

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

**ORIGINAL APPLICATION NO. 519 OF 2021**

DIST. : BEED

- (1) Usha W/o Anil Gaikwad, )  
Age. 44 years, Occu. Household, )  
R/o 'Rameshwar', H. No. 10, )  
Police Row House, Charata Fata, )  
Beed, Tq. & Dist. Beed. )
- (2) Atul S/o Anil Gaikwad, )  
Age. 21 years, Occu. Education, )  
R/o 'Rameshwar', H. No. 10, )  
Police Row House, Charata Fata, )  
Beed, Tq. & Dist. Beed. ) -- **APPLICANTS.**

**VERSUS**

- (1) The State of Maharashtra, )  
Through the Secretary, )  
Home Department, )  
Madam Cama Road, )  
Hutatma Rajguru Chowk, )  
Nariman Point, Mantralaya, )  
Mumbai - 400 032. )
- (2) The Superintendent of Police, )  
S.P. Office Beed, )  
Tq. & Dist. Beed - 431 122. )
- (3) The Collector, Beed, )  
Dist. Beed. ) -- **RESPONDENTS**

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APPEARANCE :- Shri J.M. Murkute, learned Advocate for the  
applicants.

: Shri D.R. Patil, learned Presenting Officer  
for the respondents.

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**CORAM : Hon'ble Shri Bijay Kumar, Member (A)**

**DATE : 13.10.2021**  
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**ORDER**

1. The Original Application (St.) No. 2033/2019 was filed by the two applicants on 07.10.2019 invoking provisions of section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the order passed by the Superintendent of Police, Beed dated 02.08.2017 rejecting claim of applicant no. 1 to substitute name of the applicant no. 2 in her place in the waiting list for appointment as Junior Clerk on compassionate ground.

2. The applicant had filed Miscellaneous Application No. 536/2019 in Original Application (St.) No. 2033/2019 on 07.10.2019 for condonation of delay of 01 year, 02 months and 03 days caused in filing the Original Application. Affidavit in reply was filed only by Respondent No. 2 opposing condonation of delay on the grounds that the applicant had not given good and sufficient grounds to condone the delay and as per section 5 of the Limitation Act, 1963, the applicant has not explained day to day delay. However, the Tribunal had decided on 02.09.2021 that the delay in filing the Original Application (St.) No. 2033/2019 is satisfactorily explained and allowed the Miscellaneous Application No. 536/2019 condoning delay as prayed for and thus the Miscellaneous Application No. 536/2019 in Original Application (St.) No. 2033/2019 was disposed of.

3. The applicants had also filed another Miscellaneous Application No. 189/2021 on 09.07.2021 for permission to sue the respondents jointly. As the cause of action and prayers are identical and applicants have prayed for the same relief, in order to avoid multiplicity of litigations leave to sue jointly was granted on 02.09.2021 by allowing Miscellaneous Application No. 189/2021 in Original Application (St.) No. 2033/2019.

Thereafter, this Original Application was registered and numbered as Original Application No. 519/2021.

4. The learned Chief Presenting Officer had filed affidavit in reply on behalf of respondent no. 2 on 08.03.2021 and had stated during hearing of this Original Application on 02.09.2021 that separate affidavit in reply on behalf of respondent Nos. 1 and 3 are not required. The learned Advocate for the applicant submitted that the applicant does not wish to file rejoinder to the affidavit in reply, this Original Application was admitted and kept for final hearing on 06.10.2021.

5. During the final hearing the learned Advocate for the applicant submitted that change in name of nominee of diseased employee under the scheme of appointment on compassionate ground has been permitted by Courts of law / Tribunals. He

quoted following orders of this Tribunal and a judgment of Hon'ble High court of Judicature at Bombay, Bench at Aurangabad in writ petition No. 1384/2016 as listed below :-

- (a) Order in O.A.No.184/2005 dated 03-05-2006 passed by Maharashtra Administrative Tribunal, Aurangabad .
- (b) Order in O.A.No.432/2013 dated 01-12-2014 passed by Maharashtra Administrative Tribunal, Aurangabad .
- (c) Order in O.A.No.574/2016 dated 19-09-2018 passed by Maharashtra Administrative Tribunal, Aurangabad .
- (d) Order in W.P.No.1384/2016 dated 27-02-2017 passed by the Hon'ble Bombay High Court Bench at Aurangabad .

6. During the arguments, the learned Presenting Officer Shri D.R. Patil appearing for the respondents submitted that there is no provision for substitution of a new name in place of the first applicant for appointment on compassionate ground in the Government Resolution dated 21.09.2017 which is a compilation of all existing G.Rs. issued by the General Administration Department of the State of Maharashtra. Therefore, the applicants are not eligible to get the relief prayed for. However, the learned Presenting Officer did not respond to the applicability of case laws and order of this Tribunal in the instant matter.

7. This Tribunal made reference to order passed by this Bench in Original Application No. 432/2013 dated 01.12.2014 in which reference has been made to an order of this Bench passed in Original Application No. 184/2005 which in term had been upheld by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. However, no response was received to this from either side. The matter was closed for order on 06.10.2021.

8. Relief prayed for :-

- “(A) This Original Application may kindly be allowed.*
- (B) The letter / order dated 02.08.2017 passed by Superintendent of Police, Beed may kindly be quashed and set aside.*
- (C) The respondents may kindly be directed to forthwith consider the claim of applicant No. 2 for appointment on compassionate ground and consequently to give such appointment as per the qualification on the post of Police Constable or any other suitable post as per his qualification.*
- (D) The respondent no. 2 Superintendent of Police, Beed may kindly be directed to include the name of applicant No. 2 in place of applicant no. 1 in the list of compassionate appointment seekers on the basis of application filed by applicants.*

- (E) *Pending hearing and final disposal of this Original Application the stay to the letter dated 02.08.2017 may kindly be granted and the respondent No. 2 may kindly be directed to include the name of applicant No. 2 in place of applicant No. 1 in the list of compassionate appointment seekers and consider the applicant No. 2 for appointment on the post of Police Constable or any other suitable post as per his qualification.*
- (F) *Any other suitable and equitable relief may kindly be granted in favour of the applicants.”*

9. Analysis of facts -

- (a) It is undisputed that the applicant no. 1 had applied on 07.07.2014 for her appointment on compassionate ground as heir of diseased Police Jamadar late Shri Anil Namdeo Gaikwad who passed away on 18.02.2014, while on duty because of illness. It is also undisputed fact that the application of the applicant no. 1 was duly scrutinized and her name was considered for appointment as Woman Police Constable as well as Junior Clerk with waiting list nos. 14 and 12 respectively. The applicant no. 1 was later on declared to be unfit for the post of Woman Police

Constable as she did not have acquired educational qualification of having passed 12<sup>th</sup> standard of Secondary Education. It is also admitted by the two contesting sides that by the time of filing of affidavit in reply on behalf of respondent No. 2 i.e. on 4.1.2021, first seven candidates from the waiting list maintained for clerical post had got appointment.

- (b) It is also undisputed fact that the applicant no. 1 had submitted application for her appointment as her son was only about 15 years old and has applied for substitution of her name by name of her son in the waiting list within 6 months after her son attained 18 years of age.
- (c) It is undisputed by the contesting parties that the Government Resolution issued by General Administration Department No. अकंपा-१०१४/प्र.क.१६४/आठ, Mantralaya, Mumbai, dated 20<sup>th</sup> May, 2015 and अकंपा-१२१७/प्र.क.१०२/आठ, Mantralaya, Mumbai, dated 21<sup>st</sup> September, 2017 do not provide for change in name of applicant except in eventuality of death of the family member whose name was on the waiting list.

- (d) On plain reading of para 4 of the affidavit in reply filed by the respondent No. 2, which runs as follows :-

*“04. As regards to the contents of Para No. 5 of the Original Application, I say and submit that the contents of this para are true to the extent that name of the applicant was included in both the waiting lists for appointments on compassionate grounds for the post of Police Constable as well as Junior Grade Clerk. Her name was at Sr. No. 14 in the list maintained for the post Police Constable. But, however, her name was not considered for appointment of Woman Police Constable because she was not fulfilling the required educational qualification i.e. 12 standard pass for the post of Police Constable. For the post of Junior Grade Clerk her name was on waiting list at Sr. No. 12. Out of 12 candidates first seven candidates have been given appointment as Junior Grade Clerk.”*

- (e) From the text of clause 7(d) it is evident that the applicant no. 1 was not considered for appointment as Woman Police Constable only because she did not fulfill required educational qualification of 12<sup>th</sup> standard pass for the post of Police Constable. Thus, it impliedly means that the respondents have not granted relaxation in terms of educational



qualifications which is provided in clause 12(E) of Annexure 'अ' of G.R. No. अकंपा-१२१७/प्र.क्र.१०२/आठ, Mantralaya, Mumbai, dated 21<sup>st</sup> September, 2017, which reads as follows :-

“१२. अनुकंपा नियुक्तीसाठी शैक्षणिक अर्हता-

(इ) तथापि, दिवंगत शासकीय कर्मचा-याची पत्नी शैक्षणिक पात्रतेव्यतिरिक्त इतर अटी पूर्ण करित असल्यास तिच्या बाबतीत गट-ड मध्ये नेमणुकीसाठी शैक्षणिक अर्हतेची अट शिथिल करण्याचे अधिकार संबंधित नियुक्ती प्राधिका-याला असतील. (शासन निर्णय, दि. २६.१०.१९९४)”

(f)(i) On perusal of order of this Tribunal in Original Application No. 432/2013 it is clear that the facts in the Original Application No. 432/2013 were different in as much as the first applicant was overage at the time of filing her application, as such, there was resultantly no valid first applicant. Therefore, it was ordered that the respondents had erred in considering application of the first applicant as a case of substitution.

(ii) On the other hand, orders passed by this Tribunal in Original Application No. 184/2005 dated 03.05.2006 and Original Application No. 574/2016 dated 19.09.2018 show that substitution of name of applicant as sought is

permissible. The judgment in writ petition No. 384/2016, the State of Maharashtra & Ors. Vs. Mohd Zakiyoddin Mohd. Anisoddin, the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad dated 27.02.2017 has upheld decision of Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad and thereby allowed the substitution of name of a brother in waiting list for appointment on compassionate ground on the grounds that the first applicant was her sister who was getting married.

10. Conclusion – It is amply clear that the Government Resolution issued by the General Administration Department No. अकंपा-१०१४/प्र.क.१६४/आठ, Mantralaya, Mumbai, dated 20<sup>th</sup> May, 2015 and अकंपा-१२१७/प्र.क.१०२/आठ, Mantralaya, Mumbai, dated 21<sup>st</sup> September, 2017 provide for substitution of name of the first applicant in only eventuality of death of the first applicant. However, the settled case law is that substitution of name is allowed even during lifetime of the first applicant during period he or she validly has name in the waiting list, or he or she has suffered medical incapacity or he or she has become overage while waiting for offer of appointment or the first applicant is no longer available in the family for supporting it. Moreover, in the instant matter, eligibility of the first applicant for relaxation of educational

qualification for the post of Woman Police Constable was not even considered for decision on merit. Therefore, I arrive at conclusion that there is merit in the reliefs prayed for and pass following order :-

**ORDER**

- (A) The Original Application No. 519 of 2021 is hereby allowed.
- (B) The decision taken by the Superintendent of Police, Beed which was communicated to the applicant vide his letter No. आस्था-१/अनुकंपा/गायकवाड/२०१७/८४०, dated 02.08.2017 is quashed and set aside.
- (C) The Respondents are directed to allow substitution of name of applicant no. 2, Shri Atul s/o Anil Gaikwad in place of Smt. Usha W/o Anil Gaikwad, the applicant no. 1, in the waiting lists and take further action in respect of offering him appointment on merit of the case as per rules and guidelines in force.
- (D) No order as to costs.

**(BIJAY KUMAR)**  
**MEMBER (A)**

**Place : Aurangabad**  
**Date : 13.10.2021**