

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.380 OF 2016

DISTRICT : KOLHAPUR

- | | | | |
|----|---------------------------------|---|----------------------|
| 1. | Smt. Sangita R. Doijad. |) | |
| | Age : 46 Yrs., Occ.: Nil, |) | |
| 2. | Mr. Parth Rajendra Doijad. |) | |
| | Age : 21 Yrs, Occu.: Nil, |) | |
| | R/at : 604, E Ward, Shahapuri, |) | |
| | 2 nd Lane, Kolhapur. |) | ...Applicants |

Versus

- | | | | |
|----|---------------------------------|---|-----------------------|
| 1. | The State of Maharashtra. |) | |
| | Water Resources Department, |) | |
| | Mantralaya, Mumbai - 400 032. |) | |
| 2. | The Superintending Engineer. |) | |
| | Water Resources Department, |) | |
| | Sangli Irrigation Dept, Sangli. |) | |
| 3. | The Superintending Engineer. |) | |
| | Koyana Construction Circle, |) | |
| | Koyana Nagar, Satara. |) | |
| 4. | The Deputy Executive Engineer, |) | |
| | Sangli Irrigation Dept, Sangli. |) | ...Respondents |

Mr. K.R. Jagdale, Advocate for Applicants.

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

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

DATE : 14.03.2017

JUDGMENT

1. This Original Application (OA) is brought by the widow and the son of the deceased Government employee who died in harness and it seeks for the Applicant No.2 compassionate appointment after the name of his mother, the 1st Applicant came to be deleted having attained the age of 40.

2. The facts are a few and simple. The late Mr. Rajendra M. Doijad was serving as Store Keeper which post fell in group 'C' under the Respondents. The 1st Respondent is the State of Maharashtra in Water Resources Department, the 2nd Respondent is the Superintending Engineer, Water Resources Department, the 3rd Respondent is the Superintending Engineer, Koyana Construction Circle and the 4th Respondent is the Deputy Executive Engineer, Sangli Irrigation Department, Sangli. The late Mr. Rajendra Doijad died on 21.8.2006 in harness. The 1st Applicant is his wife and the 2nd Applicant is their son, they having been born on 5.6.1969 and 27.7.1995 respectively. The deceased employee had also left behind a daughter. After his demise, almost



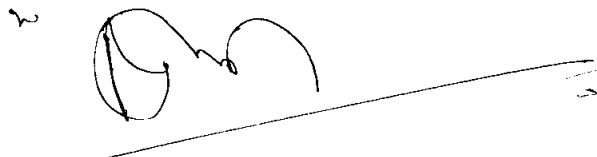
immediately, the 1st Applicant sought compassionate appointment for herself and she made this representation to the 2nd Respondent. In fact, she carried on the correspondence even thereafter. She submitted the testimonials that she was called upon to do by the Respondents and also submitted an application in a prescribed format. The 2nd Applicant attained majority on 22.7.2013 and he also moved for being appointed on compassionate ground. Vide a communication of 1.11.2014, the 2nd Respondent informed the Applicant No.2 that in as much as the 1st Applicant had crossed the age of 40 on 4.6.2009, her name came to be deleted and in support of such a move, reliance was placed on a GAD G.R. of 22nd August, 2005. It was further informed that there was no provision for substitution of the name of the other dependent, once the name of one dependent was earlier recorded for the purposes of compassionate appointment, and therefore, the request of the Applicant No.2 could also not be accepted. It is this order dated 12.2.2016 (Exh. 'P', Page 41 of the Paper Book (PB)) that is being questioned by way of this OA under Section 19 of the Administrative Tribunals Act, 1985.

3. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the

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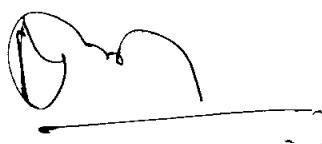
Applicants and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

4. It must have become clear from the above discussion that the crux of the matter is as to whether the Applicant No.2 after attaining the majority had a right to be included in the list of compassionate appointees because according to the Respondents, her mother's name came to be deleted in 2009 when she turned 40. In fact, it seems that the authorities did not realize the fact that the maximum age limit of 40 was later on extended upto the age of 45 by way of a G.R. of 2010. Even then, proceeding further, the sum and substance of the case of the Respondents as would become clear from the Affidavit-in-reply filed by Mr. Hanmant V. Gunale, Superintending Engineer working under the 4th Respondent for and on behalf of all the Respondents including the State of Maharashtra is that there was no provision for substituting the name of the son for the mother in the G.R. to which a reference has been made by them including the G.R. of 20th May, 2015. I have perused the said G.R. This G.R. issued by the GAD did not even refer to a few significant Judgments of this Tribunal on the same issue, and therefore, it can by no stretch of imagination survive at the expense of the principles emanating from the said case law



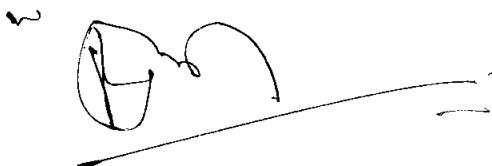
which were based on the case law of the Hon'ble Supreme Court and Hon'ble High Court. However, quite pertinently, while till the time the said G.R. was issued, the time limit for considering the request of a dependent of the deceased who was minor at the time of the death of the said deceased was one year of attaining the majority under the 2015 G.R, powers have been conferred on the competent authority to condone the delay upto a total of three years from the date of attaining majority.

5. Therefore, if the only hitch in the way of the Applicant No.2 is that his name could not have been substituted for his mother whose name came to be deleted after she attained the age of 40, then I find that there are as I mentioned above, the Judgments of this Tribunal which make it clear that this is not such an insurmountable difficulty. The first Judgment is in **OA 503/2015 (Piyush M. Shinde Vs. State of Maharashtra and 2 others, dated 5.4.2016)** rendered by a Single Bench presided over by me. That OA was brought by the son of the deceased employee and in that case, his mother made a request for inclusion of his name because she had turned 40. There also, the name of mother was included as mentioned just now and later on relying upon the G.R. of 23.4.2008, her name was deleted. There in that case,



the mother had already requested for inclusion of the name of her son in case her claim was not to be considered. Thereafter, the son also made an application with a no objection from his other family members. In that matter also, the case of the Respondents was same namely that there can be no substitution of the dependents even in the circumstances like the present one. In Para 11 of the said Judgment, I relied upon an unreported Judgment of the Aurangabad Bench of the Hon'ble Bombay High Court in **Writ Petition No.7832/2011, dated 28.2.2012.** The names of the parties were not clear in that matter. In that view of the matter, therefore, the best course of action would be to reproduce the entire Para 11 from **Piyush Shinde** (supra), which I do hereby do.


“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

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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.

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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.

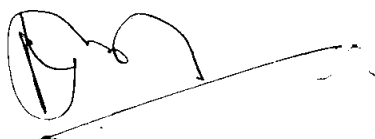
Sd/-
(Sunil P. Deshmukh, J)

Sd/-
(B.R. Gavai, J)"

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6. I then observed which observation will have to be made here also that having fully reproduced the entire order of the Hon'ble High Court, it was not necessary for me to add anything of my own. I noted therein as I did herein earlier that as per G.R. of 2010, the name of the widow could not have been deleted at 40, but it ought to have gone upto 45. There may have been some difference in the facts with regard to the mother having already laid a claim for her son earlier in that matter while here, the facts may not be exactly similar, but still in substance, they are the same. If the claim of the mother ought to have remained subsisting till 2014 in this matter, then by then, the Applicant No. 2 had also become major and he also laid a claim for compassionate appointment, and therefore, any amount of hyper technicality will not in my view be possible to be invoked to defeat the claim of the Applicants if as a result of the order of the Hon'ble High Court fully quoted above, he should be entitled thereto.

7. In Paras 15 and 16 of **Piyush Shinde** (supra), I relied upon two earlier Judgments of this Tribunal in **OA 184/2005 (Nirmala B. Doijad Vs. State of Maharashtra, dated 3.5.2006 (Aurangabad Bench)** and in **OA 432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 others, dated 0.12.2014)** also the



Aurangabad Bench of this Tribunal. I then relied upon the Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7793/2009 (Vinodkumar K. Chavan Vs. State of Maharashtra, dated 9th December, 2009)** and an earlier Judgment of this Tribunal in **OA 1043/2014 (Shubham V. Surve Vs. State of Maharashtra and one another, dated 3.11.2015)**.

8. There is an another Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7793/09 (Vinodkumar K. Chavan Vs. State of Maharashtra and others, dated 9th December, 2009)**. In that Writ Petition also, the issue was of substitution of the name of the son for the mother. The application of the mother came to be rejected on that ground. Their Lordships were pleased to observe in effect that such a course of action could not have been adopted and the Respondents were directed to reconsider the case of the said Petitioners.

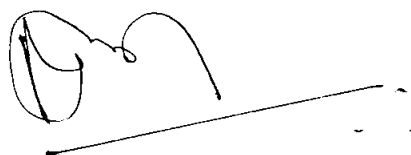
9. Another Judgment in this behalf relied upon by Mr. K.R. Jagdale, the learned Advocate for the Applicants was in **OA 604/2016 (Smt. Anusaya V. More and one another Vs. State of Maharashtra & 3 Ors, dated 24.10.2016)**. There the facts again were more or less similar as the present one and at least four earlier



Judgments of this Tribunal and a Judgment of the Hon'ble Bombay High Court in **Vinodkumar Chavan** (supra) came to be referred to and necessary directions in favour of the Applicants were given.

10. In **OA 884/2012 (Deepak M. Naik Vs. Commissioner of Police for Greater Mumbai and one another, dated 24.12.2013)** rendered by the Bench of the then Hon'ble Chairman which spoke through the Hon'ble Vice Chairman, the issue was about the appointment of a Police Constable in the circumstances therein mentioned. The principles on which the directions in favour of the Applicant were given when applied hereto, would in my view fortify the conclusion that I am inclined to reach.

11. A Judgment of 2nd Division Bench speaking through me in **OA 21/2013 (Smt. Archana R. Badmanji and one another Vs. The Superintending Engineer, Sangli Irrigation Circle Circle and one another, dated 20.8.2014)** dealt with a matter which was substantially similar to the present one and in that particular Judgment, the 2nd Bench relied upon a few Judgments including a Judgment of the Hon'ble Supreme Court in **Smt. Sushma Gosain Vs. Union of India, AIR 1976 SC 1976** laid down that such matters should not be allowed to linger

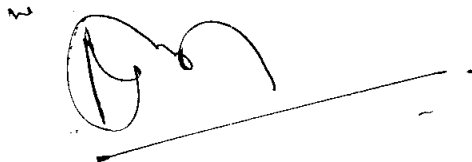


unnecessarily, in which connection, Para 9 thereof was fully reproduced in Para 11 of the Judgment of the 2nd Bench. The 2nd Bench then considered the Judgments cited on behalf of the Respondents in Para 12 of its Judgment in the matters of **Eastern Coalfields Ltd. Vs. Anil Badyakar : 2009 (5) CPSC 925, Union of India & Anr. Vs. Shashank Goswami & Anr. : 2012 (5) CPSC 34 and Union Bank of India & Ors. Vs. M.T. Latheesh, Appeal (Civil) 3548 of 2006, dated 18th August, 2006.** The principles on which the Respondents relied thereupon in that matter as well as here also is that the claimants for compassionate appointment constitute a special class by itself and they do not have any vested right as such. The 2nd Bench made the following observations in Para 12 and in fact, I can usefully reproduce a part of Para 12 and the Para 13 because the same will be applicable hereto.

“..... It was held by Their Lordships in the above matters that this is a special class of claimants seeking appointments and there is no vested right in the claimants to seek appointment on compassionate ground. The said observations will have to be read in totality and not piece meal. Generally so speaking in those particular matters and in the earlier judgments therein



referred to, there was considerable delay of years together in some cases. Further, Their Lordships held there that such appointments being a departure from the normal rule of appointment through open competition, the schemes and the rules that regulate the same would have to be strictly applied. Now, we have applied those principles hereto. Very pertinently, there is no hitch even according to the Respondents as far as the Applicant No.1 is concerned other than she having crossed the age bar. In case of the Applicant No.2, the hitch was that he could not have been substituted for his mother in the list. As a necessary fallout, there is no other defect in case of either of them. Although, as we shall be presently pointing out, there is no way, Applicant No.1's claim can be considered for appointment on compassionate ground. But then, the fact remains that applying the several clauses of the various relevant G.Rs. including the G.R. of 2005 on Respondents' own showing there was no defect other than the one that they have pointed out. We must repeat, however, that in setting up the case against the Applicant No.1, whatever has been dished out is just a ruse to cover up

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Respondents' negligence in performance of their solemn duty and/or complete insensitivity or both or may be other vitiating vices. The claim of the Applicant No.2 in the set of circumstances has a peculiar hue which may not be found quite easily in other matters. Instead of rejecting the claim of the Applicant No.1 at the threshold, the family was lulled into an expectation of success and ultimately, it was not till 21st August, 2010 that her claim was finally rejected on record. As observed already, the Applicant No.1 laid the claim for her son in all probability after she realized that she might just be hitting the dead end or may be she thought that her son was a better claimant. There would be nothing wrong in case she thought that way.


13. Very pertinently, therefore, the claimants of both the Applicants were rejected not for any substantive clause or in violation of any of the provisions of the G.R. except for delay of a few months in case of the Applicant No.2. Now, if we were to visit the consequences of delay on the Applicant No.1, the fallout and the net result would be to do so, even when that could be

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the consequences of any inexcusable indolence and complete insensitivity of the Respondents. We may mention quite unhesitatingly that the Respondents herein have dubious distinction of being in the company of the employers in **Smt. Sushma Gosain's** case (supra). The observations of the Hon'ble Supreme Court in that matter would apply fairly and squarely in this particular matter to the Respondents. The issue, therefore, is as to whether there is a way out or there is no other go, but to leave the interest of justice dialated and sacrificed at the alter of procedure. In search of an answer, we can do no better than rely upon an earlier judgment of this Tribunal to which one of us (Shri Rajiv Agarwal, Vice-Chairman) was a party. That matter was **O.A.884/2012 (Mr. Deepak Mohan Naik vs. The Commissioner of Police for Greater Mumbai and another, dated 24.12.2013)**. That matter before the Bench of the Hon'ble then Chairperson arose out of a similar claim for appointment on compassionate ground in Police force. There also, there was slight delay in following the procedure. One aspect of the matter was that the claimant



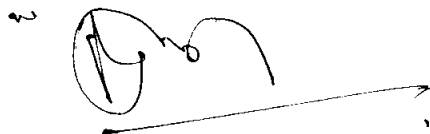
therein was already working as a Child Constable. But in an elaborately considered judgment, this Tribunal held that in certain circumstances, the delay could safely be ignored, more particularly when the facts demanded the said course of action. We must note carefully that the Tribunal in that matter made it clear that the course of action adopted therein was an exceptional one and should not be allowed to become routine as a precedent. However, in its application to the present matter, in our view, may be the Applicant No.2 is slightly better placed because right from the year 2004, as already made clear hereinabove, the Respondents so conducted themselves vis-à-vis the issue in hand as to lull the Applicants into a belief that their case was under consideration. If that be so, then as already mentioned above, to refuse to advance remedy to the Applicant No.2 at least would tantamount to put premium on Respondents' felony and punishing the Applicants for something that they are not responsible for. It is undoubtedly true that when the limitation is provided for even in the instruments like G.Rs, Circulars, etc, the said

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provision has to be strictly construed, but one cannot lose sight of the fact that in deserving cases, if enacted laws provide for condonation of delay a'la Section 5 of the Limitation Act, then it is a far cry to suggest that a judicial body should sit by helplessly and let injustice prevail. Therefore, without causing any embarrassment to the Bench of the then Hon'ble Chairman on our own assessment on the facts at hand, we are so disposed as to apply the same course of action that they adopted in that particular matter."

12. In that matter as well as in the matter before the Aurangabad Bench of the Hon'ble Bombay High Court, the delay aspect of the matter was considered but here, if the provision of 2015 G.R. are applied, then the Applicant No.2 could not be held liable for having caused any delay because in the context of the facts, the competent authority always had the power to extend it from one year to three years as already mentioned above.

13. Mr. K.R. Jagdale, the learned Advocate for the Applicants relied upon a Judgment of a Division Bench of the Hon'ble Bombay High Court in **Mahesh Singh Bisht Vs. Canara Bank (Writ Petition No.1603/2012, dated**



29.9.2016. Their Lordships were pleased to make adverse comments on the conduct of the Respondents there who dilly dallied the application of the claimant for compassionate appointment and ultimately held *inter-alia* relying upon a few Judgments of the Hon'ble Supreme Court for the claimants of the compassionate appointment.

14. Before concluding, I find that as per the mandate of the Hon'ble Supreme Court in **Sushma Gosain**, the Respondents in such matters ought to act with due dispatch. As a matter of fact, the various G.Rs holding the field have it that the process must not only be expeditious but also transparent. The claimants for compassionate appointment are only those whose ascendant was an employee falling within either Group 'C' or Group 'D', and therefore, while it is no doubt true that they also must be vigilant but at the same time, to expect them to display the sophistication which some people well placed in life might be able to do will be unrealistic, and therefore, there will be no point in harping on the so called defects in the case of the Applicants unless the Respondents could show that they did their duty in the manner they should have done.

15. The above discussion would, therefore, make it quite clear that the stand of the Respondents that they

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cannot substitute the name of the son for the widow is unsustainable for the above discussed reasons. I, therefore, quash and set aside the impugned communication dated 12.2.2016 from the Respondent No.2 and direct the Respondents to consider the case of the Applicant No.2 – Mr. Parth Rajendra Doijad for the compassionate appointment in place of his deceased father. Compliance within three months from today and the Applicants be informed about the outcome thereof within one week thereafter. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
14.03.2017

14-03-17

Mumbai

Date : 14.03.2017

Dictation taken by :

S.K. Wamanse.

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