

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.505 of 2017****WITH CIVIL APPLICATION No.331 of 2017.**

1. Abhijit S/o. Raju Thakre,  
Aged about 22 Years, Occu: Nil,  
R/o. Madhuban Colony, Kheltap Mali,  
Paratwada, Distt. Amravati.

2. Smt. Vandana Wd/o. Raju Thakre,  
Aged about 47 years, Occ.: Nil,  
R/o Madhuban Colony, Kheltap Mali,  
Paratwada, Distt. Amravati.

**Applicants.****Versus**

1) The State of Maharashtra,  
through its Secretary, Department of Home,  
Mantralaya, Mumbai -32.

2. Superintendent of Police,  
Office of Superintendent of Police, Amravati.

**Respondents.**


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**S/Shri N.R. and Mrs. K.N.Saboo, Advocates for applicants.**  
**Shri M.I. Khan, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri M.A. Lovekar,**  
**Member (J).**

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**Date of Reserving for Judgment : 27<sup>th</sup> August,2024.**

**Date of Pronouncement of Judgment : 4<sup>th</sup> September,2024.**

**JUDGMENT**

**(Delivered on this 4<sup>th</sup> day of September,2024)**

Heard Shri N.R. Saboo, learned counsel for the applicants  
and Shri M.I. Khan, learned P.O. for the respondents.

2. Facts leading to this O.A. are as follows –

Raju Thakre who was working as Police Constable died in harness on 04/08/1997. At that time his son, applicant no.1 was two years old. His date of birth is 13/01/1995. On 25/09/1997 applicant no.2 wife of the deceased (mother of applicant no.1) submitted application for appointment on compassionate ground. Her name was entered in the waiting list for appointment to Class-IV post. By communication dated 08/08/2005 she was asked to remain present with necessary documents on 13/08/2005. On 13/08/2005 (page 2 of Annex-R2-II) applicant no.2 gave it in writing that she was not prepared to work on the post of Sweeper. On 26/04/2012, applicant no.2 submitted application (Annex-A-1) that her son, applicant no.1 who was then aged 18 years, be considered for appointment on compassionate ground. On 16/07/2012 applicant no.2 submitted application (Annex-A-2) with a similar request. In this letter she specifically stated that applicant no.1 be considered for appointment on the post of Police Constable or Class-III post of Clerk. She further stated that she was not willing to accept appointment on compassionate ground. This application was followed by identical applications dated 19/01/2013 (Annex-A-3) and 10/05/2013 (Annex-A-4). By communication dated 09/05/2013 (Annex-A-5) applicant no.2 was informed by respondent no.2 that on account of crossing the

maximum age as per G.R. dated 22/08/2005, her name was removed from the waiting list. On 23/06/2017 applicant no.1 submitted application (Annex-A-6) again requesting for appointment on compassionate ground. In this application he referred to previous applications made for this purpose. In these facts, the applicants pray that order dated 09/05/2013 (Annex-A-5) be quashed and set aside and respondent no.2 be directed to enter the name of applicant no.1 in the waiting list and consider him for appointment on compassionate ground on a post as per his educational qualification.

3. It would be useful to reiterate undisputed facts. Date of birth of applicant no.2 is 25/11/1969. She completed 40 years of age on 24/11/2009. As per G.R. dated 22/08/2005 maximum age for appointment on compassionate ground was 40 years. When applicant no.2 attained this age G.R. dated 22/08/2005 was applicable. By G.R. dated 06/12/2010 (at Page no.136) upper age limit for appointment on compassionate ground was raised to 45 years. However, this G.R. was made applicable from 06/10/2010. Assuming that the order dated 09/05/2013 (Annex-A-5) could not be sustained because at this point of time applicant no.2 had not attained the age of 45 years prescribed by G.R. dated 06/12/2010, the applicants still will have to show that instant O.A. deserves to be considered on merits by condoning delay. In this case the impugned order is dated 09/05/2013. This O.A. is filed

on 10/07/2017. Thus, there is considerable delay in filing the O.A. To condone the delay the applicants have filed C.A.No.331/2017. The delay caused in filing the O.A. is attributed to pendency of O.A.No.382/2013 filed by similarly placed candidate Suraj Bhende. O.A.No.382/2013 was decided by this Bench on 31/03/2017. Relevant part of Judgment dated 31/03/2017 reads as under –

*“(14) In this case, admittedly father of the applicant i.e. deceased Subhashrao Bhende died on 19.11.2002. At that time, applicant's age was nine years. Thereafter applicant's mother applied for the post on compassionate ground and her application was kept pending till it was finally rejected vide impugned letter dated 9.5.2013. Vide similar communication dated 11.6.2013, it was intimated to the applicant that there is no provision to substitute the name and that the appointment on compassionate ground is not hereditary right. Whether the circumstances at the time of death of an employee are still existing or not can be considered by the competent authority while considering the claim for compassionate appointment. The Government has issued various G.Rs which entitle the respondent authorities to consider as to whether the exigency still exists for appointing a person on compassionate ground or not. The respondents will be at liberty to consider all these aspects while considering the claim of the applicant on its own merit. But straightway rejecting the claim on the ground that the applicant's mother had crossed the age of 40 years and that there is no provision for substitution of the name of a person to be considered for appointment on compassionate ground, itself will not be proper in view of the facts discussed in foregoing paras. I, therefore, pass the following order-*

*(i) The O.A. is allowed.*

*(ii) The impugned communication dated 9.5.2013 issued by respondent No.2 and communication dated 11.6.2013 issued by respondent No.2 are quashed and set aside.*

*(iii) The respondent No.2 is directed to consider the name of the applicant for appointment on compassionate ground on its own merit and as per various circulars in the field in this regard and to take appropriate decision on the same without being influenced by any of the observations made in this regard.*

*(iv) Decision on such claim be taken within a period of eight weeks from the date of this order and the same shall be communicated to the applicant in writing.*

*(v) No order as to costs.”*

According to the applicants, only after they came to know about the Judgment dated 31/03/2017, it was felt that now respondent no.2 would favorably consider the application for appointment on compassionate ground since case of the applicants was identical to that of Suraj Bhende. There is no merit in this ground. Once the applicants had received the order dated 09/05/2013, they were expected to approach the Tribunal within limitation. The ground for condonation the delay i.e. pendency of O.A.No.382/2013 lacks substance. Thus, the O.A. is liable to be dismissed as being time barred.

4. The applicants do not have a case on merits also. Admittedly, soon after death of her husband, applicant no.2 had

applied for appointment on compassionate ground. By communication dated 08/08/2005 she was asked to remain present with necessary documents so as to issue an appointment order to her. On 13/08/2005 she remained present, but refused to accept appointment as Sweeper which was offered to her. So far as effect of such refusal is concerned, learned P.O. has relied on the Judgment of Hon'ble Bombay High Court dated 12/06/2023 in Writ Petition No. 3160/2023. In this case mother of the original applicant had initially applied for appointment on compassionate ground. She was waitlisted and eventually offered Class-IV post which she refused to accept. In this background, the High Court held that by refusing such posting mother of the original applicant had exhausted her remedy. Facts of the case in hand are identical. Applicant no.2, mother applicant no.1 too, had refused to accept the appointment to Class-IV post which was offered to her. Once this remedy was exhausted, there was no question of considering applicant no.1 in place of applicant no.2 for appointment on compassionate ground. For the reasons discussed hereinabove C.A.No.331/2017 is rejected and the O.A. is dismissed with no order as to costs.

**(M.A.Lovekar)**  
**Member (J).**

**Dated** :- 04/09/2024.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 04/09/2024.