

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

**ORIGINAL APPLICATION NO. 351 OF 2019**

**(Subject – Compassionate Appointment)**

**DISTRICT : NANDED**

1. **Smt. Sangita wd/o Masaji Kalbande,** )  
Age : 39 years, Occu. : Household, )

2. **Sanghpal s/o Masaji Kalbande,** )  
Age : 22 years, Occu. : Nil, )

**(Deleted as per order dated 06.05.2019)**

Both R/o. Aathwale Niwas, Waman )  
Nagar, Nanded, Tq. & Dist. Nanded. )

.... **APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 32. )

2. **The Superintendent of Police,** )  
Nanded, Dist. Nanded. )

... **RESPONDENTS**

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**APPEARANCE** : Shri V.G. Pingle, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,  
Presenting Officer for Respondents.

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

**DATE** : **03.02.2022.**  
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**ORDER**

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed by the applicant challenging the impugned communication dated 13.02.2019 (Annexure A-3) issued by the respondent No. 2 i.e. the Superintendent of Police, Nanded, District Nanded, thereby refusing to substitute the name of the applicant by name of her son i.e. Sanghpal Masaji Kalbande and further seeking direction for compassionate appointment to the said Sanghpal Masaji Kalbande in terms of applications dated 21.12.2018 (Annexure A-2) and dated 06.03.2019 (Annexure A-5).

2. Facts in brief giving rise to this application are as follows :-

i. The applicant is the widow of Masaji Ukandji Kalbande, who died in harness on 26.08.2007 while serving as Police Constable under the control and supervision of the respondent No. 2 i.e. the Superintendent of Police, Nanded District Nanded.

ii. After death of her husband, the applicant made application dated 13.07.2008 (Annexure A-1) seeking

appointment on compassionate ground. Accordingly, her name was included in the waiting list of the candidates to be appointed on compassionate ground maintained by the office of respondent No. 2. As on 21.12.2018, the name of the applicant was appearing at Sr. No. 1 in the waiting list. The applicant's son Sanghpal Masaji Kalbande completed his age of 21 years on 11.03.2018 and he was having qualification of 12<sup>th</sup> Std. and was pursuing his further studies. The applicant, however, was facing so many financial difficulties, as she was required to maintain herself, her son and two daughters. She therefore, made application dated 21.12.2018 (Annexure A-2) seeking compassionate appointment for her son i.e. Sanghpal Masaji Kalbande. However, the respondent No. 2 vide impugned communication dated 13.02.2019 (Annexure A-3) communicated to the applicant that in view of the G.R. dated 20.05.2015 once name of eligible family member is taken in waiting list of candidates to be appointed on compassionate ground, name of other eligible heir / legal representative cannot be taken. Accordingly, the respondent No. 2 rejected her request made for her son.

(iii) It is further contended that thereafter, the applicant's son Sanghpal Masaji Kalbande also independently made application on 06.03.2019 (Annexure A-5) seeking compassionate appointment stating that no appointment was given to his mother i.e. the applicant till then.

(iv) In the circumstances as above, it is the contention of the applicant that the claim of her son Sanghpal Masaji Kalbande is wrongly rejected for appointment on compassionate ground. In fact, only one of the family members is claiming compassionate appointment in accordance with law. Hence, this Original Application.

3. The affidavit in reply is filed on behalf of respondent No. 2 by one Shri Kishor Anandrao Kamble working as Deputy Superintendent of Police, Division Kandhar, District Nanded, thereby he has denied the adverse contentions raised in the present Original Application. However, it is not disputed that the name of the applicant is included in the waiting list of the candidates to be appointed on compassionate ground and her name is at Sr. No. 14. However, the impugned order dated 13.02.2019 (Annexure A-3) is justified in view of the G.R. dated 20.05.2015, as there is no provision to change or alter the name

of legal heir of the deceased employee, whose name was once included in the waiting list of the compassionate appointment. In the circumstances, it is contended that the applicant's son is not entitled for compassionate appointment in the absence of specific provision. The present Original Application therefore, is liable to be dismissed.

4. The applicant filed affidavit in rejoinder and denied the adverse contentions raised in the affidavit in reply and reiterated the facts raised in the Original Application, contending that the requisite clause of G.R. dated 20.05.2015, whereby the claim of the applicant was rejected is deleted in view of the judgment and order dated 11.03.2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 6267 of 2018** in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. The State of Maharashtra and Ors.** (Annexure A-7).

5. Affidavit in sur-rejoinder is filed on behalf of respondent No. 2 by one Shri Vikas S/o Shankarrao Totawar working as the Deputy Superintendent of Police (Home), Nanded, District Nanded, thereby he has reiterated the contentions raised in the affidavit in reply.

6. I have heard the arguments advanced by Shri V.G. Pingle, learned Advocate for the applicant on one hand and Smt. Sanjviani K. Deshmukh-Ghate, learned Presenting Officer on other hand.

7. Record shows that during hearing of the Original Application, the statement made by the learned Advocate for the applicant was recorded in the farad sheet order dated 30.08.2021 in following terms :-

*“3. Learned Advocate for the applicant has submitted that he is not insisting for benefit of waiting list of mother but he only wants that the applicant to be substituted in mother’s place in waiting list and seniority be counted from the date of filing of his application as nominee for compassionate appointment. Learned P.O. states that he is not in a position to respond to this point and seeks time.”*

8. Perusal of rival pleadings and documents as discussed hereinabove, would show that the applicant’s son Sanghpal Masaji Kalbande claimed compassionate appointment in place of his mother i.e. the applicant, which is rejected by the impugned order dated 13.02.2019 (Annexure A-3), more particularly relying upon the clause-C of the G.R. dated 20.05.2015 (Annexure A-4), 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.”

9. In this regard, learned Advocate for the applicant more particularly placed reliance on the citation of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 6267 of 2018** in the matter of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors.** decided on 11.03.2020. In the said citation, restriction imposed by the Government Resolution dated 20.05.2015 as stated above was under consideration and in that respect it is held as follows:-

*“ We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that 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.”*

10. In order to fortify the contentions that the said restriction is unreasonable and that substitution cannot be refused, learned

Advocate for the applicant has also relied upon the following citations:-

(i) W.P. No. 13932 of 2017 decided on 18.07.2018 by the Hon'ble High Court of Judicature at Bombay under Civil Appellate Jurisdiction in the matter of State of Maharashtra and Ors. Vs. Smt. Anusaya V. More and Anr.

(ii) O.A. No. 427/2016 with O.A. No. 509/2018 decided on 21.01.2019 by the coordinate bench of Maharashtra Administrative Tribunal at Mumbai in the matter of Aniket S. Gaikwad and Ors. Vs. The State of Maharashtra and Anr.

(iii) W.P. No. 7793 of 2009 decided on 09.12.2009 by the Hon'ble High Court of Judicature at Bombay under Appellate Civil Jurisdiction in the matter of Vinodkumar Khiru Chavan Vs. The State of Maharashtra and Ors.

(iv) W.P. No. 8047 of 2011 decided on 17.01.2012 by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in the matter of Pravin Babasaheb Shekade Vs. The State of Maharashtra.

11. In the all abovesaid citations, compassionate appointment was granted by substitution.

12. In the case in hand, it is a fact that name of the applicant is appearing in the waiting list of the candidates to be appointed on



compassionate ground. The applicant's husband died in harness on 26.08.2007. She made application within prescribed period of limitation on 13.07.2008 (Annexure A-1) for compassionate appointment for herself. At that time, the applicant's son Sanghpal Masaji Kalbande was minor and when he became 21 years old, the applicant made application dated 21.12.2018 (Annexure A-2) for getting compassionate appointment for her son Sanghpal Masaji Kalbande. Hence, the said application is made within the extended period of three years after attaining the age of majority. Admittedly, at that point of time, name of the applicant was appearing in the waiting list of the candidates to be appointed on compassionate ground. Subsequently, the son of the applicant i.e. Sanghpal Masaji Kalbande also made application dated 06.03.2019 (Annexure A-5) for getting compassionate appointment for himself in place of his mother i.e. the applicant.

13. As discussed earlier, the restriction of not considering the name of other legal representative as provided in Clause -C of the G.R. dated 20.05.2015 (Annexure A-4) is already deleted as per the decision of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 6267 of 2018** in the matter of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of**

**Maharashtra and Ors.** decided on 11.03.2020. It is also a matter of record that the consistent view is taken by the coordinate bench of this Tribunal at Mumbai, as well as, by the Hon'ble Bombay High Court that the substitution cannot be refused.

14. In the case in hand, the applicant is claiming compassionate appointment for her son Sanghpal Masaji Kalbande by substitution as per the seniority counted from the date of filing of application for applicant's son Sanghpal Masaji Kalbande. Learned Advocate for the applicant has made that statement across the bar, which is incorporated in farad sheet order dated 30.08.2021.

15. In the circumstances as above, in my considered opinion, the impugned communication dated 13.02.2019 (Annexure A-3) issued by the respondent No. 2 refusing compassionate appointment of applicant's son Sanghpal Masaji Kalbande by substituting her name is not sustainable in the eyes of law. The said restriction is no more now in the said G.R. dated 20.05.2015 (Annexure A-4). Therefore, the impugned communication dated 13.02.2019 (Annexure A-3) is liable to be quashed and set aside. Consequently, the respondents can consider the name of the applicant's son Sanghpal Masaji Kalbande for appointment on

compassionate ground in accordance with law. I therefore, proceed to pass following order:-

**ORDER**

The Original Application No. 351/2019 is allowed in following terms :-

- (A) The impugned communication dated 13.02.2019 (Annexure A-3) issued by the respondent No. 2 is hereby quashed and set aside.
- (B) The respondents are directed to consider the application of the applicant dated 21.12.2018 (Annexure A-2) for appointment for her son Sanghpal Masaji Kalbande on compassionate ground in accordance with law and it is equitable that name of Sanghpal Masaji Kalbande be included in the waiting list for issuance of appointment order, subject to fulfilling of the eligibility criteria in accordance with rules, at the earliest.
- (C) No order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 03.02.2022.**

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