

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.749 OF 2017
(SUBJECT : DENIAL OF COMPASSIONATE APPOINTMENT)**

Sou. Tejashri Prashant Thikekar,)
(before marriage –)
Miss Tejashree Baban Gadhave)
Age 27 yrs. Occ. Nil,)
R/o. E/38, Shivclassic Apartment, Shivajiwadi Moshi,)
Tal. Haveli, Dist. Pune.) **.....APPLICANT.**

VERSUS

1. The Superintending Engineer,)
Through Deputy Superintending Engineer,)
Quality Control Circle, having office at)
Bungalow No.2, Jail Road, Yerwada, Pune 6.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Water Resources Department,)
Having office at Mantralaya, Mumbai 400 032) **.....RESPONDENTS.**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.
Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 22.01.2020.

Wadhwa

J U D G M E N T

1. The present O.A. is for challenge to the impugned communication dated 18.04.2017, whereby her application for compassionate appointment stands rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal, 1985.
2. The uncontroverted facts for the decision of the present Original Application can be summarized as follows :-
 - (a) The deceased employee namely Shri Baban Gadhave was serving on the post of Laboratory Assistant and died in harness on 21.05.2014 leaving behind heirs i.e. widow - Smt. Lalita Babab Gadhave, son - Shri Digvijay Baban Gadhave and daughter - Smt. Tejashri Prashant Thikekar (present applicant).
 - (b) Applicant, who is married daughter of the deceased made an application for grant of appointment on compassionate ground on 26.06.2014 (page 19 of P.B.).
 - (c) Smt. Lalita Babab Gadhave (widow of deceased) also applied for appointment on compassionate ground on 18.12.2014 (page 90 of P.B.), but she did not made compliance of the requisite formalities directed by letter dated 19.01.2015 (page 91 of P.B).
 - (d) The application made by the Applicant on 26.06.2014 was rejected by the communication dated 24.09.2014 (page 22 of P.B.) on the ground that in terms of G.R. dated 26.02.2013 which *inter alia* provides that compassionate appointment can be made available to the married daughter only in case where she is the only heir of the deceased or the family of deceased is totally dependent upon the married daughter.

(e) The Government Resolution (G.R.) dated 26.02.2013 was held irrational in **O.A.No.155/2012 (Kum. Sujata Dinkar Nevase V/s. The Divisional Joint Director (Agriculture), Pune) dated 21.07.2014.**

(f) The decision rendered by this Tribunal in O.A.No.155/2012 was challenged by the Department by filing Writ Petition No.1131/2016 before the Hon'ble High Court. The Hon'ble High Court formulated the issue as to whether married daughter would be deprived of appointment under compassionate appointment scheme in case family of the deceased is survived by another male/ female child and as to whether G.R. dated 26.02.2013 is contrary to the decision in case of **Writ Petition No.1284/2011 (Aparna N. Zambre and one another V/s. Assistant Superintendent Engineer and 2 others), decided on 1st August, 2011.**

(g) During the pendency of Writ Petition No.1131/2016, the Government of Maharashtra issued fresh G.R. dated 17.11.2016 (page 24 of P.B.) by cancelling the earlier G.R. dated 26.02.2013 and married daughter is also held entitled for appointment on compassionate ground.

(h) In the meantime, Shri Digvijay Baban Gadhave (brother of Applicant) also made an application for appointment of compassionate ground on 27.02.2015 with the consent of the Applicant and the name of Shri Digvijay Baban Gadhave was taken in the waiting list.

(i) Simultaneously, in view of fresh G.R. dated 27.11.2016, present applicant again made an application on 26.12.2016 for appointment on compassionate ground with consent of her brother Shri Digvijay Baban Gadhave (page 28 of P.B.)

Writ

(j) Respondents by impugned communication dated 18.04.2017 rejected the application made by the Applicant on 26.06.2014 stating that the name of Shri Digvijay Baban Gadhave is already taken in waiting list and there is no provision for substitution of heir in waiting list which is challenged in the present O.A.

2. Learned Advocate for the Applicant sought to assail the impugned communication dated 18.04.2017 contending that the very rejection of the first application of the applicant dated 26.06.2014 was on the basis of G.R. dated 26.12.2013 and the said G.R. itself was illegal and consequently also cancelled by the Government by issuing fresh G.R. dated 17.11.2016 and therefore the ground that married daughter is not entitled for appointment on compassionate ground is no more available to the Respondents as valid defense. In other words, he mean to say that the rejection of application dated 26.06.2014 itself being illegal the applicant is entitled for appointment on compassionate ground and therefore rejection of her first application as well as second application is illegal. He fairly concedes that the name of Shri Digvijay Baban Gadhave is taken in the waiting list in pursuance of his application but sought to canvas that in view of the consent given by the applicant the name of Shri Digvijay Baban Gadhave has to be substituted by inserting the name of the applicant in the waiting list. He sought to place reliance on the decision of the Hon'ble Supreme Court **AIR 1989 SC 1976 (Smt. Sushma Gosain And Others v. Union Of India And Others)**.

3. Par contra, learned P.O. for the Respondents vehemently opposed the application and submits that as the name of Shri Digvijay Baban Gadhave is already taken in waiting list now the question of its substitution being not permissible, O.A. does not survive. He submits that the object of providing employment on compassionate ground is being fulfilled in view of inclusion of name of Shri Digvijay Baban Gadhave in waiting list the applicant's claim

again raised, though earlier rejected, is not maintainable and therefore, impugned order cannot be faulted with.

4. Thus, what transpires from the material that consecutive applications were made by the Applicant, her mother as well as brother (Shri Digvijay Baban Gadhave) for grant of appointment on compassionate ground. True, Applicant's application dated 26.06.2014 was rejected on the basis of G.R. dated 26.02.2013 which was as under :-

“शासन निर्णय -

दिवंगत राज्या शासकीय कर्मचा-याच्या कुटुंबामध्ये फक्त विवाहित मुलगी हे एकमेव आपत्य असल्यास किंवा त्यांचे कुटुंब फक्त विवाहित मुलीवर अवलंबून असेल अशा प्रकरणी दिवंगत शासकीय कर्मचा-याची विवाहित मुलगी ही अनुकंपा नियुक्तीसाठी पात्र राहिल.

२) अनुकंपा तत्वावर नियुक्ती देताना त्या उमेदवाराकडून (विवाहित मुलीच्या बाबतीत तिच्यासह तिच्या पतिकडूनही) दिवंगत शासकीय कर्मचा-याच्या कुटुंबीयांचा तो/ती सांभाळ करील असे प्रतिज्ञापत्र सादर करणे आवश्यक राहिल. मात्र अनुकंपा तत्वावर एकदा नियुक्ती मिळाल्यानंतर तो/ती (उमेदवार) कुटुंबीयांचा सांभाळ करित नसल्याचे आढळल्यास त्याची/ तीची शासन सेवा तात्काळ समाप्त करण्यात यावी. तरी यासंदर्भात आवश्यक हमीपत्र (undertaking) नियुक्तीपुर्वी यापुढे उमेदवारांकडून स्टॅप पेपरवर घेण्यात यावे.

अविवाहित मुलीला अनुकंपा नियुक्ती मिळाल्यानंतर तिचा विवाह झाल्यास विवाहाच्या दिनांकापासून सहा महिन्यांच्या आत तिच्या पतिकडूनही तसे हमीपत्र घेण्यात यावे.”

5. There is no denying ^{letter} ~~letter~~ in view of the decision rendered by this Tribunal in O.A.No.155/2012 as well as in the light of observations made by Hon'ble High Court in Writ Petition No.1131/2016 by order dated 10.10.2016, the said G.R. was cancelled and in its place fresh G.R. was issued on 17.11.2016. As such the rejection of the applicant dated 26.06.2014 was not sound. However, fact remains that subsequently Shri Digvijay Baban Gadhave (brother of the Applicant) had also applied for compassionate appointment on 27.02.2015 and accordingly his name was included in waiting list.

6. Significant to note that while making applicant, Shri Digvijay Baban Gadhave had also obtained consent of applicant. Shri Digvijay Baban Gadhave has annexed copy of affidavit sworn by applicant stating that she has no objection for appointment of Shri Digvijay Baban Gadhave on compassionate ground. Copy of the affidavit is at page 94 of P.B. As such

W. D. Gadhave

once the applicant is given consent for appointment of Shri Digvijay Baban Gadhave now she cannot be allowed to turn around and to ask to delete the name of Shri Digvijay Baban Gadhave and include her name in its place.

7. Significantly, the applicant had also made second application for appointment of compassionate ground on 26.12.2016 in light of issuance of G.R. dated 27.11.2016, wherein she had requested to delete the name of Shri Digvijay Baban Gadhave from waiting list, which was turned down by the Respondents by impugned communication dated 18.04.2017.

8. Learned P.O. for the Respondents has rightly pointed out that in G.R. dated 20.05.2015 provision for substitution is restricted only in case where candidate whose name is on waiting list died. As per G.R. dated 20.05.2015 it is only in the event of death of candidate while he is in waiting list then only his name can be substituted by another heir of the deceased. There is specific mentioning in G.R. dated 20.05.2015 (page 96 of PB), which is as follows :-

“क) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही”

9. As such, the case of the Applicant does not fit in G.R. dated 20.05.2015. It needs to be highlighted that this is not the case where the name of none of the heirs is taken in waiting list. In contrast, this is the case where successive applications are made by heirs of deceased employee and name of one of the heir namely Shri Digvijay Baban Gadhave is already taken in waiting list.

10. Learned P.O. for the Respondents has also tendered extract of waiting list which is marked by letter 'X'. It shows that the name of Shri Digvijay Baban Gadhave is at serial No.9 in the waiting list. His date of birth is

15.10.1987. He is B.E. in Electric and Tele communication. As such he is likely to be appointed on compassionate soon as the financial assistance to the distressed family. Whereas the Applicant is married daughter who is living with her husband. True, the married daughter is also entitled to appointment on compassionate ground in terms of G.R. dated 17.11.2016. Nonetheless, it cannot be forgotten, when name of Shri Digvijay Baban Gadhave is already taken in waiting list and is likely to get appointment soon, the question of substitution by replacing the name of applicant does not survive. Needless to mention, the object of appointment of heir of the deceased who died in harness is to obviate the financial difficulties of the family by providing employment to the legal heir of the deceased and it is not the matter of succession or right of preemption in law.

11. In **Sushma Gosain's case** on which learned Advocate for the Applicant placed reliance, the Hon'ble Supreme Court emphasis that appointment on compassionate ground should be provided immediately to redeem the family in distress and it is improper to keep such matters pending for years. It is further observed by the Hon'ble Supreme Court that if there is no suitable post for appointment then supernumerary post should be created to accommodate the applicant, keeping in view that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of bread earner in the family. This authority is of little help to the applicant in present situation.

12. In the present case, name of Shri Digvijay Baban Gadhave brother of Applicant is already taken in waiting list and he is likely to be appointed soon. As stated earlier the applicant had already given consent to Shri Digvijay Baban Gadhave for his appointment on compassionate ground but now she is asking for deletion of name of Shri Digvijay Baban Gadhave. In such situation applicant cannot be allowed to turn around so as to defeat the claim of Shri Digvijay Baban Gadhave. Significantly, Shri Digvijay



Baban Gadhave is not made party to this O.A. Needless to mention that no adverse order can be passed against person who is not joined in the matter. He is necessary party even if he seems to have given consent to the Applicant. The validity of such consent cannot be ascertained unilaterally in his absence. Be that as it may, as the name of Shri Digvijay Baban Gadhave is already included in waiting list, the claim of applicant for substitution is unsustainable in law and facts.

13. The totality of aforesaid discussion leads me conclude that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed.

ORDER

- (a) Original Application is dismissed with no order as to costs.
- (b) Respondents to ensure that the appointment order of Shri Digvijay Baban Gadhave be issued at the earliest subject to fulfillment of other eligible criteria.

Sd/-

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(A.P. Kurhekar)
Member (J)

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