

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 208 OF 2022

Shri. Vaibhav Namdev Ghatge	}	Petitioner
Versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. Anand S. Patil for the petitioner.

Mr. B. V. Samant, AGP for State.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JUNE 8, 2022

P.C.:

1. The petitioner's father died in harness on 25th August 2000. On 25th September 2000, the petitioner's mother applied for compassionate appointment. According to the petitioner, no action was taken on such application. He, therefore, applied under the Right to Information Act, 2005 for information, whereupon the respondents confirmed, on 25th October 2017, that in fact an application had been made by his mother and that the same had been sent to the superior officers. In the meanwhile, the petitioner (born on 13th June 1992) had made an application for an appointment on compassionate ground on 8th January 2016; i.e. 6 (six) years and 5 (five) months after attaining majority. Such application was rejected by an order dated 5th February 2016, which was made the subject matter of challenge in an original

application (Original Application No. 795 of 2018) under section 19 of the Administrative Tribunals Act, 1985 before the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short). By its judgment and order dated 12th April 2019, the Tribunal has dismissed the original application, which has given rise to this writ petition.

2. We have heard Mr. Patil, learned advocate for the petitioner and Mr. Samant, learned AGP for State.

3. Paragraph 8 of the impugned judgment reads as follows:-

"8. The following facts are uncontroverted: -

- (a) Deceased employee died on 25.08.2000.
- (b) His widow filed an application for appointment on compassionate ground on 25.09.2000.
- (c) Mother's application was rejected by order dated 29.03.2011 which was admittedly served upon the mother of the Applicant.
- (d) Applicant's birth date is 13.06.1992 and he attained majority on 13.06.2010.
- (e) Applicant had made applications for appointment on compassionate ground for the first time on 08.01.2016 and 27.06.2016.
- (f) Respondents by order dated 5th February, 2016 rejected the claim of the Applicant being made after lapse of period of 15 years from the date of death of the deceased."

4. Although the Tribunal has recorded in paragraph 8(c) that rejection of the petitioner's mother's application by an order dated 29th March 2011 is an uncontroverted factor and that such order was admittedly served upon the petitioner's

mother, we have failed to comprehend as to how the Tribunal arrived at such a finding.

5. An affidavit in reply was filed by the respondents before the Tribunal. It neither suggests that the application of the petitioner's mother was rejected by the order dated 29th March 2011, nor does it suggest that the said order was served upon the petitioner's mother.

6. We are, therefore, constrained to hold that an extraneous consideration influenced the mind of the Tribunal which vitiates its order of dismissal of the original application of the petitioner.

7. That apart, it appears from the impugned order of the Tribunal that the petitioner was held disentitled to appointment on compassionate ground in view of Government Resolution dated 22nd August 2005. Whether the said Government Resolution could be made applicable in case of death of an employee in harness on 25th August 2000 is a question which might require a fresh look by the Tribunal in view of the latest decision of the Supreme Court in Civil Appeal No. 4103 of 2022 (**Malaya Nanda Sethy vs. State of Orissa and Ors.**) decided on 20th May 2022.

8. We are of the considered opinion that this is a fit and proper case where the impugned order of the Tribunal ought to be set aside and the matter remitted to the Tribunal for a fresh decision in accordance with law.

9. Consequently, the impugned order dated 12th April 2019 stands set aside. This would result in revival of Original Application No. 795 of 2018 before the Tribunal. The Tribunal

is requested to decide the original application afresh in the light of the extant law as early as possible, preferably within 4 (four) months from date of receipt of a copy of this order.

10. Since the impugned order disposed of Miscellaneous Application No. 444 of 2018 too, being an application for condonation of delay, we direct the Tribunal to consider such application first and only upon the delay being condoned, it shall look into the merits of the matter.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2022.06.09
18:04:30 +0530

(M. S. KARNIK, J.)

(CHIEF JUSTICE)