

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 WRIT PETITION NO.10611 OF 2017

Digambar Kondiba Dange,
Age 28 yrs., Occ. Education,
R/o Fulwal, Tq. Kandhar,
Dist. Nanded.

... Petitioner.

... **Versus** ...

- 1 The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai – 32.
- 2 The Collector,
Hingoli, District Hingoli.
- 3 The Superintendent Engineer,
Irrigation Department, Nanded,
Division Nanded.
- 4 The Executive Engineer,
Purna Irrigation Department,
Vasmatnagar, Dist. Nanded.

... Respondents.

...

Mr. G.J. Karne, Advocate for the petitioner

Mr. G.O. Wattamwar, AGP for respondents No.1 and 2

Mr. M.C. Swami, Advocate for respondents No.3 and 4

...

**CORAM : SUNIL P. DESHMUKH &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 25th NOVEMBER, 2019

ORAL JUDGMENT : (PER – SUNIL P. DESHMUKH, J.)

1 Rule. Rule made returnable forthwith, heard finally with consent of the parties.

2 Petitioner is before us, seeking direction to respondents to consider and decide application for compassionate appointment, challenging order dated 5th June, 2017 passed by Executive Engineer, Purna Irrigation Department.

3 Petitioner's father had been working as *Chaukidar* with respondent No.4. He died on 03.02.2001 while in service. According to petitioner, all the family members, wife of deceased, petitioner and three daughters were left behind by the deceased and were dependent on income earned by him from service. In the circumstances, on 11-06-2001, wife of deceased – mother of present petitioner, had applied for appointment on compassionate ground. Said application had been responded to by a letter in 2005, directing mother of petitioner to produce certain documents. It is contended that said letter had not been received by mother, since she had left

the place after death of her husband. On 28-06-2005 she had been communicated to remain present along with certain documents particularly caste certificate, while she ought to have been considered from open category as they belong to Wani community. According to petitioner, the demand for production of documents, particularly, caste certificate had been improper and that had detained appointment of his mother.

4 Requirement for compassionate appointment under the policy of the Government, particularly, Government resolutions dated 22-08-2005 and 23-04-2008 refer to that there can be no substitute in the list in compassionate appointment and that names of claimants could be deleted from the waiting list on attaining age of 40 years. Petitioner's mother attained 40 years age in 2008.

5 It is not disputed that petitioner had applied for replacement of his name in place of his mother in 2009 on attaining age of majority.

6 According to petitioner, such an application for replacement and appointment on compassionate ground had been moved within prescribed period under Government schemes, however, the same had not been responded to compelling him to move this Court under Writ Petition No.119 of 2017. A Division Bench of this Court in its order dated 27-02-2017 had directed the respondents to decide the application filed by petitioner on its

own merit in accordance with law, expeditiously, preferably within six months from the date of order. Pursuant to the same, petitioner has been communicated decision of respondent No.4 dated 05-06-2017, rejecting the claim of petitioner for appointment on compassionate ground. According to respondents, pursuant to Government resolutions dated 06-02-2008 and 20-05-2015, claim of a family member of deceased from the waiting list for compassionate appointments is non replaceable and waiting list cannot be altered.

7 Learned counsel for the petitioner during course of submissions purportedly relied on a Judgment dated 18-07-2018, passed in the case of *State of Maharashtra and others vs. Smt. Anusaya V. More and another* in *Writ Petition No.13932 of 2017*. It appears that order passed is on the concession on behalf of respondent No.2 to include name of petitioner at the same place in the waiting list in place of his mother.

Yet another order dated 09-12-2009, passed in the case of *Vinodkumar Khiru Chavan vs. The State of Maharashtra and others* in *Writ Petition No.7793 of 2009*, has been relied on. It is with reference to an application before circular dated 23-04-2008 had been issued. In that case it has been considered that plea could not be rejected and is a distinguishable case.

Learned counsel purports to rely on an order dated 17-04-2014,

passed in *Rupesh Sakharaji Tate and another vs. The State of Maharashtra and others* in *Writ Petition No.4211 of 2013*. It was a case, wherein the matter had been disposed of with a direction to decide the representation. Learned counsel contends that said order is on similar set of facts, yet, it emerges that High Court had directed only decision on representation. It appears to be a case such a replacement of son in place of mother had been applied for by mother well before the further decision by the State Government disallowing replacement.

8 In the present case, however, it appears that the application of mother of petitioner for compassionate appointment did not make any progress beyond communication for production of documents and in the meantime on attaining age of 40 years, before petitioner had attained the age of majority, her name under the policy of Government had been deleted. In the circumstances, the application by petitioner to replace his name in place of his mother would hardly be considered.

9 Apart from aforesaid, father of petitioner died in 2001, the mother had not moved against communication for production of caste papers nor after deletion of her name from waiting list. After years of lapse and particularly, while the petitioner moved an application in 2009 till 2017, he had not initiated any action for replacement of his name.

10 Looking at the circumstances, it is difficult for us to indulge into the request made in writ petition. We are disinclined to entertain the writ petition.

11 Writ petition is dismissed. Rule discharged.

(Smt. Vibha Kankanwadi)
JUDGE

(Sunil P. Deshmukh)
JUDGE

agd