

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 286 OF 2021  
(Subject – Compassionate Appointment)**

**DISTRICT : BEED**

1. **Sayyed Ubed Sayyed Asif,** )  
Age : 19 years, Occu. : Nil, )  
R/o : Dargah Masjid, Kazi Nagar, )  
Nagar Road, Balepir, Beed-431122. )
2. **Sayyed Juned Sayyed Asif,** )  
Age : 23 years, Occu. : Nil, )  
R/o : Dargah Masjid, Kazi Nagar, )  
Nagar Road, Balepir, Beed-431122. )
3. **Sayyed Fatema Asif,** )  
Age : 44 years, Occu. : Household, )  
R/o : Dargah Masjid, Kazi Nagar, )  
Nagar Road, Balepir, Beed-431122. ).... **APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through The Principal Secretary, )  
Home Department, New Administrative )  
Building, 9<sup>th</sup> Floor, Opposite Mantralaya,) )  
Mumbai, Pin Code 400 032. )
2. **Superintendent of Police,** )  
Office of Superintendent of Police, Beed,) )  
Near District Civil Hospital, Barshi Road,) )  
Beed, Pin Code 431 122. )... **RESPONDENTS**

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**APPEARANCE** : Shri N.K. Tungar, Advocate for the Applicants.

: Shri N.U. Yadav, Presenting Officer for  
Respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**

**DATE** : **06.09.2022.**  
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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order / communication dated 19.03.2021 (Annexure-D) issued by the respondent No. 2 i.e. the Superintendent of Police, Beed refusing to substitute to accept the name of the applicant No. 1 i.e. Sayyed Ubed Sayyed Asif in the waiting list for appointment in place of his brother i.e. applicant No. 2 viz. Sayyed Juned Sayyed Asif, whose name was already considered for appointment on compassionate ground.

2. The facts in brief giving rise to this Application can be stated as follows :-

(a) The applicant Nos. 1 and 2 are respectively younger and elder sons and the applicant No. 3 is the widow of the Government servant named Syyed Asif Syyed Ali, who died in harness on 09.04.2017 while working as Police Head

Constable with the respondent No. 2 i.e. the Superintendent of Police, Beed.

(b) After the death of said Government servant as above and after coming to know about the scheme of compassionate appointment, the applicant No. 3 i.e. the widow made applications dated 18.04.2017 and 08.09.2017 (Annexure-B collectively) seeking compassionate appointment to the applicant No. 2 i.e. Sayyed Juned Sayyed Asif, who is elder son of deceased Government servant and was 19 years old. The respondent No. 2 i.e. the Superintendent of Police, Beed considered the said applications and included the name of applicant No. 2 i.e. Sayyed Juned Sayyed Asif in the waiting list of the candidates to be appointed on compassionate ground. It is further stated that the applicant No. 2 i.e. Sayyed Juned Sayyed Asif was not interested to serve in the Police Department, as in the meantime, he had joined at some other place and was residing separately. In view of the same, the applicant No. 3 i.e. the widow of the deceased Government servant moved application dated 08.03.2021 (Annexure-C) to the respondent No. 2 for substitution of name of the applicant No. 1 i.e. Sayyed Ubed Sayyed Asif in

place of the applicant No. 2 Sayyed Juned Sayyed Asif for compassionate appointment. The respondent No. 2 by the impugned order dated 19.03.2021 (Annexure-D) rejected the said application summarily stating that there is no provision for substituting the name of the legal representative in the scheme of compassionate appointment as per the G.R. dated 20.05.2015 (Annexure-E) and the applicant No. 3 was directed to kept the applicant No. 2 i.e. Sayyed Juned Sayyed Asif for medical examination and filling requisite form for appointment in Police Department.

(c) It is submitted that the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 6267 of 2018 in the matter of Dnyaneshwar Radhakrishna Musane Vs. The State of Maharashtra and Ors.** was pleased to consider the restriction imposed in the Government Resolution dated 20.05.2015 that name of the legal representative of deceased employee cannot be considered in place of another legal representative of the deceased employee, whose name happens to be in the waiting list for giving appointment on compassionate ground is unjustified and it was ordered to be deleted. In

view of the same, according to the applicants, the impugned order dated 19.03.2021 (Annexure -D) issued by the respondent No. 2 is unsustainable and the same is liable to be quashed and set aside. Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 and 2 by one Umashankar S/o Manmath Kasture, working as the Deputy Superintendent of Police (Home), Beed, Dist. Beed, thereby he denied all the adverse contentions raised in the Original Application and submitted that in fact the applicant No. 2, whose name was considered for compassionate appointment in the Police Department and was called for physical measurement, medical examination and character verification process, but he did not turn up till date. In view of the same, the claim of the applicant was already considered for compassionate appointment as can be seen from the impugned order dated 19.03.2021 (Annexure-D). In view of the same, the present Original Application is devoid of merits and the same is liable to be dismissed.

4. After filing of the affidavit in reply, the applicant Nos. 2 and 3 have filed written undertaking on record that they have no

objection, if the name of applicant No. 1 Sayyed Ubed Sayyed Asif is considered for compassionate appointment in place of applicant No. 2 i.e. Sayyed Juned Sayyed Asif.

5. I have heard the arguments advanced at length by Shri N.K. Tungar, learned Advocate for the applicants on one hand and Shri N.U. Yadav, learned Presenting Officer for the respondents on the other hand.

6. Upon perusal of the rival pleadings, it is evident that undisputedly the name of applicant No. 2 viz. Sayyed Juned Sayyed Asif was already considered and taken in the waiting list and was allowed to participate in the recruitment process of Police officials. The applicant No. 2 viz. Sayyed Juned Sayyed Asif was called upon to undergo medical examination and to produce requisite character certificate. It has come on record that applicant No. 2 viz. Sayyed Juned Sayyed Asif has got employment elsewhere and is not residing with his mother i.e. the applicant No. 3 and the applicant Nos. 2 and 3 have no objection, if the name of the applicant No. 1 viz. Sayyed Ubed Sayyed Asif in place of applicant No. 2 for compassionate appointment.

7. Perusal of the impugned communication / order dated 19.03.2021 (Annexure-D) would show that the substitution of name of applicant No. 1 in place of applicant No. 2 is refused in view of the G.R. dated 20.05.2015 (Annexure-E) and more particularly as per the clause C(क), which is as follows :-

“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 उमेदवाराऐवजी 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.”

8. The above-said clause was under consideration before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 6267 of 2018** in the matter of **Dnyaneshwar Radhakrishna Musane Vs. The State of Maharashtra and Ors.** decided on 11.03.2020. In the said citation case also substitution of name of legal representative by another representative was refused. In the said citation, in para No. 5 it is observed as under :-

*“5.....It is not the case of respondent no. 2 that petitioner's mother was given appointment on compassionate ground and then she resigned and proposed that petitioner should be given appointment. The name of petitioner's mother was in waiting list when she gave up her claim and proposed that the petitioner should be considered for appointment on compassionate ground.”*

Thereafter in the said citation, it is held as follows :-

*“The restriction imposed by the Government Resolution dated 20.05.2015 if name of 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.”*

9. In the case in hand, name of the applicant No. 2 was not only taken in the waiting list, but also he had participated in the recruitment process for Police officials and was likely to get the employment. However, it is stated that the applicant No. 2 is not residing with his family members and he is residing separately. It is not a case that the applicant No. 2 is offered employment and he refused it. Hence, the ratio laid down in the above-said citation will be applicable to this case. In such circumstances, substitution of name of the applicant No. 1 i.e. Sayyed Ubed Sayyed Asif, who is younger son of the deceased government



servant in place of applicant No. 2 is sought. The age of applicant No. 1 i.e. Sayyed Ubed Sayyed Asif is stated to be 19 years old at the time of filing of the present Original Application as on 16.06.2021, whereas the application for substitution of his name was made by the applicant No. 3 on 08.03.2021, which is in close vicinity. In view of the same, in my considered opinion, limitation clause will not come in the way of refusing substitution. In the circumstances, I hold that the impugned order / communication dated 19.03.2021 (Exhibit-D) is not legal and proper, which is liable to be quashed and set aside. I therefore, proceed to pass following order :-

**ORDER**

The Original Application No. 286 of 2021 is allowed in following terms :-

- (A) The impugned order / communication dated 19.03.2021 (Exhibit-D) issued by the respondent No. 2 i.e. the Superintendent of Police, Beed is hereby quashed and set aside.
- (B) The respondents are directed to consider the application made by the applicant No. 3 dated 09.03.2021 (Annexure-C) for appointment to

applicant No. 1 viz. Sayyed Ubed Sayyed Asif in place of applicant No. 2 viz. Sayyed Juned Sayyed Asif on compassionate ground and it is equitable that his name be included in the waiting list for the issuance of appointment order, subject to fulfillment of eligibility criteria in accordance with rules at the earliest.

(C) No order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 06.09.2022.**

**(V.D. DONGRE)**  
**MEMBER (J)**

**KPB S.B. O.A. No. 286 of 2021 VDD Compassionate appointment**