

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1239 of 2022 (S.B.)

- (1) Smt. Sunita Wd/o Shyam Jamgade,
Aged about 58 years, Occ. Nil,
- (2) Pranay S/o Shyam Jamgade,
Aged about 31 years, Occ. Nil,

All applicants 1 to 2 are r/o Khalashi Lines,
Near Lala Garden, Mohan Nagar, Nagpur.

Applicants.

Versus

- 1) The Secretary of Home (Transport) Department,
2nd floor, Mantralaya, Madam Kama Road, Mumbai-400 032.
- 2) The Transport Commissioner,
4th floor, Road Transport Administrative Building,
near Dr. Ambedkar Garden, Bandre (East), Mumbai-400 051.
- 3) The Regional Transport Officer,
The Regional Transport Office, Nagpur (Gramin),
Indora, Lal Godam, Kamtee Road, Nagpur.

Respondents.

V.L. and S.V. Kolhe, Advocates 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 Smt. S.V. Kolhe, learned counsel for the applicants
and Shri H.K. Pande, learned P.O. for the respondents.

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

The applicants are legal representatives of deceased Shyam V. Jamgade, who was government servant and died due to illness on 01/05/2005 while he was on duty. After the death of Shyam V. Jamgade, the applicant no.1 made an application on 18/06/2005 to the respondent no.3 for grant of compassionate appointment. The application was rejected after three years by respondent no.3 vide order dated 21/07/2008 on the ground that applicant no.1 is age barred as she is more than 40 years of her age.

3. The applicant no.2 after attaining the age of majority, applied on 12/12/2013 for appointment on compassionate ground. His application is rejected. It was informed to the applicant no.2 that the name of his mother was deleted from the waiting seniority list and therefore substitution is not permitted. Hence, applicants approached to this Tribunal for the following reliefs –

“ (i) quash and set aside the order dated 04/03/2017 issued by respondent no.1 communicated under communication dated 17/3/2017 by the respondent no.2 to the applicants thereby rejected the claim of applicant no.2 for appointment on the post of Class-IV on compassionate ground, in the interest of justice;

(ii) issue direction to the respondent nos.1 to 3 to include the name of applicant no.2 in waiting list of eligible candidate for compassionate appointment after substituting name of the applicant no.1, w.e.f.

12/12/2013 when the applicant no.1 has submitted application for said request after completion of 18 years of age of applicant no.2;

(iii) issue direction to the respondent nos.1 to 3 to consider the claim of applicant no.2 for compassionate appointment on the post of Class-IV and further grant compassionate appointment to the applicant no.2 on the post of Class IV w.e.f. 12/12/2013 when the applicant no.1 has submitted application for said request after completion of 18 years of age of applicant no.2;

(iv) issue direction to respondents to pay compensation of Rs.25,000/- to the applicants towards financial losses and mental agony.”

4. Heard Shri H.K. Pande, learned P.O. for the respondents. The O.A. is strongly opposed by the respondents on the ground that the substitution is not permitted as per the G.R. of 2017, hence the O.A. is liable to be dismissed.

5. Heard Smt. S.V. Kolhe, learned counsel for the applicants. She has pointed out the communication dated 31/05/2014. In the said letter, it was informed to the applicant no.2 that he shall apply within one year after completion of age of 18 years. In fact, the applicant no.2 had applied in the year 2013 that should have been considered by the respondents. Again the applicant no.2 applied on 28/07/2014. This itself shows that applicant no.2 applied within one year from the date of attaining the age of majority. But the respondents have rejected his claim on the ground that the name of

his mother was deleted from waiting seniority list and therefore his name cannot be substituted.

6. The learned counsel for applicant has 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 unreasonable restriction imposed by the G.R. 20/5/2015 was directed to be deleted.

7. Shri H.K. Pande, learned P.O. for the respondents. He has submitted that recently the Division Bench of Hon'ble Bombay High Court has distinguished the judgment in the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others**. It is pertinent to note that the State Government has not challenged the Judgment in the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others**, in which specific direction was given to the State Government to delete unreasonable restriction imposed by the G.R. dated 20/05/2015. The State Government not challenged the Judgment in the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others**. The State Government also not complied the direction. Now the State Government cannot say that it is not binding on it. The judgment of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others** is not quashed or set aside till date. Hence, in view of 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**, the substitution is permitted.

8. Moreover, in the present matter it was not a case of substitution. The mother of applicant was not given any employment. Her application itself was not accepted on the ground that she was more than 40 years of age. The applicant no.2 applied in the year 2013. He was directed to apply within one year from the date of completion of 18 years of age. The applicant no.2 applied in the year 2014 within one year from the date of attaining the age of majority. Therefore, it was duty of the respondents to provide employment, but instead of same, rejected the claim of applicant no.2 on the ground of G.R. of 2015.

9. In the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others** specific direction was given to the State Government to delete the unreasonable restriction imposed by the G.R. 20/5/2015. The material portion in the judgment is reproduced 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.*

10. In view of 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***, the following order is passed—

ORDER

- (i) The O.A. is allowed.

(ii) The respondents are directed to enter the name of applicant No.2 in the waiting seniority list and provide him employment on compassionate ground, as per the rules.

(iii) No order as to costs.

Dated :- 21/02/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

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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