

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1046 of 2022 (S.B.)

Shri Manish S/o Vitthalrao Motghare,
Aged about 36 years, Occ. unemployed,
R/o Rajgopalachari Ward, MSEB Colony,
At post Bhandara-441904.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Principal Secretary,
Forest and Revenue Department, Mantralaya,
Madam Cama Marg, Hutatma Rajguru Chowk,
Mumbai-400 032.
- 2) The Chief Conservator of Forest,
Chandrapur Forest Circle, Civil Lines,
Nagpur Road, Chandrapur -442 401 (M.S.).
- 3) The Dy. Conservator of Forest,
Transport and Marketing at Ballarshaha, Alapalli Road,
Ballarshaha-442 701, Distt. Chandrapur (M.S.).
- 4) The District Rehabilitation Officer-cum-The Collector,
Nagpur-440 001.
- 5) The Collector, Chandrapur-442 401 (M.S.).

Respondents.

**S/Shri D.B. Walthare, P. Hukare, A.N. Dighore, Advs. for the
applicant.**

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

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

Dated :- 21/02/2023.

JUDGMENT

Heard Shri D.B. Walthare, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant's family is a project affected family. As per the Certificate issued by the Rehabilitation Officer, Nagpur dated 05/06/2000 late Shri Girish Vitthal Motghare was employed as a Driver in the establishment of respondents. Late Shri Girish Vitthal Motghare has died due to illness on 21/08/2014 while he was in service. The brother of applicant applied for appointment on compassionate ground. His name was at Sr.No.56 in the waiting list of the year 2014, but he was not granted any employment on the ground that he has completed 45 years of age. Therefore, on 10/07/2020, the applicant applied for substitution of his name, but it is not accepted on the ground that substitution is not provided as per the G.R. dated 20/05/2015. Hence, the applicant approached to this Tribunal for the following reliefs –

“ (i) quash and set aside the order dated 19/05/2021 (Annex-A-1) being bad in law.

(ii) direct the respondents to enter the name of the applicant and offer him original seniority in the waiting list where the name of his late brother Shri Shrish was standing.

(iii) Grant the compassionate appointment on any Group C or Group D under the jurisdiction of respondents or at any place in Maharashtra State as per his turn and eligibility at the earliest.”

3. Heard Shri H.K. Pande, learned P.O. for the respondents. The O.A. is strongly opposed by the respondents. It is submitted that as per the G.R. of 2015, substitution is not permitted. Hence, the O.A. is liable to be dismissed.

4. Heard Shri D.B. Walthare, learned counsel for the applicant. He has pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A. No.327/2018. He has also pointed out the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others** and submitted that the substitution is permitted.

5. Heard Shri H.K. Pande, learned P.O. for the respondents. He has strongly opposed the submission. The G.R. of 2017 is the consolidation of all the earlier G.Rs. The brother of applicant was not given any appointment on the ground that he has completed 45 years of age. The Id. P.O. has submitted that the Judgment of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others** is distinguished by the another Division Bench of Hon'ble Bombay High Court. The Judgment in the case of **Dnyaneshwar**

Ramkishan Musane Vs. The State of Maharashtra and Others is also the Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad. The Hon'ble Bombay High Court Bench at Aurangabad in the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others** has held that "the restrictions imposed in the G.R. dated 20.05.2015 for not substitution of the name of other legal representatives, is unreasonable and therefore the State Government was directed to delete the same. The material portion of the Judgment in the case of **Dnyaneshwar Ramkishan Musane Vs. the State of Maharashtra and Others** is as under-

- 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.*

6. In the above cited Judgment, direction was given to the State Government to delete the unreasonable restriction imposed by the G.R. of 2015. The State Government has not challenged this Judgment. It was expected from the State Government to delete the unreasonable restriction. The said Judgment is binding on the State Government. Hence, the rejection of application of the applicant on the ground that substitution is not permitted, is not legal and proper. Hence the following order -

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to substitute the name of applicant and enter his name in the same waiting seniority list in place of name of his brother Shirish was standing and provide him employment, as per the rules.
- (iii) No order as to costs.

Dated :- 21/02/2023.

(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 Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 21/02/2023.

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