

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.645 OF 2017

DISTRICT : NASHIK

Shri Manoj Ashok Damale.)
Age : 25 Yrs., Occu. Nil,)
R/o. Shree Swami Samarth CHS.,)
Opp. Irrigation Colony, Makhamalabad,)
District : Nashik.)...**Applicant**

Versus

1. Superintending Engineer &)
Administrator, Command Area)
Development Authority, Nashik.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

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

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.04.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned order dated 27.04.2016 whereby the application made by the Applicant for grant of appointment on compassionate ground has been rejected.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is the son of deceased Ashok Damale who was in Government service on the post of Junior Clerk. Ashok Damale died in harness on 27.04.2002. After the death of Ashok Damale, Applicant's mother made an application on 15.04.2006 requesting Respondent No.2 to provide appointment on compassionate ground either to her or to her son i.e. the present Applicant. Accordingly, the name of Applicant's mother was taken in waiting list for the appointment on compassionate ground. However, nothing was communicated to the Applicant in this behalf. For the first time, by letter dated 12.03.2012, she came to know that the name of her mother Smt. Lankabai was taken in the waiting list, but her name came to be deleted on attaining the age of 40 years in terms of G.R. dated 23.04.2008. This information was obtained by the Applicant under R.T.I. Act. Therefore, on 17.04.2004, the Applicant again made an application to Respondent No.1 stating that the application made by her mother on 15.04.2006 was joint application for mother and Applicant, and therefore, his name ought to have been taken in waiting list in place of mother. He, therefore, again requested to re-consider the decision and to appoint him for compassionate appointment. He again made representation to Hon'ble Chief Minister on 24.09.2014 through Union and requested for grant of appointment on compassionate ground. However, the Government by letter date 27.04.2016 rejected the Applicant's request on the ground that there is no provision for substitution of heir in the waiting list and accordingly, the application made by the Applicant came to be rejected. The Applicant has challenged this impugned order dated 27.04.2016 contending that the application made by his mother on 15.04.2016 was joint application for mother and son, and therefore, the Respondents ought to have taken the name of Applicant in waiting list after the deletion of the name of mother on attaining the age of 40 years. The Applicant, therefore, contends that he is in dire need of the employment, but the Respondents have rejected his claim without considering the merits of the

matter. He, therefore, prayed to quash and set aside the impugned order dated 27.04.2016 and seek directions to the Respondents to include his name in the waiting list for the appointment on compassionate ground in Group 'C' post.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.32 to 34 of the Paper Book) inter-alia denying the entitlement of the Applicant for the appointment on compassionate ground. The Respondents contend that the name of mother of the Applicant was taken in waiting list, but she had crossed 40 years of age before the issuance of appointment letter, and therefore, in terms of G.R. dated 22.08.2005, her name has been deleted from waiting list. According to Respondents, once the name of the heir of the deceased is deleted from waiting list on attaining the age of 40 years, another heir cannot be substituted for want of any provision to that effect in G.R. dated 22.08.2005. The Respondents, therefore, sought to justify the impugned order dated 27.04.2016 and prayed to reject the application.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the Respondents are adopting hyper-technical approach while considering the claim of the Applicant. He has further pointed out that the application made by Applicant's mother on 15.04.2006 was for the appointment on compassionate ground for herself or for his son i.e. the present Applicant who was minor at that time. The date of birth of the Applicant is 26.06.1992 and he attained majority in 2010. He, therefore, urged that as the name of Applicant was already in the application made by the Applicant's mother on 15.04.2006, his name ought to have been substituted after deletion of the name of his mother from waiting list on attaining 40 years age. To drive home point, he referred to various decisions in this behalf.

5. Per contra, Ms. S.T. Suryawanshi, learned Presenting Officer made two-fold submissions. Firstly, the application made by the Applicant for grant of

appointment on compassionate ground by application dated 17.04.2014 is barred by limitation and secondly, the period of almost 17 years are over from the date of death of deceased employee, which shows that the family is not in dire need of the employment, and therefore, the rejection of the claim of the Applicant cannot be faulted with. She sought to place reliance on the Judgment delivered by this Tribunal in ***O.A.No.381/2017 (Amanulla Mahaldar Vs. State of Maharashtra) decided by Tribunal at A'bad Bench on 06.11.2017*** wherein the O.A. has been rejected.

6. At the very outset, in view of the pleadings and submissions advanced by the learned Counsels, the following factors emerges as uncontroverted.

- “(i) The father of Applicant Ashok Damale died in harness on 27.04.2002.
- (ii) On 15.04.2006, the mother of Applicant viz. Smt. Lankabai made application for appointment on compassionate ground for herself or her son (i.e. Applicant) as seen from Page No.14 of P.B.
- (iii) The name of mother of the Applicant viz. Lankabai was taken in waiting list for the appointment on compassionate ground, but her name was deleted from waiting list on attaining the age of 40 years in terms of G.R. dated 22.08.2005.
- (iv) For the first time, the Applicant got to know about the deletion of name of his mother from waiting list in view of information received by him on 12.03.2012 under R.T.I. Act.
- (v) On 17.04.2014, the Applicant made application addressed to Respondent No.1 to re-consider his request in view of his name in the application made by his mother on 15.04.2006 and requested for appointment on compassionate ground.

(vi) The Respondent No.2 by his communication dated 27.04.2016 rejected the Applicant's request for inclusion of his name in waiting list.

7. At this juncture, it would be apposite to refer the decisions relied by the learned Advocate for the Applicant rendered by this Tribunal as well as by Hon'ble High Court which have bearing over the issue in the present O.A.

8. Needless to mention that the concept of compassionate employment is intended to alleviate to distress of the family and rigid or too technical approaches should be avoided, as it would defeat very object of this scheme. As such, the Courts cannot ignore the very purpose of providing employment on compassionate ground to the defendant of Government servant died in harness. Only because after the death of deceased Government servant, his family managed to survive for long period, that should not be the reason for rejection.

9. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. Vs. Union of India)** wherein in Para No.9, it has been held as follows :

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

10. The learned Advocate for the Applicant referred to various decisions, which are as follows :-

(i) ***O.A.No.432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 Ors.) decided on 01.12.2014.*** In this matter, in similar situation, the substitution of the name of son in place of mother's name was rejected. However, the order of rejection has been quashed. In this judgment, the Tribunal has referred its earlier decision in O.A.No.184/2005 decided on 03.05.2006 wherein substitution was allowed and the said order has been confirmed by Hon'ble High Court.

(ii) ***O.A.No.184/2005 (Smt. Nirmala Doijad Vs. State of Maharashtra) decided on 03.05.2006.*** In this matter, while allowing the substitution, this Tribunal held that where there is no specific provision for substitution, justice requires that the policy of Government should be implemented and interpreted in its spirit for giving its benefit to the legal representative of the person who died in harness. It has been held that, there is no specific rule prohibiting the substitution, and therefore, the directions were issued for substitution of the heir and appointment subject to eligibility.

(iii) ***O.A.No.503/2015 (Piyush Shinde Vs. State of Maharashtra) decided on 05.04.2016.*** In this matter arising from similar situation, this Tribunal relying on its various earlier decisions rendered in O.A.No.184/2005 (cited supra), O.A.No.432/2013 (cited supra), O.A.No.1043/2014 (cited supra) and Judgment of Hon'ble High Court in Writ Petition No.7793/2009 (Vinodkumar Chavan Vs. State of Maharashtra) decided on 09.12.2009, directions were given to replace the name of the Applicant for appointment on compassionate ground.

(iv) ***O.A.604/2016 (Anusaya More Vs. State of Maharashtra) decided by this Tribunal on 24.10.2016,*** wherein the name of one of the heir of the deceased employee was taken on record, but having attained the age of 40 years, her name was deleted. In her place, her son seeks substitution, which came to be rejected. The Tribunal held that it would be equitable that son's name is included in waiting list where his mother's name was placed and O.A. was allowed. This Judgment was challenged in Writ Petition No.13932/2017. The Hon'ble High Court by Judgment dated 18.07.2018 maintained the order of Tribunal with modification that the name of son be included in waiting list from the date of application made by son w.e.f.11.02.2014 and not from the date of mother's application.

(v) ***O.A.No.327/2017 (Smt. Vanita Shitole Vs. State of Maharashtra) decided on 7th August, 2017, O.A.636/2016 (Sagar B. Raikar Vs. Superintending Engineer) decided on 21.03.2017, O.A.239/2016 (Swati Khatavkar Vs. State of Maharashtra) decided on 21.10.2016,***

O.A.884/2016 (Mayur Gurav Vs. State of Maharashtra) decided n 30.03.2017 and O.A. 1126/2017 (Siddhesh N. Jagde Vs. State of Maharashtra) decided on 04.06.2018. In all these O.As, the name of one of the heir was taken on record for the appointment on compassionate ground, but having crossed 40 years of age, the name came to be deleted and second heir son seeks substitution, which was rejected by the Government. However, the Tribunal turned down the defence of the Government that in absence of specific provision, the substitution is not permissible. The Tribunal issued direction to consider the name of the Applicant for appointment on compassionate ground.

11. In this behalf, reference of one more decision of Hon'ble High Court in ***Writ Petition No.877/2015 (Dhulaji Kharat Vs. State of Maharashtra) decided on 12th December, 2018*** would be very useful as it is directly on the point involved in the present matter about the composite application for grant of appointment on compassionate ground to widow or her son. In this matter, the Government servant died in harness in 2008 and that time, the Petitioner Dhulaji was minor. His mother made an application for appointment to Dhulaji on compassionate ground on attaining the age of majority. However, it was not considered. Then again, the Petitioner Dhulaji made application in 2013 to consider the application made by his mother in 2008. The Government, however, declined to consider the request on the ground that the Applicant Dhulaji had not filed an application within one year from the date of attaining majority. In that context, the Hon'ble High Court held that the request for appointment of Petitioner Shri Dhulaji was already made by her mother well within one year from the death of deceased, and therefore, that application ought to have been considered for giving appointment on compassionate ground to Petitioner Shri Dhulaji and the contention that the application was not made within one year from the date of attaining majority was rejected. Accordingly, directions were issued to consider the application made by mother in 2008 for appointment on compassionate ground.

12. Now, turning to the facts of the present case, admittedly, the widow of deceased made an application on 15.04.2006 requesting the Respondents to provide appointment on compassionate ground either to her or her son on attaining majority. There is specific request to that effect in application dated 15.04.2006 (Page No.14 of P.B.). Consequently, the name of widow was taken on waiting list, but later deleted having crossed the age of 40 years. However, that should not have been the end of matter, as the request for appointment of the son was already made in application dated 15.04.2006. The Applicant attained majority in 2010. Significantly, there was no communication to the Applicant or his mother about the deletion of the name of mother from waiting list having attained the age of 40 years. For the first time, the Applicant came to know about the rejection on 27.04.2016 which communication is challenged in the present O.A, which is well within the limitation from impugned communication dated 27.04.2016. In fact, there is no specific contention about the limitation in Affidavit-in-reply filed by the Respondents and the said plea was raised during the course of arguments only. Be that as it may, as the request for the appointment of Applicant was already made by mother in her application dated 15.04.2006, the contention raised by learned Presenting Officer that the Applicant has not made application within time has to be rejected.

13. Furthermore, by the impugned order dated 27.04.2016, the request of the Applicant has been rejected on the ground that, once the name of his mother was entered in waiting list and it came to be deleted having attained the age of 40 years, substitution is not permissible. Thus, it was not rejected on the ground of delay in filing application for appointment on compassionate ground. Apart, in view of ratio laid down by Hon'ble High Court in **Dhulaji Kharat's** case (discussed supra), the application made by mother of the Applicant for appointment to Applicant, the claim cannot be said barred by limitation. This being the position, the submission advanced by the learned P.O. holds no water.

14. Now, material question comes whether substitution is permissible. The Respondents have rejected the application solely on the ground that there is no provision in G.R. dated 22.08.2005 for substitution of another heir of the deceased. The learned P.O. sought to contend that, as per G.R. dated 22.05.2007, it is only in case of death of heir whose name is taken on waiting list, the substitution is permissible. True, there is no specific provision for substitution of heir in G.R. date 22.08.2005. Having regard to the aim and object of this scheme of appointment to provide financial assistance to the distressed family, the judicial approach is expected from the executive. As such, in view of Judgment of Hon'ble Supreme Court in **Sushma Gosain's** case, it was unjust on the part of Respondents to keep the issue of issuance of appointment order pending for years together. In fact, the Hon'ble Apex Court held that, if there is no suitable post for appointment, then supernumerary post should be created to accommodate the heir of the deceased. Had this mandate of Hon'ble Supreme Court was followed by the executive, the Applicant's mother would have got appointment on compassionate ground within time. Having not done so, thereafter, rejected the application of the Applicant on the ground that substitution is not permissible is contrary to the spirit and mandate of the Judgment of Hon'ble Supreme Court as well as scheme for the appointment on compassionate ground.

15. As such consistent view has been taken by this Tribunal in various O.As referred to above as well as by Hon'ble High Court that having regard to spirit and object of this scheme for providing employment to the heir of the deceased employee on compassionate ground is to mitigate and obviate the difficulties faced by the deceased family due to loss of only earning member of the family and the State is under obligation to consider the application for substitution in proper perspective. Accordingly, directions were issued to consider the application for substitution and inclusion of the name in waiting list.

16. Lastly, the learned P.O. sought to contend that the father of the Applicant died in 2002, and therefore, compassionate appointment after such a long period is not permissible, as there is no proximity or dire need for the appointment on compassionate ground. She referred the Judgment in **(2009) 6 SCC 481 (Santosh Kumar Dubey Vs. State of Uttar Pradesh & Ors.)** wherein in Para Nos.11 and 12, the Hon'ble Supreme Court held as follows :

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service.

17. Whereas, the learned Advocate for the Applicant referred to the Judgment in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** wherein the Hon'ble Supreme Court observed that, only because family had managed to survive for 10 years, it cannot be assumed that there was no immediate necessity and it cannot be a major reason for rejection. In the present matter, the father of the Applicant died in 2002 and the name of his mother was included in waiting list, but later her name was deleted having attained the age of 40 years, which was not even communicated to the Applicant. As such, it was in fact in-action on the part of Respondents not to provide immediate relief by creating supernumerary post as per the mandate of Hon'ble Supreme Court in **Sushma Gosain's** case. Therefore, the Respondents cannot take the benefit of their own in-action.

18. In so far as the Judgment rendered by this Tribunal in ***O.A.381/2017 (Amanulla S. Mahaldar Vs. State of Maharashtra) decided on 06.11.2017*** is concerned, I have gone through the Judgment and found it is quite distinguishable and not applicable in the present situation. In that matter, it was second round of litigation. Prior to filing of O.A.381/2017, the Applicant Amanulla Mahaldar had filed O.A.No.700/2016 seeking the relief of direction, as the request of substitution was rejected in view of deletion of the name of one of the heir on attaining the age of 40 years from the waiting list. Accordingly, in O.A.700/2016, the Tribunal gave direction to the Government to consider the request of the Applicant afresh and to take appropriate decision. As per the direction given by the Tribunal, the Government reconsidered the request of the Applicant, but again rejected his claim for appointment on compassionate ground. It is in that context, this Tribunal rejected O.A.381/2017. This being the position, obviously, it has no application to the present situation. Apart, learned Advocate for the Applicant has pointed out that the decision rendered in O.A.381/2017 has been challenged and the matter is subjudice before the Hon'ble High Court.

19. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the request of Applicant by impugned order dated 27.04.2016 for taking his name on the waiting list in place of his mother is arbitrary and not sustainable in law and fact and the same, therefore, deserves to be quashed and set aside. The Respondents ought to have considered the request of the Applicant in view of consistent decisions rendered by this Tribunal referred to above as well as law laid down by Hon'ble High Court as well as Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 27.04.2016 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application of the Applicant for appointment on compassionate ground and it is equitable as well as judicious that his name is included in the waiting list for the issuance of appointment order, subject to fulfillment of eligible criteria in accordance to Rules.
- (D) This exercise be completed within three months from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 02.04.2019

Dictation taken by :

S.K. Wamanse.

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