

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.370 OF 2017**

**DISTRICT : Mumbai**

1. Smt. Vanita Popat Shitole )
2. Shri Somnath Popat Shitole )
- R/at. Post Yawat, Taluka Daund, )
- District Pune – 412214. )..Applicants

**VERSUS**

1. State of Maharashtra, through the )  
Chief Secretary, Mantralaya, Mumbai 32. )
2. Principal Secretary, Water Resources )  
Department, Mantralaya, Mumbai 32. )
3. Superintending Engineer, Pune )  
Irrigation Circle, 2<sup>nd</sup> floor, Sinchan )  
Bhavan, Pune 411 011. )
4. Deputy Executive Engineer, )  
Khadakwasla Irrigation Division, )  
Sinchan Bhavan, Pune 411 011. )..Respondents

Smt. Punam Mahajan, the learned Advocate for the Applicant  
Ms S. Suryawanshi, the learned P.O. for the Respondents

**CORAM : Shri R.B. Malik, Member (J)**

**DATE : 7<sup>th</sup> August, 2017**

**JUDGMENT**

1. The late Shri Popat D. Shitole working in Group 'D' as Chowkidar in the office of Yawat Irrigation Sub-Division, Pune died in harness on 25.03.2008. The Applicants are his

widow and son respectively. This O.A. relates to the issue of compassionate appointment. Initially, the name of her mother was included in the list but later on she as well as her son wanted the name of the son to be incorporated which request was turned down by Annexure 'A6', page 24 of the Paper-Book (PB), dated 23.04.2012 on the ground that such a substitution was not permissible. This OA is directed there against and relief of considering the Applicant for compassionate appointment is sought.

2. I have perused the record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer (PO) for the Respondents.

3. This OA needs to be decided in terms of an earlier OA decided by me sitting singly in **O.A. No.503/2015 (Shri Piyush Mohan Shinde V/s. State of Maharashtra & 2 Ors, dated 05.04.2016)** in which I relied upon two judgments of the Hon'ble High Court and a few judgments of this Tribunal and held in effect that in circumstances such as these, the move as herein sought to be adopted can succeed.

4. It is not at all disputed that the said deceased died in harness. The present Applicants are his heirs and legal representatives (LRs). There are other heirs as well, but be it noted as well that none of them has any objection to incorporate the name of the Applicant No.2 for the purposes

of compassionate appointment. The Applicant No.1 was born on 01.10.1972 and the Applicant No.2 on 23.08.1993. There is material to show that initially the year of birth of the Applicant No.1 was 1970 but by adopting necessary procedure it came to be changed to 01.10.1972 for which there are documents including the Gazette Notification. After the demise of the said deceased, the name of the 1<sup>st</sup> Applicant was included in the concerned waiting list. Post 2010, the age of 45 years is the cut-off date before which the claimant should get the compassionate appointment and in case he/she were not to get it then the claim would lapse. The record bears out that by the communication that are there on record, a request was made for substitution of the name of the Applicant No.2 for the Applicant No.1 i.e. the name of the son for the mother. That move was resisted which ultimately snowballed into this particular action by the communication of 10.03.2013. The office of the 3<sup>rd</sup> Respondent addressed the communication to the Government in Water Resources Department which is Respondent No.2, the Deputy Executive Engineer, Khadakvasla Division being the 4<sup>th</sup> Respondent seeking guidance in the matter as to whether the name of the son could be substituted for his mother. That communication is at Annexure 'A-21', page 63 of the PB.

5. In the above background, I think at this stage itself I had better turned to **Piyush Shinde (Supra)**, a copy of which is at Annexure 'A-16', page 43 of the PB. That was a matter

where the son applied for being considered for compassionate appointment after his mother became disentitled after attending the age of 40 which at one point in time was the cut-off date. The mother addressed a communication to the concerned authority stating therein that her matter remains pending for about 5 years and her name came to be deleted for the reasons aforestated. In fact, she should have been considered for the said compassionate appointment till she turned 45 for which she relied upon a certain G.R. of 06.12.2010 and then mentioned that in case she was not to be considered then her son, the Applicant Piyush be considered therefor. In essence, therefore, the facts were not quite dissimilar there as well as here. There is an attempt at substitution of the name of the son for his mother. Thereafter in Piyush Shinde's case also just like here, the son addressed a communication for inclusion of his name in the concerned list. The stand of the authorities was also the same namely the absence of provision permitting the substitution of the names. Having discussed this aspect of the matter, I think at this stage para 11 of **Piyush Shinde (Supra)** needs to be fully reproduced, in which para, there is a quotation from the judgment of the Hon'ble Bombay High Court at A'bad Bench in Writ Petition No.783/2011, dated 28.02.2012.

**“11. The above discussion must have made it clear that, initially the mother of the Applicant applied for compassionate appointment and her claim remained pending for years on. She then addressed a communication**

based on 2010 G.R. seeking for all practical purposes reconsideration of her claim. It is quite possible that if I have correctly understood the Respondents, they do not dispute the fact that under the 2010 G.R, the age of reckoning has been increased from 40 years to 45 years. What most probably is their case is that in as much as in the year 2008 itself, the name of the mother of the Applicant had been deleted, she would not be eligible or entitled for being considered or more appropriately put reconsidered for compassionate appointment. Now, as to this submission of and on behalf of the Respondents, I find that the order of Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in Writ Petition No.7832/2011 (names of the parties not there), dated 28.2.2012 is a complete answer to all the questions that the Respondents would like to throw up. A copy of that order of the Hon'ble High Court is at Exh. 'H' (Page 37). I am not too sure if this order has been reported in any journal, and therefore, it will be most appropriate to reproduce it entirely.

**“1. Rule. Rule made returnable forthwith and heard finally.**

**2. Petition arises out of peculiar facts. Petitioner's husband, who was employee of the Respondent-Zilla Parishad expired on 7.4.2006. The petitioner, therefore, made an application to the Respondent for appointment on compassionate ground.**

**3. Accordingly, her name was included in the waiting list. However, by order dated 24.5.2010, name of the petitioner was deleted from the waiting list, on the ground that she completed 40 years of age. The said communication was challenged before this Court by way of Writ Petition No.1585 of 2011.**

**4. In the meanwhile, by Govt. Resolution dated 6.12.2010, policy of the Respondent underwent a change and a decision was taken by the Government to increase the upper age limit from 40 to 45 for appointment on compassionate ground.**

**5. However, it is the contention of Respondent-Zilla Parishad that the said Government Resolution dated 6.12.2010 has been given effect from 6.10.2010 and since the petitioner's name is deleted from the waiting list, she is not entitled to appointment on compassionate ground.**

**6. Petitioner's date of birth is 2.5.1968 and as such, she would be completing 45 years of age only on 2.5.2013. Even if it is considered that the effect of the said Govt. Resolution dated 6.12.2010 is given from 6.10.2010, still the petitioner would certainly be entitled to be appointed on compassionate ground till 2.5.2013 when she will be completing 45 years of age. We, therefore, find that the petitioner's case deserves to be considered in terms of the Govt. Resolution dated 6.12.2010.**

**7. We, therefore, allow the petition and direct the Zilla Parishad to consider the claim of the petitioner for appointment on compassionate ground by restoring her position in the waiting list as it stood prior to the order dated 24.5.2010 deleting her name from the list. The respondent-Zilla Parishad shall issue appointment order to the petitioner in accordance with the said Govt. Resolution and as per law. The same shall be done within six weeks from today.**

**8. Petition stands disposed of. Rule is made absolute, in aforesaid terms.**

**Sd/-**

**(Sunil P. Deshmukh, J)**

**Sd/-**

**(B.R. Gavai, J)”**

6. In para 13 of the Piyush Shinde case, I referred to a G.R. dated 25.05.2015 which has introduced at least two momentous provisions. They are with regard to the mandates that the dependents of the deceased employee would have to be informed in writing about their entitlements with regard to the compassionate appointment after the death of their ascendant and secondly there was an increase in the time limit from one year to three years. In para 15, I relied upon the earlier judgment in O.A. No.184/2005 of the A'bad Bench of this Tribunal to para 15, 16, 17 & 18 which need to be fully reproduced for a correct focus and so as to do away with needless paraphrasing.

**“15. I have already mentioned above that in the present case, guided by the order of the Hon’ble High Court fully extracted above, the claim of the Applicant’s mother still subsisted till August, 2011 and she had made a composite request for herself and the Applicant as if in the alternative. The argument that the Respondents usually advance in such circumstances is in ignorance of the earlier judgments of binding nature, which ignorance may be either genuine or may not be. But then, I must go with those judgments only. In OA 184/2005 (Nirmala B. Doijad and one another Vs. State of Maharashtra and three others, dated 3.5.2006) (Aurangabad Bench of MAT) in similar circumstances, widow and son of the deceased jointly moved the Tribunal for a similar relief. The Respondents cited the absence of any provision of substitution of the name of the dependants. After an elaborate discussion, the Tribunal held that even if such Rules were not there, a proper judicial view to advance the cause of justice needs to be taken and the claim of the Applicants there was upheld.**

**16. It appears from another judgment rendered by a Division Bench of this Tribunal at Aurangabad in OA 432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 others, dated 0.12.2014) that the judgment in Nirmala Doijad (supra) was upheld by the Hon’ble High Court. Relying thereupon the Bench in Shivprasad’s case granted relief to the Applicant there who was the son of the deceased and the**

facts were exactly similar like the present one. There also, the mother had crossed the age of 40 just like the present one and the claim of the son was negatived just like the Respondents did herein. As already mentioned above, the Tribunal advanced relief to the Applicants in that matter.

17. In Writ Petition No.7793/2009 (Vinodkumar K. Chavan Vs. State of Maharashtra, dated 9<sup>th</sup> December, 2009 also, the facts were that after the demise of a class IV employee, his widow made an application for appointment on compassionate ground. Correspondence took place. After a few years, she made an application requesting for substitution for the name of her son. She was informed that her name had already been deleted because she had crossed the age of 40 years which was the cut-off at that point in time, and therefore, her request could not be considered. Their Lordships, however, directed that her request be considered and made a clear observation that the request of the lady could not have been rejected.

18. The above judgment of the Hon'ble High Court was followed by the 2<sup>nd</sup> Bench of this Tribunal which spoke through the Hon'ble Vice-Chairman in OA 1043/2014 (Shubham V. Surve Vs. State of Maharashtra and one another, dated 3.11.2015). The earlier judgments of this Tribunal and the above referred judgment of the

**Hon'ble High Court were relied upon and the OA succeeded.”**

7. It is, therefore, quite clear that regard being had to the parity of factual matrix and the application of the law, the present OA will have to be decided in line with Piyush Shinde's OA and this OA also will have to be allowed.

8. The Respondents are directed to consider the case of the appointment of the Applicant No.2 on compassionate ground on the basis of applications already made by these Applicants. They are, further directed to consider the said applications by including the name of the Applicant No.2 for and instead of the Applicant No.1 w.e.f. the date which the Applicant No.1 applied for at the first time. The Applicant No.2 be given an appropriate posting in Group 'D' category, if he is found fit but the issue herein determined be not raked up again by Respondents.

9. The Original Application is allowed in these terms with no order as to costs.

**Sd/-**  
**(R.B. MALIK)**  
**MEMBER (J)**  
**07.08.2017**

**Date : 07.08.2017**

**Place : Mumbai**

**Dictation taken by : VSM**

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