

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.239 OF 2016

DISTRICT : SATARA

1. Swati P. Khatavkar)
2. Shri Gaurav P. Khatavkar)
R/at. Talathi Colony, Dahivadi)
Road, At and Post Vaduj,)
Taluka Khatav, Dist. Satara)

...Applicants

Versus

1. The State of Maharashtra.)
Through the Collector,)
Dist. Satara, Satara.)
2. The Sub Divisional Officer,)
Phaltan, Dist. Satara.)

...Respondents

Ms Swati Manchekar, Advocate for Applicants.

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

CORAM : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 21.10.2016

JUDGMENT

1. This is an application by the mother and son being the heirs and legal representative of the late Shri Prabhakar Khatavkar who died in harness and the OA relates to the issue of appointment on compassionate ground.

2. I have perused the record and proceedings and hear Ms Swati Manchekar, the learned Advocate for the applicants and Shri A.J.Chougule, the learned Presenting Officer for the respondents.

3. As a matter of fact for all practical purposes, this OA needs to be allowed just for asking because it is covered by a few judgments of the Hon'ble Bombay High court as well as of this very Tribunal. The first judgment is in **W.P.No.7793/2009 (Vinodkumar Khiru Chavan V/s State of Maharashtra & Ors, dated 9.12.2009)**. The next was an order of the Hon'ble Vice-Chairman in **OA No.215/2014 (Smt Surekha N. Molak & 1 Anr. V/s Superintendent Engineer and 2 ors, dated 29.9.2015)**. Another judgment was rendered by me in **OA No.503/2015 (Piyush Shinde V/s State of Maharashtra & 2 Ors, dated 5.4.2016)** and lastly there was another OA decided by me being **OA No.279/2015 (Amol A. Suryawanshi V/s SDO, Bor & 2 Ors, dated 16.3.2016)**. I should have thought that with this kind of material to go by the authorities should not have compelled the applicants to take recourse to remedy of this OA. The deceased ascendant of the applicant Shri Prabhakar Khatavkar, who was the husband of the first applicant and father of the second applicant, died in harness on 17.10.2009. Apart from the applicants, he also left behind

two daughters and the record shows that they have sworn on affidavit that they would have no objection if the benefits were to be given to the applicants as herein sought. There is no hurdle in that connection. It appears that within time prescribed by the G.R.s relevant hereto, the first applicant applied for being considered for the appointment on compassionate ground. There was no hitch in that behalf. However, it appears that she did not have requisite qualifications and, therefore, in the ultimate analysis both the applicants moved the concerned authorities for allowing the second applicant to be, in the manner of speaking, substituted for his mother. It is not necessary to set out the details of facts and documents but the only ground on which the claim is being resisted is that according to the rules, such a substitution is not allowed. It was so mentioned also in the communication dated 26.2.2015 from the office of Collector, Satara to SDO, Phaltan. It was mentioned therein that there can be no right of inheritance in circumstances such as this one and as per rules the substitution cannot be allowed. The SDO, Phaltan addressed a communication dated 30.12.2015 to the second applicant to inform inter-alia that such substitution cannot be allowed.

4. There is a G.R. dated 20.5.2015 (Exb.A-11, page 46 of PB) which is being strongly relied upon by the learned P.O. on behalf of the respondents. It pertains to appointment on compassionate ground to the post of Clerk-cum-Typist. The significance is being attached to the provisions therein that if an enlisted heir were to pass away then subject to the conditions therein another heir could be allowed to be enlisted. By implication, it is suggested that those circumstances do not exist herein.

5. The Hon'ble Bombay High Court in Vinod Kumar Case (Supra), in more or less identical circumstances gave the directions to consider the case of the son for compassionate appointment. That was a matter where the mother became age barred because till then her claim was not considered presumably because of what can be called official delay. In Amol Suryawanshi's OA, I had an occasion to discuss that case law along with the Supreme Court's judgment in the matter of Smt Sushma Gosain V/s Union of India AIR 1976 (SC). I also relied upon the judgment of the Division Bench of the Hon'ble High Court in W.P.No. 8915/2011(Executive Engineer, PWD, Solapur & Ors. V/s Jijabai Choudhary, dated 14.11.2011). In Sushma Gosain as well as in Jijabai Choudhary's cases, the Hon'ble constitutional courts

denounced the tendency in the authorities to cause delay in such matters. In **Piyush Shinde's** case (Supra) also the facts were basically the same where the mother wanted to substitute her son as an heir of the deceased husband. In para (11), I took guidance from the judgment of the DB of Hon'ble High Court , Aurangabad Bench and reproduced the same. Para (11) of Piyush Shinde's case in fact needs to be fully reproduced:-

"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 my view, it will be erroneous to contend that the G.R. of 20.5.2015 places difficulty and it is not as if unless enlisted heir was to die another heir cannot be enlisted. In my view, the said G.R. in that behalf incorporates only an enabling provision to take care of a particular contingency i.e. death. It is, therefore, very clear from the forgoing that the issue involved herein as already mentioned above is fully governed by the above referred cases and the respondents will have to act in accordance with that. I reject their case that so called substitution is impermissible and I hold that the applicant no.2's name

will have to be enlisted in place of the applicant no.1 and consider him for appointment on compassionate ground.

7. The impugned order is quashed and set aside. The respondents are directed to enlist the name of the applicant no.2 for his mother, the applicant no.1 and consider the case of the applicant no.2 for appointment on compassionate basis at the earliest. The OA is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
21.10.2016

Mumbai
Date : 21.10.2016
Dictation taken by :
V.S. Mane