

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.75 OF 2022

DISTRICT : SINDHUDURG

Sub.:- Compassionate Appointment

1. Smt. Shakuntala Kalu Patil.)
Age : 54 Yrs, Occu.: Household,)
R/o. Post Insuli, Pagawadi,)
Taluka : Sawantwadi,)
Dist.: Sindhudurg.)
2. Shri Janu Kalu Patil.)
Age : 25 Yrs, Occu.: Nil,)
R/o. Post Insuli, Pagawadi,)
Taluka : Sawantwadi,)
Dist.: Sindhudurg.)...**Applicants**

Versus

1. The Commissioner and Registrar of)
Co-operative Society, M.S, Pune.)
2. The Divisional Jt. Registrar of)
Co-op. Society, Konkan Bhavan,)
Navi, Mumbai, 3rd Floor,)
Desk No.308, Navi Mumbai – 614.)
3. The District Dy. Registrar of Co-op.)
Society, Main Administrative Bldg,)
Dalan No.301, A-Wing, 2nd Floor,)
Sindhudurganagari, Tal.: Kudal,)
District : Sindhudurg.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicants.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 13.02.2023

JUDGMENT

1. The Applicants have challenged the communication dated 29.12.2018 as well as 05.08.2020 whereby the claim of Applicant No.2 for compassionate appointment has been rejected on the ground of absence of provision for substitution of heir in the waiting list.

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

The Applicant No.1 – Smt. Shakuntala and Applicant No.2 – Janu are widow and son of deceased Government Servant Kalu Patil. He was Peon on the establishment of Respondent No.2 and died in harness on 03.05.2008 leaving behind widow (Applicant No.1), two minor daughters and son (Applicant No.2). After the death of deceased Government servant, there was no earning member in the family and it was in dire need of financial assistance for livelihood. Applicant NO.1 – Shakuntala, therefore, made an application on 20.05.2008 within a period of one year of limitation claiming compassionate appointment for herself for the post of Peon citing the difficulties faced by family on account of death of sole bread earner of the family. Thereafter, she made various representations and in response to it, only correspondence was made in between Departments, but nothing substantial has come out. Again, she applied on 08.03.2011 requesting that her son (Applicant No.2) has become 15 years' old and requested to keep one post reserved for him. The date of birth of Applicant No.2 is 22.03.1996 and he attained majority on 22.03.2014. She again made an application on 09.09.2014 stating that his son has attained 18 years' of age and requested for compassionate appointment to him. Though it was made within one year from the date of attaining majority, no cognizance was taken. Then again, Applicant No.2 himself applied on 09.03.2017 in reference to all earlier applications made by his mother and requested for compassionate appointment. He again made representation on 27.11.2017. It is on this background, Respondent No.3 – District Deputy Registrar, Co-operative Societies by

communication dated 29.12.2018 informed the Applicant that in absence of provision for substitution in waiting list, the claim for compassionate appointment cannot be accepted. He again made representation on 01.06.2019. Respondent No.3 by communication dated 05.08.2020 again rejected the claim on the same ground of absence of provision of substitution in waiting list, which are impugned in the present O.A.

3. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

4. At the very outset, it needs to be stated that at the time of death of deceased Government servant, the Applicant No.1 was more than 40 years of old. Her date of birth is 03.03.1967 and attained 40 years' of age on 03.06.2007. Whereas her husband died on 03.05.2008. In terms of Scheme for compassionate appointment, the then existing, if name of heir is taken on waiting list and attained age of 40 years, name has to be deleted from waiting list. The age limit of 40 years was subsequently enhanced upto 45 years by G.R. dated 22.08.2005. Thus, in the present case, at the time of death of Government servant, the widow had already attained the age of 40 years and his daughters and son were minor. By impugned communication, all that Respondent No.3 sought to contend that once name of the heir is taken in waiting list and deleted on attaining the age of 40/45 years, there is no provision for substitution of another heir. Whereas in the present case, on the date of death of deceased Government servant itself, the Applicant No.1 was more than 40 years of age. No such specific record is produced to substantiate that the name of Applicant No.1 was really taken in waiting list and thereafter deleted on attaining the age of 40 years. Even assuming for a moment that the name of Applicant No.1 was taken in waiting list, in that event, having regard to the aim and object of the Scheme for compassionate appointment, the Respondents ought to have provided compassionate appointment to her within reasonable time and mere keeping of name in waiting list would not suffice. The very object of Scheme is to alleviate

the financial difficulties of distressed family due to loss of sole earning member of the family and such claim cannot be kept pending for years together. Indeed, in **AIR 1989 SC 1976 [Smt. Sushma Gosain & Ors. Vs. Union of India]** Hon'ble Supreme Court in Para No.9 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.”

5. Notably, after Applicant No.2 attained 18 years of age, his mother (Applicant No.1) also made another independent application on 09.09.2014 (Page No.27 of P.B.) stating that his son has attained 18 years of age and requested to consider his claim for compassionate appointment. That application was made within one year from the date of attaining majority by Applicant No.2 as required in Scheme. At least, that time, his claim ought to have been considered in proper perspective, so as to take his name in waiting list and provide compassionate appointment. However, there was only exchanges of correspondence between Departments and nothing concrete has been materialized. The Applicant kept on making representation after representations, but it was subjected to red tapisum and nothing concrete was materialized, which shows total apathy and inaction on the part of Respondents. The claim of the Applicant has been rejected on technical ground that there is no provision of substitution of heir in the Scheme for compassionate appointment, which is not at all sustainable in view of recent decision of Hon'ble Supreme Court in **Writ Petition No.6267/2018 [Dnyaneshwar R. Musane Vs. State of Maharashtra] decided on 11.03.2020.**

6. In **Gnyaneshwar Musane's** case (cited supra) Hon'ble High Court considered G.R. dated 20.05.2015 which *inter-alia* states that where name of one legal representative of deceased employee is in waiting list,

then another heir cannot request for substitution of name in the waiting list. Hon'ble High Court held that the said condition in G.R. dated 20.05.2015 is totally unjustified and directions were issued to delete the same. Hon'ble High Court held as under :-

“We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of 928-WP-6267-2018.odt one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.”

7. At this juncture, it would be also apposite to refer the decision of Hon'ble Supreme Court in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** which is squarely applicable to the present situation. In that case also, the name of widow was empanelled under the compassionate appointment scheme but later it was declined on account of crossing the age. Thereafter, her daughter made an application for substitution of her name in place of widow. The claim was opposed on the ground that the family had already managed to survive for 10 years, and therefore, there was no immediate necessity. The Hon'ble Supreme Court held that only because family had managed to survive 14 years, it cannot be the reason for rejection and whether the family pulled on begging or borrowing should not have been the consideration. In Para No.3, the Hon'ble Supreme Court held as under :-

“3. We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view

that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”

8. Thus, what transpires from the record that after the death of Government servant Kanu Patil, there was no eligible family member to seek compassionate appointment, since at the time of his death, his widow had already crossed 40 years' of age and children were minor. Therefore, it was imperative on the part of Respondents to consider the application made by wife on behalf of Applicant No.2 immediately within one year from attaining majority by Applicant No.2, so as to enter his name in waiting list for further action. As per Scheme, Applicant No.2 was entitled to make an application within one year on attaining majority which was rightly made within a period of limitation, but Respondents have taken a strange plea that substitution is not permissible. As per this Scheme, compassionate appointment has to be provided to one of the heir for survival of family.

9. The totality of aforesaid discussion leads me to conclude that the impugned orders dated 29.12.2018 and 05.08.2020 are totally indefensible and liable to be quashed. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned orders dated 29.12.2018 and 05.08.2020 are quashed and set aside.
- (C) The Respondents are directed to consider the applications dated 09.02.2014 and 09.03.2017 for appointment to Applicant No.2 on compassionate ground and it would be equitable and judicious that his name is included in the waiting list for the issuance of appointment order, subject to fulfillment of eligibility criteria in accordance to rules. Two

months' time is granted to take the name of Applicant No.2
in waiting list.

(D) No order as to costs.

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

Mumbai

Date : 13.02.2023

Dictation taken by :

S.K. Wamanse.

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