

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 160 OF 2021

DISTRICT:- DHULE

Mayur S/o. Ravindra Sonawane,
Age: 24 years, Occu. Nil,
R/o: Manmadiin, Near Water Tank,
Parola Road, Dhule.

.. APPLICANTS.

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
General Administration Department,
M.S. Mantralaya, Mumbai-32.
2. The Divisional Joint Registrar,
Co-operative Societies,
Nashik, 3rd Floor, Gruha Nirman
Bhawan, Ram Ganesh Gadakari
Chowk, Nashik – 2.
3. The District Deputy Registrar,
Co-operative Societies, Dhule,
Administrative Complex,
Old Collector Office Campus,
Dhule-1.
4. The Collector, Dhule,
Collector Office, Dhule,
Garud Baag, Navnath Nagar,
Dhule, Maharashtra 424001.

.. RESPONDENTS

APPEARANCE : Shri Saket Joshi, counsel holding for Shri
Avinash Deshmukh, counsel for the
applicant.
: Shri N.U. Yadav, Presenting Officer for
the respondent authorities.

**CORAM : JUSTICE SHRI P.R.BORA,
VICE CHAIRMAN**

RESERVED ON : 28.08.2023

PRONOUNCED ON : 05.09.2023

ORDER

Heard Shri Saket Joshi, learned counsel holding for Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent authorities.

2. Present is the case pertaining to compassionate appointment sought by the present applicant. Applicant's father namely Ravindra Sonawane was in the employment of Co-operative Department of the State Government and was working under immediate control of respondent No.3 i.e. the District Deputy Registrar, Co-operative Societies, Dhule. Ravindra Sonawane died on 25.04.2008 while in service. After his untimely death, his widow i.e. mother of the present applicant namely Usha Ravindra Sonawane had applied for compassionate appointment and the proposal regarding her appointment was forwarded by respondent No.3 to respondent No.4 on 18.10.2008. In due course of time and after completion of requisite formalities, name of the applicant's mother was included in the wait list of the persons held eligible for appointment on the compassionate ground. At the time, when mother of the applicant had submitted an application and accordingly her name was included in the wait list, the applicant was minor. Though the name of the mother of applicant was included in the wait list in the year 2008 itself, she could not get the appointment inasmuch as her turn in the wait list was not reached. In the meanwhile, the applicant attained the age of majority on 03.12.2014. Thereupon applicant

duly submitted an application to respondent No.3 on 06.05.2015 praying for inclusion of his name in the wait list of the persons held eligible for appointment on the compassionate ground. On the basis of the application submitted by applicant on 06.05.2015 respondent No.3 on 09.01.2016 submitted the proposal to respondent No.4 for inclusion of name of the applicant in the combined wait list of the persons eligible to be appointed on compassionate ground. Accordingly name of applicant was included in the wait list. After waiting for considerable long period when no appointment was given to the applicant, he submitted an application to respondent No.2 on 10.08.2020. Respondent No.2, however, rejected the request of the applicant vide communication dated 14.09.2020. Respondent No.2 has rejected the request of the applicant stating that no provision is existing for substitution of name already included in the waiting list. The aforesaid order is challenged in the present Original Application.

3. Shri Saket Joshi, learned counsel holding for Shri Avinash Deshmukh, learned counsel appearing for the applicant submitted that the Division Bench of the Hon'ble Bombay High Court in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors., (2020)5, Mh.L.J.,381**, decided on 11.03.2020 has held the restriction imposed by the Government Resolution dated 20.05.2015 denying the substitution of the name of legal representative of the deceased employee whose name is included in the waiting list for giving appointment on compassionate ground with another legal heir of the deceased, to be unjustified and has set

aside the said restriction. Learned counsel further submitted that in view of the law laid down by the Hon'ble Bombay High Court in the aforesaid matter, respondent No. 2 could not have rejected the request of the applicant for substituting his name in place of his mother. Learned counsel further submitted that earlier to the aforesaid decision this Tribunal in O.A. No. 432/2013 decided on 01.12.2014 had taken a similar view and has set aside the order impugned in the said O.A., whereby the request for substitution of name in the wait list was rejected by the authority concerned. Learned counsel also referred to judgment of this Tribunal in O.A. No. 184 of 2005 decided on 03.05.2016, wherein also the request for substitution was directed to be considered by the authorities concerned. Learned counsel also placed his reliance on the judgment delivered on 27.02.2017 by the Hon'ble Division Bench of Bombay High Court Bench at Aurangabad in Writ Petition No. 1384 of 2016, wherein similar issue was for consideration of the Hon'ble High Court and the substitution was held permissible in the case of appointment on compassionate ground. Learned counsel in the circumstances has prayed for setting aside the communication dated 14.09.2020 and also prayed for direction against the respondents to include name of the present applicant in the list of candidates held eligible to be appointed on compassionate ground and to give order of appointment in Class-III for which he holds the eligibility and the prescribed qualification.

4. Respondent Nos. 3 and 4 have filed their affidavit in reply and have resisted the contentions raised in the O.A. and prayer made therein. In their affidavit in reply, respondent Nos. 3 & 4 have referred to and relied upon the Government Resolution issued by the General Administration Department on 20.5.2015. It is the contention of the respondents that another legal heir can be substituted in place of legal heir whose name has been included in the waiting list only in the event of death of the legal heir whose name is in the waiting list. Reliance is also given of the subsequent G.R. dated 21.9.2017 issued by the G.A.D. However, copy of the said G.R. is not placed on record. It is further contended that as per the existing G.R. so long as mother of the applicant whose name was already included in the waiting list was alive, the request for substitution was not liable to be considered. According to the respondents, no error has been committed by them in rejecting the request of the applicant for substituting his name in place of his mother. The respondents have, therefore, prayed for dismissal of the O.A.

5. I have duly considered the submissions made on behalf of the applicant, as well as, respondents. Majority facts are not in dispute. The request of the applicant has been rejected on the basis of the G.R. dated 20.5.2015. I deem it appropriate to reproduce herein below the relevant portion of the said G.R. on the basis of which the

respondents have turned down the request of the applicant, which reads thus: -

“क) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवारऐवजी त्याच्या कुटुंबातील अन्य पात्र उमेदवाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नांव त्याला ज्या दिवशी १८ वर्षे पूर्ण होतील त्या दिनांकास घेण्यात यावे.”

6. Similar provision is there in the G.R. dated 21.9.2017 to which also the respondents have referred to in their affidavit in reply. I may not reproduce the same for the reason that it is incorporated in the subsequent G.R. without any change therein. In the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors.** (cited supra) the Hon'ble Division Bench of Bombay High Court has held the restriction imposed in the G.R. dated 20.5.2015 to be unjustified and said restriction is directed to be deleted. Paragraph No. 6 of the said judgment is relevant, which reads thus: -

“6. In this view of the matter, we find that the restriction imposed by the Government Resolution dated 20.05.2015 that name of legal representative of deceased employee cannot be considered in place of another legal representative of that deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground, is unjustified. Hence, we pass the following order:

ORDER

I) We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of 928-WP-6267-2018.odt one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.

II) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.

III) The respondent no.2 - Chief Executive Officer is directed to include the name of the petitioner in the waiting list of persons seeking appointment on compassionate ground, substituting his name in place of his mother's name.

IV) The respondent no.2 - Chief Executive Officer is directed to consider the claim of the petitioner for appointment on compassionate ground on the post commensurate with his qualifications and treating his seniority as per the seniority of his mother.

V) Rule is made absolute in the above terms.

VI) In the circumstances, the parties to bear their own costs."

7. The request of the applicant for substituting his name in place of his mother and to give him an appointment on compassionate ground has been rejected by respondent No. 2 on the sole ground that no such provision is there in the G.R. dated 20.05.2015 or in the G.R. dated 21.09.2017.

8. As has come on record, the applicant was minor at the time when his father died. The applicant attained the age of majority on 03.12.2014. He submitted an application in the prescribed form by annexing therewith all required documents on 06.05.2015 to

respondent No. 3. Respondent No. 3 on 09.01.2016 forwarded the proposal to respondent No. 4 for inclusion of applicant's name in the combined wait list of persons seeking compassionate appointment. It is the matter of record that respondent No. 4 included the name of applicant in combined wait list of the persons held eligible for compassionate appointment in Class-III category. The applicant has placed on record copy of the said waiting list, wherein his name is appearing at Sr. No. 74. Thus, the name of applicant was not only included in the wait list maintained at the office of respondent No. 3, but also in the combined wait list maintained at the office of respondent No. 4. Unfortunately, the applicant on 10.08.2020 forwarded application to respondent No. 2 also praying for his appointment on compassionate ground and respondent No. 3 vide the impugned communication dated 14.09.2020 rejected the request of the applicant stating that there was no provision for substitution of the name of one legal heir of the deceased with his another legal heir.

9. As noted hereinabove, the applicant has challenged the aforesaid order in the present Original Application. The ground on which respondent No. 2 has rejected the request of the applicant is apparently unsustainable in view of the judgment of the Division Bench of Hon'ble Bombay High Court in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors.** (cited supra). When respondent No. 2 rejected the request of the applicant on the basis of the aforesaid G.R. dated 20.05.2015, the relevant portion in

the said G.R. was already directed to be deleted by the Hon'ble Bombay High Court in its judgment in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors.** (cited supra). It is thus evident that on the date of rejection of the request of the applicant by respondent No. 2 the provision on the basis of which the request was rejected was not in existence. Respondent No. 2 thus rejected the request of applicant on non-existent ground. As has been argued by the learned counsel appearing for the applicant, even prior to the decision in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors.** (cited supra) this Tribunal in O.A. No. 432/2013, decided on 01.12.2014 had already taken a view and has set aside the order impugned in the said O.A., whereby the request for substitution of name in the wait list was rejected by the authority concerned. Even Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad, while deciding W.P. No. 1384/2016 decided on 27.02.2017 had held the substitution permissible in the case of appointment on compassionate ground. It is significant to note that in the application submitted by the applicant to respondent No. 2, he had provided all the particulars as about application submitted by him to respondent No. 3. Respondent No. 3 accordingly got included name of the applicant in the wait list maintained at the office of respondent No. 4. Ignoring the aforesaid facts, as well as, in utter disregard of the law laid down by the Hon'ble Bombay High Court in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors.** (cited supra), respondent No. 2 passed the

impugned order. For the reason discussed by me hereinabove, the said order is unsustainable and deserves to be set aside. In the result the following order is passed :-

ORDER

(i) The impugned communication dated 14.9.2020 issued by respondent No. 2 is quashed and set aside.

(ii) Respondents are directed to consider the candidature of the applicant for appointment on compassionate ground on the basis of the name included of the applicant in the wait list maintained by respondent No. 4 by considering the seniority of the applicant from the date of 2.7.2008 i.e. the date on which the name of mother of the applicant was included in the waiting list of the candidates held eligible for appointment on compassionate ground.

(iii) The Original Application stands allowed in the aforesaid terms.

(vi) There shall be no order as to costs.

VICE CHAIRMAN