



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Terminus (VT), Mumbai - 400 001

Tel : 2207 8962, 2205 0791 Fax : 2207 8962 Website : <http://mshrc.maharashtra.gov.in>

Case No. – 5139/2012-13

Name of the complainant : **Shri. Vijay Vitoba Chopde**
C/o Prashant Ganpat Pathare
Ekatmata Housing Society
Chawl No 6, Room no 4,
Gavali Nagar, Poona Link Road,
Kalyan (E), Dist- Thane

Vs.

Name of the Respondent : **The Dairy Development Commissioner**
Worli Dairy, Administrative Building
Abdul Gafarkhan Road,
Worli sea face, Mumbai 18

Date : **23rd February 2016**

Coram : **Justice S. R. Bannurmath, Chairperson**

ORDER

Shri. Vijay V. Chopade the complainant and Shri. Jagannath Parshuram Patil – Desk Officer representing the Commissioner – Dairy Development Department, Mumbai are present and heard them.

This complaint by Shri. Vijay Vithoba Chopde complaining that his father Vithoba Ramji Chopde who was working with the Dairy Development and was missing from 22.09.1999. As such immediately on attaining majority he has prayed the concerned department to give him appointment on compassionate ground. In this regard he has referred to the news item dated 31.01.2013 in which it is stated that the National Human Rights Commission at Nagpur Sitting in the case of Vinod Ramdas Shende Vs.

Municipal Corporation, Nagpur has directed the authority to consider similar prayer.

In this regard report from the Commissioner, Dairy Development, Mumbai is called for and a report is submitted interalia stating that no doubt there is a Police report that the father of the complainant is missing from 22.09.1999 and in this regard on 16.05.2001 the widow Smt. Pushpa Vithoba Chopde had made similar applications which is rejected on the ground of the Government Resolution dated 26.10.2004. It is stated that compassionate appointments can be given only in the case of death and not in the case of missing person.

On going through the report and the order of the National Human Rights Commission in the case of Vinod Ramdas Shende (NHRC Case No. 3668/13/17/2012), and various pronouncements of the Courts, it is to be noted that if a person is missing for more than seven years it is to be treated as case of death of the person after seven years. In fact as the report of the Commissioner itself indicates taking into consideration this aspect the Department concerned has settled the family pension, provident fund etc. to the family of the missing person. This indicates that the Government has treated the missing person as dead. It is also to be noted that reference to the GR dated 26.10.2004 appears to be incorrect. The earliest GR No. 1093/2335/ C.R. 90/93/8 dated 26.10.1994 wherein there is reference to giving compassionate appointment even to the missing persons. But later on it appears there is one more Government Resolution in which the word "missing" is deleted. The Commission is of the view that when under the law and as per the decision of the Hon'ble Supreme Court repeated in AIR 1967 SC 1134 it is held that "there is a presumption of

death if a person is unheard for seven years by the person who would normally have heard of him.” In this view of the law and the order of the National Human Rights Commission in the similar circumstances in the case of Vinod Ramdas Shende’s case, the Commission is of the view that the father of the complainant i.e. Shri. Vithoba Ramji Chopade father of the complainant, who is missing since 1999 almost for the last 17 years, deemed to be dead and as such may entitle for compassionate appointment. As such the Commission issue following recommendations :

- a) **That the Commissioner – Dairy Development Department, Maharashtra to consider the case of the complainant Shri. Vijay Chopade for compassionate appointment since his father is missing for the last more than seven years and as such deemed to be dead and also keeping in view the Government Resolution No. 1093/2335/C.R/90/93/8 wherein also there is scope for giving compassionate appointment to the relatives of the even missing person subject to the complainant providing necessary application and information in this regard. It is made clear that the concerned department is at liberty to consider giving suitable posts according to the necessary qualifications prescribed for the post available.**
- b) **The Commissioner shall comply the directions and report the same to this Commission within four weeks from the date of receipt of order.**

**(Justice S. R. Bannurmath)
Chairperson, SHRC**