

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1153 OF 2016

DISTRICT : PUNE

Shri Sudhir Tukasram Sabale.)
Age : 23 Yrs, R/at Post : Karanjgaon,)
Tauka Maval, Dist : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. Principal Secretary.)
Water Resources Department,)
Mantralaya, Mumbai 400 032.)
3. Superintending Engineer.)
Pune Irrigation Circle, 2nd Floor,)
Sinchan Bhavan, Pune 411 011.)
4. Executive Engineer.)
Pune Irrigation Division,)
Pune - 411 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

[Handwritten signature]

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 03.05.2017

JUDGMENT

1. This Original Application (OA) is brought by the son of a deceased Government employee working under the immediate control of the 3rd Respondent – Superintending Engineer, Pune Irrigation Circle. The said employee Shri Tukaram Sabale died on 2.4.2008. His widow had initially made a request for appointment on compassionate ground, but later on, she requested the name of the present Applicant being included in the said list for compassionate appointment. The request is declined on the ground that there was no provision to substitute the name of one heir by the other one. That stand of the Respondents became clear from what is Annexure 'A-9' (Page 30 of the Paper Book (PB)) and that is impugned in this OA wherein, further directions are sought for the Respondents to consider the claim of the Applicant for appointment on compassionate ground.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PB) for the Respondents.



3. This particular OA is fully governed by my own Judgment in **OA 503/2015 (Shri Piyush M. Shinde Vs. The State of Maharashtra & 2 Ors, dated 5.4.2016)** which in turn was based on a Judgment of the Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in **Writ Petition No.7832/2011 (names of the parties being not there) dated 28.2.2012.** The essential and basic facts are the same. Therefore, a detailed account of factual parameter from **Piyush Shinde** (supra) will really be out of place.

4. The mother of the Applicant, after the demise of her husband applied for compassionate appointment and it is common ground that her name was included in the list, but she could not be accommodated. Relying upon the GR dated 6.12.2010 (Annexure 'A-3', Page 19 of the PB), it was urged that the maximum age had been enhanced from 40 to 45 and hence, the entitlement of the lady would subsist till November, 2017. However, she made a written request on health ground that her name be substituted by the name of her son being the present Applicant. That request was turned down.

5. At this stage, I think I should usefully reproduce Para 11 from **Piyush Shinde's** case.



“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, I made the following observations in **Piyush Shinde's** case, which Para also deserves to be reproduced.

“**13.** There is absolutely no provision therein with regard to whatever may happen, if in the meanwhile, the action was taken the like of which the Respondents took in case of Applicant's mother. Therefore, as per the judgment of the Hon'ble Bombay High Court, it is very clear that the age of reckoning for the lady would be 45 which in this case would be till the year 2011. She had already made it clear before attaining the age of 45 that if she could not be considered then her son's case be taken into consideration and it was thereafter that the Applicant also applied for being considered for appointment on compassionate ground. At this

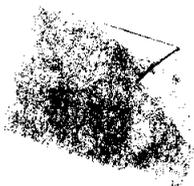


stage itself, it needs to be quite pertinently noted that a recent G.R. of 20th May, 2015 in respect of the compassionate appointments introduces at least two major changes from the earlier state of affairs. In the first place, it lays down a mandate that the dependants of the deceased employee would have to be informed in writing, in effect their rights and entitlement post demise of their ascendant. Secondly, the time limit of one year has been increased to three years in so far as member of the family like Applicant's mother is concerned from the date of the demise of the deceased employee and also three years after attaining the age of majority as far as the member of the family like the present Applicant is concerned. One year period stands and the concerned authority has been granted powers to condone the delay of the next two years and the period thus makes up for three years."

7. In Para 15 of **Piyush Shinde** (supra), I referred to an earlier Judgment of this Tribunal in **OA 184/2005 (Nirmala B. Doijad and one another Vs. The State of Maharashtra and 3 others, dated 3.5.2006 at Aurangabad Bench)**. Para 15 thereof reads as follows :



“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.”



8. The above discussion must, therefore, make it very clear that there is no force and substance in the case of the Respondents, and therefore, this OA also must follow the course of the OA in **Piyush Shinde** (supra). The Respondents are, therefore, directed to consider the case for appointment on compassionate ground of the Applicant instead of his mother and take necessary steps in that directions and pass an appropriate order as per law within a period of three months from today. The Original Application is accordingly allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
03.05.2017

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Mumbai

Date : 03.05.2017

Dictation taken by :

S.K. Wamanse.