02.07.2014, Respondent No.1 was informed that she being crossed 40 years of age, not eligible for appointment in terms of G.R. dated 22.08.2005. Later, Applicant No.2 also made an application on 15.05.2005 in view of denial of appointment to his mother. However, by impugned order dated 30.05.2015 his request has been turned down on the ground of absence of provision of substitution of heir in G.R. dated 22.08.2005.

11. True, there is no specific stipulation in G.R. dated 22.08.2005 for substitution of heir, if the name of the heir is deleted on account of crossing 40 years of age but at the same time there is no such express prohibition in G.R. for substitution of heir. As stated earlier the distinguishing factor in the present matter is that the Applicant No.1 herself made application within one year from the death of deceased for appointing Applicant No.2 who was that time minor. This being the position the application made by the Applicant No.1 (Smt. Chhaya Vishwas Bhosale) for providing appointment to her son Applicant No.2 (Shri Abhijeet Vishwas Bhosale) ought to have been kept alive and considered when he attained majority, otherwise the very purpose of this scheme will be defeated.

12. True, Applicant No.2 (Shri Abhijeet Vishwas Bhosale) has not applied independently after attaining majority but fact remains that when he was minor, Applicant No.1 herself made application for appointment of Applicant No.2. This situation is squarely covered by the decision of Hon'ble High Court in **Writ Petition No.877/2015 (Dhulaji Kharat V/s. State of Maharashtra) decided on 12.12.2018** hereinafter referred as **Dhulaji's case**.

13. In **Dhulaji's case** referred to above, the Government servant died in harness in 2008 and that time Petitioner - Shri Dhulaji Kharat was minor. His mother made application for appointment of Shri Dhulaji Kharat on compassionate ground. However, it was not considered. Then again Shri Dhulaji Kharat made an application in 2013 to consider the application made by his mother in 2008. The Government, however, decline to consider the request on the ground that the Petitioner - Shri Dhulaji Kharat had not filed the application within one year from the date of attaining majority. In this context, however, Hon'ble High Court held that the request for appointment of Shri Dhulaji Kharat was already made by his mother while within one year from the death of deceased and therefore, that application ought to have been considered for giving appointment to him on compassionate ground and the contention of the Government on the point of limitation was rejected. Accordingly, directions were issued to consider the application made by mother in 2008 for appointment on compassionate ground. This decision of Hon'ble High Court is squarely attracted to the present situation.

14. It would be highly unjust and unfair rather arbitrary to reject the claim for appointment uncompassionate ground on such technical grounds. Firstly, the claim made by Applicant No.2 (Shri Abhijeet Vishwas Bhosale) during his minority ought to have been considered an attaining his majority or to provide the employment to his mother during the period when her name was valid in waiting list, on priority basis in view of judgment of Hon'ble Supreme Court in **Sushma Gosain's case**. But no steps were taken to provide employment to her. If such course of action is countenanced it would be amounting to give benefits of lethargy and inaction to the Respondents, and would frustrate very of scheme.

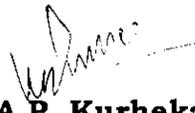
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15. In so far as the Judgment rendered by this Tribunal in **O.A.381/2017 (Amanulla S. Mahaldar Vs. State of Maharashtra) decided on 06.11.2017** referred by learned P.O. is concerned, I have gone through the Judgment and found it is quite distinguishable and not applicable in the present situation. In that matter, it was second round of litigation. Prior to filing of O.A.381/2017, the Applicant Amanulla Mahaldar had filed O.A.No.700/2016 seeking the relief of direction, as the request of substitution was rejected in view of deletion of the name of one of the heir on attaining the age of 40 years from the waiting list. Accordingly, in O.A.700/2016, the Tribunal gave direction to the Government to consider the request of the Applicant afresh and to take appropriate decision. As per the direction given by the Tribunal, the Government reconsidered the request of the Applicant, but again rejected his claim for appointment on compassionate ground. It is in that context, this Tribunal rejected O.A.381/2017. This being the position, obviously, it has no application to the present situation. Apart, learned Advocate for the Applicant has pointed out that the decision rendered in O.A.381/2017 has been challenged and the matter is subjudice before the Hon'ble High Court.

16. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the claim by impugned order dated 30.05.2016 is arbitrary and not sustainable in law and fact and the same, therefore, deserves to be quashed and set aside. The Respondents ought to have considered the request of the Applicant in view of consistent decisions rendered by this Tribunal referred to above as well as law laid down by Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly. Hence, the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 30.05.2015 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application dated 17.05.2006 made for appointment to the Applicant No.2 (Shri Abhijeet Vishwas Bhosale) on compassionate ground and it is equitable as well as judicious that his name is included in the waiting list for the issuance of appointment order, subject to fulfillment of eligible criteria in accordance to Rules.
- (D) This exercise be completed within three months from today.
- (E) No order as to costs.


(A.P. Kurhekar)
Member (J)

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