

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**BENCH AT AURANGABAD****ORIGINAL APPLICATION NO. 41 OF 2022**

DIST. : LATUR

1. Nagesh Devidas Harne,)
Age. 25 years, Occ. : Education,)
R/o Mahsul Colony, Mondha Road,)
Ahemadpur, Tq. Ahemadpur,)
Dist. Latur.)
2. Anju Wd/o Devidas Harne,)
Age. 47 years, Occ. : Household,)
R/o Mahsul Colony, Mondha Road,)
Ahemadpur, Tq. Ahemadpur,)
Dist. Latur.)..

APPLICANTS**V E R S U S**

1. The State of Maharashtra,)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai – 32.)
2. The District Collector,)
Collector Office, Latur.)
3. The Tahsildar, Tehsil Office,)
Ahmedpur, Dist. Latur.)..

RESPONDENTS

 APPEARANCE :- Shri Kakasaheb B. Jadhav, learned
 Advocate for the applicant.

: Smt. Deepali S. Deshpande, learned
 Presenting Officer for the respondent
 authorities.

CORAM : Hon'ble Shri Justice P.R. Bora, Vice Chairman

DATE : 16th January, 2023

ORDER

1. Heard Shri Kakasaheb B. Jadhav, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondent authorities.

2. Aggrieved by the orders dated 21.9.2021 and 31.12.2021 whereby the request made by the present applicants for substituting the name of applicant no. 1, Shri Nagesh Devidas Harne, in place of his younger brother, Shri Pratik Devidas Harne, has been rejected by respondent no. 2, the applicants have filed the present Original Application.

3. Devidas Narayan Harne was serving as Awal Karkoon and he died on 17.7.2020 while in service. On 10.9.2020 wife of deceased Devidas Harne submitted an application seeking appointment on compassionate ground for her younger son namely Pratik. However, subsequently the applicant prayed for compassionate appointment for her elder son Nagesh and requested the respondent authorities to substitute the name of

Nagesh in place of Pratik. Since the said request has been rejected the applicants have approached this Tribunal.

4. Shri Jadhav, learned counsel appearing for the applicants submitted that it is true that initially applicant no. 2 i.e. wife of deceased Government servant had sought the compassionate appointment for her younger son Pratik and has submitted the relevant documents in that regard. The learned counsel further submitted that however when it was noticed that the younger son may not be able to accept the said appointment for the reason that he was studying the course of B.D.S. and was not likely to settle and reside with her, applicant no. 2 filed another application praying for substituting his name with the name of her younger son Nagesh. The learned counsel relying on the judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and others, WP No. 6267/2018** decided on 11.3.2020 submitted that substitution is held permissible in the said judgment and as such the respondents should not have rejected the request of the applicants. The learned counsel further submitted that relying on the aforesaid judgment of the Hon'ble High Court this Tribunal has also passed such orders in several matters. Two of such orders are placed on record and were brought to the

notice of the Tribunal. The learned counsel submitted that in view of the law laid down by the Hon'ble High Court, the orders of rejecting the request of the applicants are to be held as unsustainable and deserve to be quashed and set aside. The learned counsel, therefore, prayed for setting aside the said orders and also prayed for including the name of applicant no. 1 in the waiting list of the candidates to be given appointment on compassionate ground.

5. The learned Presenting Officer opposed the prayers so made, as well as, the contentions so raised in the application. In the affidavit in reply submitted on behalf of the respondents it is contended that having regard to the provisions of Government Resolutions dated 20.5.2015 and 21.9.2017 the request of the applicant was not liable to be considered. The respondents on the aforesaid ground have prayed for rejection of the application. The learned P.O. reiterating the contentions raised in the affidavit in reply submitted that the judgment of the Division Bench of the Hon'ble High Court in the case of **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and others** (cited supra) may not apply to the facts of the present case.

6. The learned counsel for the applicant has heavily relied upon the judgment of the Division Bench of the Hon'ble High Court in the case of **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and others** (cited supra). In the said matter also

the request for substitution of the name of the legal representatives, whose name was earlier included in the waiting list was rejected on the ground that there is no such provision in the GR dated 20.5.2015. The Division Bench of the Hon'ble High Court negated the said reason. The Hon'ble High Court has observed thus :-

“5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view that the prohibition imposed by the Government Resolution dated 20.05.2015 that name of any legal representative of deceased employee would not be substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the fundamental rights guaranteed by Article 14 of the Constitution of India. As the per the policy of the State Government, one legal representative of deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution dated 20.05.2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the list in place of the other legal representative who had submitted his/her application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated. 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.

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 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. In the present matter it is true that initially name of younger son was proposed by the mother of the applicant seeking appointment for him on compassionate ground. Such an application was filed on 10.9.2020 i.e. immediately within 2 months of the death of deceased Government servant. The request for substitution of the name of the legal representative was thereafter made on 13.7.2021 and it was reiterated vide another application submitted on 18.11.2021.

8. When the name of elder son was proposed by the applicant no. 2 it was the contention that he has promised for taking care of the entire family including the applicant no. 2. Affidavit of the said legal representative was also filed on record. Subsequently the request came to be made for substituting the name of elder son in place of younger son. I deem it appropriate to reproduce the said letter as it is vernacular, which reads thus: -

“दिनांक १३.७.२०२१

प्रति,
मा. जिल्हाधिकारी साहेब,
लातूर.

विषय :- अनुकंपा नोकरीचा नॉमिनी बदलणे बाबत—
संदर्भ :- माझा अर्ज दिनांक १०.०९.२०२०.

महोदय,

उपरोक्त विषयाच्या अनुषंगाने विनंती की, माझे पती कै. हारणे देविदास नारायण अव्वल कारकून या पदावर कार्यरत असतांना दिनांक १७.७.२०२० रोजी मृत्यू पावले आहेत. माझे पतीच्या मृत्यूनंतर माझे वय झालेले असल्यामुळे माझे वारस म्हणून माझा लहान मुलगा श्री. प्रतिक नारायण हारणे यांना अपुंकंपासाठी नॉमिनी करण्यात आले होते. परंतु काही अपरिहार्य कारणासाठी त्याच्या ठिकाणी माझा मोठा मुलगा श्री. नागेश देविदास हारणे यांना नॉमिनी करण्यासाठी विनंती अर्ज करत आहे.

तरी मा. साहेबांना माझ्या विनंती अर्जाचा सहानुभूतीपूर्वक विचार करून माझे अनुकंपा नौकरीसाठी पहिले नॉमिनी श्री. प्रतिक नारायण हारणे यांच्या ठिकाणी श्री. नागेश देविदास हारणे यांचे नांव नॉमिनी बदलून देण्यात यावे, ही विनंती.

सोबत :-

१. अनुकंपा अर्जाची छायांकित प्रत
२. वारसाचे समंती बॉडपेपर
३. कुटुंबातील अन्य व्यक्तीना सांभाळ करण्याबाबत प्रतिज्ञापेपर बॉड पेपर
४. अपत्य बाबत बॉडपेपर.

आपला विश्वासू,
श्रीमती अंजू देविदास हारणे
वारसपत्नी

नवा मोंढा, अहमदपूर, ता. अहमदपूर, जि. लातूर.”

9. Subsequent application which was made on 18.11.2021 also needs to be reproduced, which reads thus: -

“दिनांक १८.११.२०२१

प्रति,
मा. तहसिलदार साहेब,
तहसिल कार्यालय, अहमदपूर,
जि. लातूर.

विषय :- अनुकंपावरील वारसदाराचे नांव बदलून मिळणे बाबत...

महोदय,

वरील विषयी विनंतीपूर्वक अर्ज सादर करण्यात येतो की, मी अंजू देविदास हारणे रा. मोंढा रोड, महसूल कॉलनी, अहमदपूर येथील रहिवासी असून माझे पती कै. देविदास नारायण हारणे हे तहसिल कार्यालय, अहमदपूर येथे अव्वल कारकून या पदावर कार्यरत होते. परंतु त्यांचे अचानक आजारपणामुळे दि. १७.७.२०२० रोजी निधन झाले असून त्यांच्या जागेवर अनुकंपा तत्वावर मी माझा लहान मुलगा

नामे प्रतिक देविदास हरणे यांचे नांव नोंदवले होते व ते अनुक्रमांक यादीनुसर वर्ग चार नुसार यादीमध्ये क्रमांक ३३ आला आहे. परंतु माझा मुलगा प्रतिक हरणे हा अहमदनगर येथे बी.डी.एस. या शाखेत शिक्षण घेत असून तो शिक्षणानंतर तेथेच स्थयीक होणार आहे तसेच त्याने नोकरी करण्यास असमर्थता दाखवून माझा सांभाळ करण्यास नकार दिला आहे असे शपथपत्र लिहून दिले असून सध्या माझी तब्बेत दिवसेंदिवस खराब होत चालली असून माझी संपुर्ण देखभाल माझा मोठा मुलगा नामे नागेश देविदास हरणे करित आहे. माझ्या घरची परिस्थिती हालाकीची असून उत्पन्नाचे कोणतेही साधन नाही.

तरी मे. साहेबांनी माझा मोठा मुलगा नामे नागेश देविदास हरणे याला अनुकंपावरील नोकरी सहानुभूतीपूर्वक विचार करून सामावून घ्यावे ही नम्र विनंती.

अर्जदार,
अंजू देविदास हारणे
वारसपत्नी
रा. मोंढा रोड, महसूल कॉलनी, अहमदपूर,
ता. अहमदपूर, जि. लातूर.”

10. In the first letter applicant No. 2 has not provided any reason much less good reason for substitution of name of her elder son in place of younger son. In the subsequent application some more grounds came to be raised and contention was raised that Pratik, younger son whose name was initially proposed was taking education for BDS course at Ahmednagar and was going to settle there and in the circumstances he has expressed his inability to maintain his family more particularly his mother and elder brother etc. In fact, very purpose of providing compassionate appointment is that a family of deceased Government servant shall not put to hardship after his untimely death. In the present matter, when

applicant No. 2 proposed name of her younger son Pratik, at that time also he was studying the course of BDS at Ahmednagar. It was thus, well within knowledge of entire family. At that time it was not the case of the applicants that elder son was not having qualification etc., so as to get appointment on compassionate ground. In the circumstances, why name of applicant No. 1 was not initially proposed is not disclosed by the applicants. After about one year request for substitution has been made. Though it has been contended that the younger son has refused to maintain his mother i.e applicant No. 2, in his affidavit it is not so mentioned and it is only mentioned that after passing BDS he will be staying at Ahmednagar and will be practicing there or will do any job at that place.

11. It appears to me that substitution can only be allowed if the reasons for substitution are justifiable. When it was possible for applicant No. 2 to propose name of elder son, who was sufficiently educated why his name was not proposed by applicant No. 2 for appointment on compassionate ground is not disclosed. In fact, younger son, whose name was earlier proposed, in no case was likely to accept the appointment on

compassionate ground for the reason that he was studying the BDS course.

12. In the present matter the respondents however have not taken any such defense. The respondents have refused the request for substitution of name of one L.R. by another on the only ground that in GRs dated 20.5.2015 and 21.9.2017 there is no such provision for substitution. The reason as has been assigned cannot be sustained in view of the judgment of the Hon'ble Bombay High Court in the case of **Dnyaneshwar Ramkishan Musane** (cited supra). In the said judgment the Hon'ble Division Bench has held the restriction imposed by GR dated 20.5.2015 as unjustified and have further directed to delete the said restriction.

13. For the reasons discussed above orders dated 21.9.2021 and 31.12.2021 passed by respondent no. 2 are quashed and set aside. Respondents are directed to include the name of applicant no. 1 in place of his younger brother Pratik in the waiting list of the candidates to be given appointments on compassionate ground and to consider the claim of applicant no. 1 as and when his turn comes for his appointment

commensurating to his educational qualification on the date of application.

14. The Original Application stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 16th January, 2023

ARJ O.A. NO. 41 OF 2022