

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.636 OF 2016

DISTRICT : RAIGAD

Mr. Sagar Baliram Raikar.)
Age : 28 Yrs, Occu.: Nil, R/o. A/P. Ravalje)
Tal.: Mangaon, District : Raigad.)...**Applicant**

Versus

1. The Superintending Engineer.)
Thane Irrigation Circle, Thane,)
Having Office at Sinchan Bhawan,)
3rd Floor, Kopari Vasahat,)
Thane (E).)
2. The Executive Engineer.)
Raigad Irrigation Division, Kolad,)
Tal.: Roha, Dist : Raigad.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. D.B. Khaire, Special Counsel for Respondents 1 & 2.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent No.3.



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

DATE : 21.03.2017


JUDGMENT

1. The Applicant being the son of a deceased Government employee who died in harness has brought this Original Application (OA) calling into question the order dated 17.2.2016 made by the 1st Respondent – Superintending Engineer, Thane Irrigation Circle, Thane whereby his name was removed from the waiting list of the candidates who had applied for appointment on compassionate ground. The 2nd Respondent is the Executive Engineer, Raigad Irrigation Division and the 3rd Respondent is the State of Maharashtra in Water Resources Department.

2. The late Mr. Baliram Raikar died in harness on 29.5.1998 leaving behind his wife Smt. Aruna and the Applicant as their son. The date of birth of the Applicant is 29.6.2006. The date of birth of his mother is 1.6.1964. At Exh. 'E' (Page 23 of the Paper Book (PB)) there is a communication from 2nd Respondent to the Collector, Raigad dated 4.3.2011. It was mentioned therein that after the demise of the said deceased, the name of her widow Smt. Aruna on her application was enlisted as an



Applicant for compassionate appointment. She, however, attained the age of 40 on 1.6.2004, and thereafter, according to the G.R. of 22.8.2005 (2)(2), her name was deleted from that list and she was informed accordingly. She had already made an application to include the name of the Applicant and that would have been possible only if before turning 40, she would have made a request. However, upon her application and with permission of the superiors, the name of the Applicant was included in her place w.e.f. 15.5.2006 for the compassionate appointment in Group 'C' post. The name of the Applicant was accordingly included. There is a separate communication from the 2nd Respondent to Smt. Aruna Raikar, which is at Exh. 'D' (Page 22 of the PB) dated 7.12.2007 whereby she was informed that her name was at Serial No.1 in the list, but her name had to be deleted after she turned 40. At Exh. 'C' (Page 21 of the PB), there is an extract of the chart showing that the name of the Applicant was included in that list for compassionate appointment w.e.f. 15.10.2006. I have already mentioned above that in an official communication, it was mentioned that, upon the application of Smt. Aruna Raikar, the name of the Applicant was included in her place. That communication addressed to the 1st Respondent is at Exh. 'B' (Page 19 of

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the PB).

3. The discussion thus far must have made it quite clear that the said deceased was a group 'C' employee. After his death, initially the name of his wife was included in the list of compassionate appointees, and thereafter, in the year 2006, the name of the Applicant was in fact actually recorded. By the impugned order above referred to, however (dated 17.12.2016), the Applicant was informed that though a lot of exercise was done to sympathetically consider his case, but then there was no provision for substituting the name of one dependent for the other in the Rules or instruments, and therefore, his name had been deleted. It is this order of the 1st Respondent that is being questioned herein.

4. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant, Mr. D.B. Khaire, the learned Special Counsel for the Respondents 1 and 2 and Smt. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondent No.3.

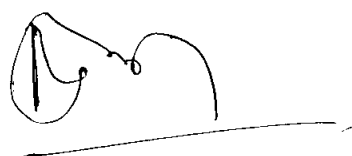
5. It must have become clear from the above discussion that the issue herein is as to whether the stand of the Respondent that in the facts and circumstances



such as they are, the claim of the Applicant was liable to be defeated on the ground that the claim of one dependent (wife) could not be substituted by another (son). Mr. Khaire, the learned Special Counsel in all fairness told me that this was the only crucial issue to be decided herein.

6. In fact, this issue is now fully concluded by a few Judgments of this Tribunal and at least two Judgments of the Division Bench of the Hon'ble Bombay High Court. In **OA 503/2015 (Piyush M. Shinde Vs. State of Maharashtra and 2 others, dated 5.4.2016)** which Judgment was rendered by me, I took guidance from the Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7832/2011 (names of the parties not there, dated 28.2.2012)**. Para 11 from **Piyush Shinde's** case was fully quoted by me in another Judgment in **OA 3880/2016 (Smt. Sangita R. Doijad and 1 another Vs. The State of Maharashtra and 3 others, dated 14.3.1997)**. That particular Para also extracted a significant passage from the Judgment in **Writ Petition No.7832/2011** (supra). It will be most advantageous to reproduce Para 11 from **Piyush Shinde** (supra).

“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



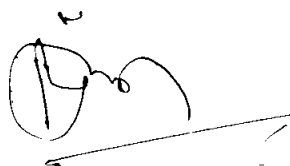
journal, and therefore, it will be most appropriate to reproduce it entirely.

“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.

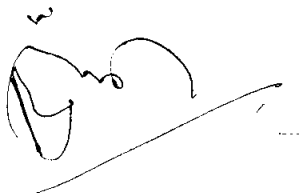
4. In the meanwhile, by Govt. Resolution dated 6.12.2010, policy of the Respondent underwent a change and a decision was taken by the Government to increase the

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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.

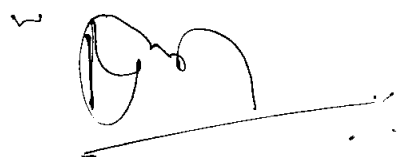
8. Petition stands disposed of. Rule is made absolute, in aforesaid terms.

Sd/-
(Sunil P. Deshmukh, J)

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

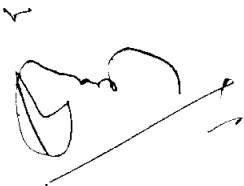
Having reproduced the entire Paragraph from the order of the Hon'ble High Court, I do not think, I have to add anything of my own.

7. The facts in **OA 21/2013 (Smt. Archana R. Badmanji and one another Vs. The Superintending Engineer, Sangli Irrigation Circle and one another, dated 20.8.2014)** rendered by the 2nd Division Bench of



this Tribunal which spoke through me were almost identical as the present one. There also, the wife of the Government servant after his demise got her name enrolled, but lest her claim might not reach till such time as she reached the maximum age limit, she requested for her name to be substituted by her son. The same objection which is raised here was raised there as well. For principles, the 2nd Bench relied upon **Smt. Sushma Gosain Vs. Union of India : AIR 1976 SC 1976.** In **Badmanji's** matter, another earlier Judgment of the Bench of the then Hon'ble Chairman in **OA 884/2012 (Deepak M. Naik Vs. Commissioner of Police for Greater Mumbai and one another, dated 24.12.2013)** was relied upon in that case also. There was some delay as according to the Respondents is the case over here. Here, however, the G.R. of 2015 confers on the concerned authority the power to condone the delay by a further period of two years, thereby making the case of the Applicant stronger.

8. In another unreported Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7793/2009 (Vinodkumar K. Chavan Vs. State of Maharashtra and others, dated 9th December, 2009)** also the issue of substitution of the name of the son for the mother was



involved. Their Lordships in effect held that the claim could not be defeated on that score.

9. I have already referred to **Archana Badmanji** and **Sushma Gosain** (supra) hereinabove. In **Archana Badmanji's** case, three Judgments of the Hon'ble Supreme Court were cited on behalf of the Respondents. I have considered all those Judgments again in **Sangita Doijad** (supra) and Para 11 of **Sangita Doijad's** case in fact needs to be fully reproduced so as to have a complete and a focused picture before us although it will be a little longish quote.

"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



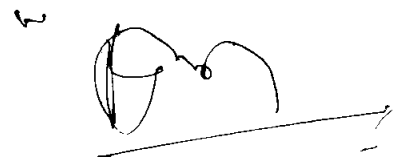
allowed to linger unnecessarily, in which connection, Para 9 thereof was fully reproduced in Para 11 of the Judgment of the 2nd Bench. The 2nd Bench then considered the Judgments cited on behalf of the Respondents in Para 12 of its Judgment in the matters of **Eastern Coalfields Ltd. Vs. Anil Badyakar : 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

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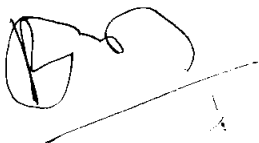


appointment on compassionate ground. The said observations will have to be read in totality and not piece meal. Generally so speaking in those particular matters and in the earlier judgments therein referred to, there was considerable delay of years together in some cases. Further, Their Lordships held 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

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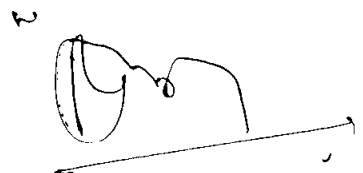
then, the fact remains that applying the several clauses of the various relevant G.Rs. including the G.R. of 2005 on Respondents' own showing there was no defect other than the one that they have pointed out. We must repeat, however, that in setting up the case against the Applicant No.1, whatever has been dished out is just a ruse to cover up 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

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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 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


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(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

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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 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."

10. It will become very clear from the foregoing that this OA will have to be decided in same terms as was **Badmanji** and **Doijad** (supra). All the submissions to the



contrary advanced by Mr. D.B. Khaire, the learned Special Counsel for Respondents 1 and 2 and Mrs. K.S. Gaikwad, the learned PO for Respondent No.3 are not accepted.

11. The order herein impugned stands hereby quashed and set aside. The Respondent No.1 is hereby directed to restore the name of the Applicant in the list at the same number as it was when the impugned order was made and proceed on the basis that the impugned order was never made and consider the claim of the Applicant for the post in Group 'C' as expeditiously as possible and preferably within six months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)

Member-J

21.03.2017

21.3.17

Mumbai

Date : 21.03.2017

Dictation taken by :

S.K. Wamanse.

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