

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10963 OF 2019

Shri Afroz Khan s/o Karim KhanPetitioner

Versus

The State of Maharashtra and anotherRespondents
.....

Mr. Sagar S. Phatale, Advocate for petitioner
Mr. S. S. Dande, Assistant Government Pleader for
respondents
.....

CORAM SUNIL P. DESHMUKH &
: S. M. GAVHANE, JJ.
DATE: 4th September, 2019

ORDER :

1. Heard learned counsel for the petitioner and learned Assistant Government Pleader appearing for respondents.
2. It is the case of petitioner that after death of employee (mother of present petitioner) in 1995, her daughter i.e. sister of present petitioner had applied for appointment on compassionate ground, whose name had been appearing in waiting list. While name of sister of petitioner was on waiting

list, she got married and filed affidavit seeking deletion of her name by substituting petitioner's name.

3. It appears that petitioner had applied for compassionate appointment in 2009 and the application filed by him came to be rejected by respondent no. 1 vide communication dated 5th December, 2012, on the ground that there was no provision for accommodation by substitution.

4. Thereafter, original application bearing no. 115 of 2013 had been preferred by petitioner challenging communication dated 5th December, 2012 before Maharashtra Administrative Tribunal, Mumbai. Same has been dismissed by the tribunal under its order dated 6th October, 2015. As such, the petitioner is before this court.

5. On perusal of decision rendered by the tribunal, it appears that the tribunal has taken stock of the situation and had particularly observed that the applicant – petitioner had attained majority much before the sister had applied for deletion of her name by substitution of petitioner's name who had by then been a 27-year-old man.

6. The tribunal, in the circumstances, had referred to government resolution dated 11th September, 1996, rule 5(a) in the appendix 'A' of government resolution dated 26th September, 1994. According to aforesaid government resolution, the applicant has to move an application for appointment on compassionate ground under the scheme within a period of one year on attainment of majority. Government resolution also stipulates that the variance to the rule could not be plausible having regard to clause 8 thereof.

7. The tribunal had also appreciated that after marriage, sister of petitioner was not willing to work as a government employees and application for substitution had been moved which was an afterthought. The tribunal referring to this has considered the decision in the case of *Vinod Kumar Kiru Chavan Vs. State of Maharashtra & others* dated 9th December, 2009 in writ petition no. 7793 of 2009, whereunder, request for substitution had been under consideration and had distinguished it. The tribunal has also referred to the decision of this court in the case of *Vaibhav S. Kulkarni Vs. State of Maharashtra & others* dated 19th November, 2005 in writ petition bearing no. 6777 of 2005 as well as decision of supreme court in the case of *Santosh Kumar Dubey Vs. State of U.P. and others*

decided on 18th May, 2009 in civil appeal no. 1955 of 2003. Supreme court in aforesaid case has particularly emphasized the concept underlying compassionate appointment.

8. Having regard to aforesaid, it does not appear that the the petitioner has any case, either on facts or in law. The decision of the tribunal can seldom be faulted with.

9. Writ petition, therefore, is not being entertained, and is dismissed.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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