

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 61 of 2023 (S.B.)**

(1) Poonam Mukund Kadam,
Aged 26 years, Occ. Pvt. Service,
R/o Nanak Nagar Nimwadi, Akola.

(2) Mayuri Mukund Kadam,
Aged 23 years, Occ. Education,
R/o Nanak Nagar Nimwadi, Akola.

Applicants.

Versus

(1) State of Maharashtra,
through its Secretary, Department of Home,
Mantralaya, Mumbai-32.

(2) Superintendent of Police, Akola
Maharashtra-444 001.

Respondents.

S/Shri V.B. Bhise, N.R. Shiralkar, A. Motlag, Advs. for the applicants.

Shri H.K. Pande, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 20/02/2024.

J U D G M E N T

Heard Shri V.B. Bhise, learned counsel for the applicants
and Shri H.K. Pande, learned P.O. for the respondents.

2. The case of applicants in short is as under –

The father of applicants namely Mr. Mukund Kadam died
due to heart attack while working under the Institution of respondent

no.2 as a Police Head Constable. The name of applicant no.1, Poonam Mukund Kadam was entered in the waiting seniority list to be appointed on compassionate ground.

3. The applicant no.1 made application to respondent no.2 on 12/02/2019 stating that her name is added in the seniority list and it be substituted by applicant no.2. On 04/02/2021, the applicant no.1 received a letter from respondent no.2 that to remain present for interview / selection. The applicant no.1 made representation on 05/02/2021 requesting to substitute the name of applicant no.2 in place of applicant no.1. The respondent no.2 forwarded the said representation to respondent no.1 as per letter / proposal dated 09/02/2021. In the said proposal, the respondent no.1 was informed that as per the G.R. dated 20/05/2015, the name of applicant no.2 cannot be substituted in place of applicant no.1. Therefore, the applicants approached to this Tribunal for direction to the respondents to substitute the name of applicant no.2 in place of applicant no.1.

4. The reply is filed by the respondents. The respondents have submitted in the reply that the name of applicant no.1 was already recorded in the waiting seniority list. As per the G.R. dated 20/05/2015, the name of applicant no.2 in place of applicant no.1 cannot be substituted. Hence, the O.A. is liable to be rejected.

5. During the course of submission, the learned counsel for the applicant has pointed out the decision of the Hon'ble Bombay High Court in Writ Petition No.4061 of 2021, decided on 02/05/2023. The learned counsel for applicant has submitted that applicant no.1 got private service and therefore she requested to the respondents to enter the name of applicant no.2. The learned counsel for the applicant has submitted that the mother of applicant no.2 having no objection to provide the service to applicant no.2 on compassionate ground.

6. The learned P.O. has submitted that the application for substitution is rejected on the ground that substitution is not provided as per the G.R. dated 20/05/2015.

7. From the perusal of the documents request made by applicant no.1 to respondent no.2 to substitute the name of applicant no.2 was forwarded by the Superintendent of Police, Akola (R/2) on 09/02/2021. In the said proposal, the respondent no.1 was informed that as per the G.R. dated 20/05/2015, the name of applicant no.2 cannot be substituted in place of applicant no.1.

8. It is submitted in the reply that the respondents cannot substitute the name of applicant no.2 in place of applicant no.1 in view of the G.R. dated 20/05/2015.

9. Now the issue in respect of substitution is decided by the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6267/2018 in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others.** The Hon'ble Bombay High Court has held that unreasonable restrictions imposed by the G.R. dated 20/05/2015 are liable to be removed from the G.R. The specific directions were given in the said Judgment to the Government of Maharashtra. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others*** has passed the following 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.*”

10. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.4061/2021, decided on 02/05/2023. In para-15 the Hon'ble Bombay High Court has observed as under –

“(15) In the present case father of the petitioner expired on 27th April, 2014. The name of the petitioner's brother was included in the waitlist for appointment on compassionate ground as per his application dated 17th May, 2014. It is not disputed that the application of the petitioner's brother was not decided, and the same is pending. It is the case of the petitioner that since her brother was not given any appointment, he had already accepted the job at some other place. Since the petitioner completed her education and her mother was dependent on her, she made an application to substitute her name in place of her brother. It is also not disputed by respondent Nos. 2 and 3 that petitioner's brother had given consent for such substitution. The petitioner made an application to substitute her name on 5th June, 2021. Instead of deciding her application for substituting her name, respondent Nos. 2 and 3 issued a letter dated 22nd June, 2021 directing petitioner's brother to comply with certain requisitions. Though the application filed by petitioner's brother was pending since 17th May, 2014, it was only after petitioner's application for substituting her name was submitted on 5th June, 2021 a letter of requisition was issued on 22nd June, 2021 calling upon the petitioner's brother to comply with certain conditions. Thus the action of respondent Nos. 2 and 3 amounts to refusal to substitute the petitioner's name in place of her brother for compassionate appointment. Respondent Nos. 2 and 3 have refused to substitute the name of the petitioner only on the basis of restrictions imposed by the Government Resolution dated 21st September, 2017.”

11. The respondents cannot deny the substitution of name of applicant no.2 because of the G.R. dated 20/05/2015. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to substitute / enter the name of applicant no.2 in the waiting seniority list and provide her employment on compassionate ground.

(iii) No order as to costs.

Dated :- 20/02/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 20/02/2024.