

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 411 OF 2015

DISTRICT: BEED

Akash S/o Tukaram Jadhav,
Age: 19 years, Occu: Nil,
R/o Datta Mandir, Suttar Galli,
Patoda, Tal. Patoda, Dist. Beed.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
P.W.D. Department,
Mantralaya, Mumbai.
(copy to be served on P.O. M.A.T.
Bench at Aurangabad)
- 2) The Collector,
Collector Office, Beed.
- 3) The Superintending Engineer,
P.W.D. Circle, Osmanabad,
Dist. Osmanabad.
- 4) The Executive Engineer,
P.W.D. Ambajogai,
Dist. Beed.
- 5) The Sub-Divisional Engineer,
P.W.D. Sub-Division, Ambajogai,
Dist. Beed.

.. RESPONDENTS

APPEARANCE : Shri P.K. Wagh, learned Advocate holding
for Shri A.D. Aghav, learned Advocate for
the Applicant.

: Smt. Resha S. Deshmukh, learned
Presenting Officer for the Respondents.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

J U D G M E N T

(Delivered on 2nd September, 2016.)

The applicant Akash S/o Tukaram Jadhav, has challenged the communication dated 4.4.2015 issued by respondent no. 5 and the communication dated 19.11.2014 issued by the respondent no. 2 to respondent no. 4 and has requested that these communications be quashed and set aside. He has also claimed direction to the respondents to consider his claim for appointment on compassionate ground.

2. The applicant's father Shri Tukaram Jadhav, was serving with the respondent no. 5 as a Laborer and while in service he died on 23.07.2002. The applicant and his brother were minor at that time and therefore, the applicant's mother applied for compassionate appointment on 4.12.2002. During pendency of her application, the applicant's mother also died on 26.03.2003. It is admitted fact that after the death of applicant's mother, his elder brother Shri Dada Tukaram Jadhav also applied for appointment on compassionate ground but his claim was also rejected. In the mean time, the

applicant become major and on attaining the age of majority, he filed an application for appointment on compassionate ground in place of her father on 14.03.2014.

3. Vide impugned communication dated 4.4.2015, his claim was rejected. The said communication reads as under:-

“ उपरोक्त संदर्भिय विषयाच्या अनुषंगाने कळविण्यात येते कि संदर्भिय पत्र क्र. १ अन्वये मा. जिल्हाधिकारी बीड यांनी या कार्यालयास असे सुचना दिली आहे कि या पूर्वी प्रतिक्षा सुचीतील वारसदाराचे नांव बदलून त्यांचे जागी अन्य वारसदारांचे नाव नोंदविण्याची तरतूद नसल्यामुळे प्रकरण निकाली काढला आहे. या सोबत मा. जिल्हाधिकारी बीड यांच्या पत्राची छायांकित प्रत देण्यात येत आहे. सदरील पत्राचे आवलोकन करावे.

करीता माहितीस्तव रवाना.”

Vide impugned communication dated 19.11.2014, the Collector, Beed, has informed to the Executive Engineer, Ambajogai, that the name of the applicant's mother Smt. Chaya Tukaram Jadhav, was in the wait list at Sr. No. 84 and since Smt. Chaya T. Jadhav, has died, the applicant's name cannot be replaced in her place and therefore, the applicant's claim cannot be considered. Both these communications are being challenged in this Original Application.

4. Being aggrieved by the said communications, the applicant approached the Hon'ble High Court of Judicature at

Bombay, Bench at Aurangabad by filing W.P. No. 5725/2015. The Hon'ble High Court vide order dated 9.6.2015, was pleased to dispose of the applicant's petition with liberty to avail the alternate remedy and hence, this Original Application.

5. The respondent no. 2 has filed affidavit in reply. In paragraph nos. 6 and 7 of the affidavit in reply, the respondent no. 2 submitted as under:-

“6. As regards Para No. IV (10) of the application I say and submit that the brother of applicant named Dada Tukaram Jadhav previously made an application before respondent no. 4 for compassionate appointment. The said application is rejected by PWD, Mantryalya, Mumbai vide order No. अकंपा/२००७/प्र.क.३९/सेवा-४ dated 27.07.2007 as there is no any provision to replace name of one heir of deceased in the name of another. The said order was communicated by Executive Engineer, PWD, Beed vide office letter dated 7.7.2011 to this respondent. The said provision is also applicable to present applicant. Therefore, the present applicant is not entitled to file an application for compassionate appointment. The copy of letter dated 7.7.2011 is annexed herewith and marked at Exh. “R-1”.

7. As regards Para No. IV(11) of the application I say and submit that as there is no provision to replace name of one heir in the name of another. The application of brother of the applicant was rejected on 27.07.2007 as there is no provision to replace name of one heir deceased in the name of another. The same principle is applicable to present applicant. Therefore, the order passed by this respondent on dated 19.11.2014 is legal and cannot be termed as erroneous.”

6. Heard Shri P.K. Wagh, learned Advocate holding for Shri A.D. Aghav, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for the respondents. I have also perused the application, affidavits, affidavit in reply and various documents placed on record by the respective parties.

7. The only material point to be considered is whether the impugned communication dated 4.4.2015 issued by the respondent no. 5 and communication dated 19.11.2014 issued by the Collector, Beed are legal and proper?

8. As already stated, it is clear from the facts of the case that the applicant is claiming compassionate appointment due to death of his father and earlier his mother's claim for same relief was accepted and she was kept in waiting list of the candidates to be appointed on compassionate ground in the general list at Sr. No. 84. According to the respondents, since, the applicant's mother died on 26.03.2003, the name of the applicant cannot be substituted in her place. The respondents have given reference of one letter dated 27.06.2007 (Exhibit R-1) at paper book page nos. 45 and 46 (both inclusive) issued by the Desk Officer, Mumbai in P.W.D. to all the Chief Engineers. In the said letter it has been mentioned in paragraph no. 2, "प्रतिक्षा सूचीतील एका वारसदाराचे नाव बदलून त्याचे जागी अन्य वारसदाराचे नाव नोंदविण्याची तरतूद नाही". It is material to note that in the very letter in earlier paragraph, it is mentioned as under:-

“सा.प्र.वि., दि. २२.८.२००५ च्या शासन निर्णयातील परि. २ खालील सुधारित तरतुदी शासन निर्णयाच्या दिनांकापासून लागू झाल्या आहेत. त्यामुळे दि. २२.८.२००५ पूर्वी ज्या उमेदवारांची नावे अनुकंपा तत्वावरील नियुक्तीसाठी प्रतिक्षा सूचीवर नोंदविलेली आहेत. त्याच्या प्रकरणी प्रस्तुत सुधारणा लागू होणार नाहीत.”

9. From the aforesaid letter, it is clear that the G.R. dated 22.08.2005 is not applicable in cases of the candidates who were on waiting list prior to 22.08.2005. If it is so, the

G.R. will not be applicable to the case of applicant's mother, since she was already in the waiting list of the candidates to be appointed on compassionate ground prior to 2005 and at that time there was no such provision for replacement of name.

10. On perusal of the record as well as on going through the submissions made by the learned counsel for the respective parties, it seems that the provisions of compassionate appointment have been misconstrued by both the parties.

11. In the present case, the applicant was minor when his father died. He was also minor when his mother died and admittedly, he attained majority in the year 2013 or so. It seems that the applicant's date of birth, as seems from his application of Annexure A-2 at paper book page no. 13, is 21.03.1995 and therefore, he attained majority on 20.03.2013. Within one year, he has filed application for getting appointment on compassionate ground. He has also filed affidavit and heir-ship certificate and gave information as required in prescribed pro-forma. In view of this, the applicant has every right to apply for compassionate appointment within

one year of attaining majority. Since, his father died when he was minor, this fact has not been considered by the respondents properly.

12. The respondents themselves have placed on record a copy of communication dated 6.1.2016. Vide said letter, the Superintending Engineer, P.W.D., Osmanabad, has recommended the case of the applicant to the Collector, Beed, from which, it seems that the final select list of candidates to be appointed on compassionate ground, was published on 1.7.2014, and in the said list at Sr. No. 15, the name of Shri Akash Tukaram Jadhav i.e. applicant was shown. From the said communication, it, however, seems that his name was deleted. Prior to the applicant, his brother Shri Dada Tukaram Jadhav, applied for the appointment and his application was not brought to the notice of the competent authority.

13. Considering all the pros and cons of this case, it is material to note that the applicant became major in the year 2013 and has filed application for compassionate appointment within one year from the date of attaining majority. In fact, the respondents have not considered this aspect and therefore,

rejected the applicant's claim merely on the technical ground by wrongly interpreting some G.Rs., which state that the name of the candidates on waiting list of persons to be appointed on compassionate ground cannot be replaced. Both these communications are therefore, absolutely illegal, and hence, same deserves to be set aside. I view, thereof, I pass following order:-

ORDER

1. The Original Application is partly allowed.
2. The impugned communications dated 4.4.2015 and 19.11.2014 are quashed and set aside.
3. The respondents are directed to consider the applicant's claim for compassionate appointment as per the provisions of existing G.Rs. without being influenced by any of the observations made in this order and shall take decision on merits of the case.
4. Decision taken on the applicant's application shall be communicated to the applicant within three months from the date of this order in writing by R.P.A.D.

There shall be no order as to costs.

(J.D. KULKARNI)
MEMBER (J)