

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.95 OF 2023

**DISTRICT : KOLHAPUR
SUB : COMM.APPOINTMENT**

Shrikant Dattu Dalavi ,)
Age:- 32 years, Occ : Farmer,)
R/o. Kalasgade, Post Tilarinagar, Tal.Chandgad,))... **Applicant**
Dist. Kolhapur.)

Versus

- 1) The State of Maharashtra, through its)
Secretary of Water Resources Department,))
Mantralaya, Mumbai.)
- 2) The Superintendent Engineer of Kolhapur)
Water Resources Department, Kolhapur.)
- 3) The Collector, Kolhapur District.)...**Respondents**

Shri N. N. Pawar, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri Ashutosh N. Karmarkar, Hon'ble Member (J)

DATE : 24.09.2024.

JUDGEMENT

1. The Applicant has sought relief of setting aside the impugned communication dated 17.05.2021 of Respondent No.2. He has also prayed for direction to Respondent to include his name in the waiting list for appointment on compassionate ground.

2. The Applicant's father Dattu was serving as 'Peon' with Respondent No.2 who died in harness on 07.12.2024. The widow Smt. Shobha filed an application for appointment on compassionate ground. The Respondent No.2 included her name in the waiting list at Sr. No.63. the Applicant's mother was informed vide letter dated 18.06.2008 by the Respondent No.2 about removal of her name from the waiting list and that she is not eligible for appointment on compassionate ground. Thereafter, Applicant's mother forwarded representation dated 07.12.2009 for consideration of her son for appointment on compassionate ground who attend the age of majority. The Respondent No.2 informed on 29.12.2009 that the Applicant's name cannot be considered. Again on obtaining degree, the Applicant forwarded representation for the same relief which was not allowed as per communication dated 16.11.2011.

Thereafter, the Applicant again made representation on 04.01.2021 to Respondent No.2. It was rejected by the Respondent No.2 on 17.05.2021. The Applicant approached the Hon'ble High Court by filing W.P. No.738/2022 wherein the Hon'ble High Court has granted liberty to Applicant to approach this Tribunal. This application is filed on the ground that the Applicant was not treated equally as in many cases of State of Maharashtra substituted the name of son in place of their mother.

3. The Respondent Nos.2 and 3 have filed their reply. According to them, the application is not filed within time. The Applicant forwarded representation dated 04.03.2021 after long time of attaining majority.

According to learned PO for Respondents, the Applicant has no right for appointment as claimed. The Applicant's mother is getting family pension. So, there is no question of any irreparable loss to Applicant.

4. Both the parties have submitted as per their respective contentions. According to learned Advocate for Applicant, the Respondent has objected the application on the ground of delay but that will not come in the way and for that purpose, he relied on the case of Hon'ble High Court of Judicature at Madras in ***Mohanambal v. The Director Land and Survey Department, Kancheepuram and Others, 2011 (1) CTC 349.*** He has also relied on the case of ***Mangalabai Janardhan Shinde and Another Vs. State of Maharashtra and Another 2022 SCC Online Bom 1694*** and the judgment of this Tribunal Bench at Nagpur in O.A. No.598/2022.

5. On the other hand, learned PO has submitted that the Applicant has not mentioned in his application about financial crises. It is submitted that delay in filing application was condoned but merit cannot be ignored. Learned PO has relied on the judgment of this Tribunal in ***O.A.265/2016 in Prashant Ganjale V/s State of Maharashtra.*** In support of the contention in delay in filing Original Application, learned PO relied on the case of ***Dhalla Ram V/s Union of India, (1997) 11 SCC 201*** and ***Naresh Kumar V/s. Department of Atomic Energy & Ors., (2010) 7 SCC 525.*** He has also submitted that since the application is filed after long period, it can be presumed that family of the Applicant is not facing financial distress. For this purpose, she relied on the case of ***Hon'ble High Court in Writ Petition No.43 of***

2020 [Sau. Aarti W/o Purushottam Nimje Vs. State of Maharashtra & Ors.] decided on 06.12.2021 of the Hon'ble High Court of Judicature at Bombay Bench at Nagpur. She has also referred the judgment of this Tribunal in **O.A.No.381/2017 (Amanulla S. Mahaldar V/s State of Maharashtra & Ors.)**.

6. It is undisputed fact that the Applicant's mother Smt. Shobha moved application for compassionate appointment after the death of Applicant's father and she was included at Sr. No.63. It is also undisputed fact that her name was deleted as per communication dated 18.06.2008 on crossing the age of 40 years. It is undisputed fact that Applicant's mother moved representation dated 07.12.2009 to Respondent No.2 for considering his name for appointment on compassionate ground, but it was rejected. It is also admitted that the Applicant has for forwarded application dated 04.03.2021 for compassionate appointment which was not allowed.

7. So far as the object and concept of compassionate appointment is concerned, it would be appropriate to refer the judgment of the Hon'ble Supreme Court in case of **West Bengal V/s Debabrata, AIR 2023 SC 1467**. It is held by the Hon'ble Supreme Court in para No.32 as under:-

32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

8. The Respondent has mainly raised the ground of delay in filing this petition and on this ground itself, the Applicant is not entitled for the relief claimed. It has to be noted that the Applicant has earlier filed O.A.No.1061/2022 for the same relief. It was withdrawn by order dated 16.12.2022 with liberty to file fresh O.A. along with M.A. for condonation of delay. The order of the Tribunal dated 16.12.2022 shows that it was brought to the notice of the Applicant that communication of the Respondent dated 19.12.2009 and 16.11.2011 were required to be challenged. It appears that the Respondent has denied the claim of compassionate appointment of the Applicant on above referred two dates. However, in this matter also these two communications are also not challenged by the Applicant.

9. It is clear from the record that after rejection of application of Applicant for compassionate appointment on 16.11.2011, the Applicant has not taken steps for long time.

10. Learned Advocate for the Applicant has submitted that Applicant attained the age of majority in 2009. It is contended in the application that Applicant got B.A. Degree in 2013 and then this application is filed. Absolutely there is no sufficient reason for not moving application for compassionate appointment from 2013 to 2021. It appears from the correspondence at Exb. 'C' (page 17 of OA) that prayer of the Applicant was for substitution in place of name of his mother. It is clear from the contention of the Applicant that name of Applicant's mother was deleted in 2008 on crossing the age of 40 as per rules which were in existence at that time.

11. Learned Advocate for Applicant has relied in case of ***(Dnyaneshwar Ramkishan Musane V/s State of Maharashtra & Ors.), 2020 (5) Mh. L. J. 381*** and ***Mangalabai Janardhan Shinde and Another Vs. State of Maharashtra and Another, (2023) 1 AIR Bom R 792***. The Hon'ble Bombay High Court has held in para 5 of ***Dnyaneshwar Musane*** ' case (cited above) as under :-

"5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view that the prohibition imposed by the Government Resolution dated 20.05.2015 that name of any legal representative of deceased employee would not be substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the fundamental rights guaranteed by [Article 14](#) of the Constitution of India. As the per the policy of the State Government, one legal representative of deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution dated 20.05.2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the list in place 928-WP-6267-2018.odt of the other legal representative who had submitted his/her application earlier, does not further the object of the policy

of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated.”

12. After hearing for formulated. The Hon’ble High court held in para 12 of **Mangalabai Shinde’** case (cited above) which reads as under:-

“12. On account of the judgments in the case of Dnyaneshwar Ramkishan Musane (supra) and in the case of Prashant Bhimrao Desai and another (supra) the position that stands today is that there is no restriction on substitution of name of ward in the wait list for compassionate appointment.”

So as per these citations referred above, there is no restriction of substitution in waiting list for compassionate appointment. At the same time, it cannot be ignored that there is huge delay in filing application.

13. Learned PO has submitted that though the application for condonation of delay is allowed but merit cannot be ignored. He has referred to order of this Tribunal in O.A.No.265/2016, dated 01.08.2023 in which it is held as under :-

“6. The delay is condoned as per Limitation Act or as per the procedure of the Tribunal. However, it has nothing to do with the merits. If at all on account of delay and laches no relief can be granted then, it is a substantial and valid ground though delay is condoned.”

14. Learned PO has also relied on the case of **Dhalla Ram V/s Union of India, 1997 (11) SCC 201** in which it is held by the Hon’ble Supreme Court that in view of long delay, after the refusal by the Government in filing the application, the same cannot be entertained. The appointment

on compassionate ground is not the method of recruitment but it is facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution.

15. The Hon'ble Bombay High Court has also held in case of **Aarti Nimje's case (cited above)** that compassionate appointment cannot be offered after lapse of substantial period of time since the death of bread earner of family. It appears that Applicant's family is survived for a long time till filing of application in 2023 though the Applicant's father died in 2004. It suggested that there is no immediate need to make appointment on compassionate ground. So, I am of the view that the need to offer succor by offering an appointment on compassionate ground to save family in financial distress did not exist on the date of application.

16. The recitals of application reveal that Applicant has forwarded application for compassionate appointment in 2009 & 2011. Then he has stated about his visits to Respondent for consideration of his claim. Then another representation was forwarded in March 2021. But the delay in between 2011-2021 for forwarding application is not explained. Learned PO has relied on the case of Hon'ble Supreme Court in case of **Naresh Kumar V/s Department of Atomic Energy & Others (2010) 7 SCC 525**, wherein it has been held that where employee keeps making repeated representations which have consistently rejected, then concern person cannot claim relief on that ground. Para 15 of the said judgment is relevant which reads as under :-

“15. Merely, because the case of the appellant was forwarded by the Department vide its Letter dated 27.1.2007 for favourable consideration, would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation after representation which are consistently rejected then the appellant cannot claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the writ petition even on the ground of unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for the reasons best known to the appellant he did not challenge the same before the court of competent jurisdiction.”

17 Therefore, on the ground of delay and for the reasons stated in forthgoing paras, the application deserves to be rejected.

18. Learned Advocate for Applicant has relief on ***Mohanambal's case*** (cited above). In that case the petitioner has filed Application for compassionate appointment immediately after completion of 12th standard in 2002. In this mater, the facts appear to be different so this judgment is not helpful for the Applicant. Similarly, the facts in case of ***Smt. Anita Ashok Mahakal & Anr V/s State of Maharashtra & Ors*** before this Tribunal at Nagpur Bench in **O.A.No.598 of 2022** also appeared to be different, so it will not be helpful for the Applicant.

19. The Applicant has also raised the ground that Applicant was not treated equally as in other cases the Respondents substituted the name of son from their mother but the Applicant has not placed on record such relevant instances. It also cannot be ignored that Applicant has himself contended in representation dated 04.03.2021 that he is doing labour work. The Respondent has also contended in Affidavit in Reply that Applicant's mother is getting family pension and there is no

question of any loss to the Applicant. The Applicant has not disputed this fact.

20. Thus, for the reasons stated above, the Original Application deserves to be dismissed. Hence, the following order :-

ORDER

- (A) The Original Application is dismissed.
- (B) No order as to costs.

Sd/-

(Ashutosh N. Karmarkar)
Member (J)

Place: Mumbai

Date: 24.09.2024.

Dictation taken by: V. S. Mane

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