

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 224 of 2021 (SB)**

**APPLICANT** : Neha D/o. Devidas Dahiwalé,  
Aged about 31 years,  
Occupation : Nil, R/o. Flat No.403,  
Vighnaharta Apartment,  
Thakkar Colony, Chandrapur.

// Versus //

- RESPONDENTS**: 1) The State of Maharashtra,  
Through its Principal Secretary,  
Public Health Department,  
10<sup>th</sup> Floor, B-Wing,  
GT Hospital Complex Building,  
Mumbai – 400032.
- 2) Deputy Director of Health Services  
Nagpur Circle, Mata Kacheri Complex,  
Shradhanand Peth, Nagpur.
- 3) Assistant Director, Health Services  
(Malaria), Mata Kacheri Complex,  
Shradhanand Peth, Nagpur.
- 4) District Malaria Officer, Chandrapur,  
District-Chandrapur.

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**Shri R.M. Fating, Advocate for the applicant.**

**Shri S.A. Sainis, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Member (J).**

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**Date of Reserving for Judgment : 22<sup>nd</sup> April, 2022.**

**Date of Pronouncement of Judgment : 29<sup>th</sup> April, 2022.**

## **JUDGMENT**

**(Delivered on this 29<sup>th</sup> day of April, 2022)**

Heard Shri R.M. Fating, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

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

The father of the applicant was working as a 'Health Assistant' in the office of respondent no.2. He died in harness on 21.02.2009. The brother of the applicant namely Tathagat Devidas Dahiwale applied for appointment on compassionate ground on 26/09/2014. In view of inability, the applicant's brother, namely Tathagat Devidas Dahiwale made an application to substitute the name of applicant in waiting list of compassionate appointment. The applicant, duly qualified, M.A., M.Ed., made an application in place of her brother on 16/12/2014.

3. Upon satisfaction and compliance of documents, the respondent no.2 sent the proposal on 29/04/2016 with recommendation to substitute the name of the applicant in place of her brother to the Collector, Chandrapur. On 05/07/2016, the respondent no.2 communicated to the applicant's brother that his name has been deleted and he will not claim for the same in future. The name of the applicant appeared at Sr.No.35 in

waiting list, showing seniority as on 01/01/2017. Thereafter, the name of the applicant published in the waiting list every year from 2017 to 2020 continuously by respondent no.2. The applicant's name appeared every year from 2018 to 2020 in waiting list, of appointment on compassionate ground issued by respondent no.2 at Sr.No.33,31,21 respectively. On 13/08/2020, the respondent no.2 sent letter asking the applicant as to why her name should not be deleted from the waiting list of compassionate appointment, as substitution is not permissible as per the Govt. G.R. 21/09/2017. The applicant has sent detailed explanation to the respondent no.2 on 02/09/2020.

4. In spite of the fact that the name of the applicant has already been empanelled in the waiting list of the compassionate ground, prior to change in Govt. policy and continuously from the year 2016 to 2020, the respondent no.2 arbitrarily and without application of mind issued communication dated 18/02/2021, by which deleted the name of the applicant from the waiting list of compassionate appointment as per the Govt. G.Rs. dated 20/05/2015 and 29/09/2017. Therefore, the applicant approached to this Tribunal.

5. The application is strongly opposed by the respondents. It is submitted that in view of the G.Rs. of 2015 and 2017, once the name of legal heir of deceased is taken on waiting list, the substitution of other name is not permissible unless that person died.

6. Heard learned counsel for the applicant Shri R.M. Fating. He has submitted that the name of applicant is wrongly deleted from the waiting list. The G.Rs. of 2015 and 2017 are considered by the Hon'ble Bombay High Court and this Tribunal.

7. The Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6267/2018, decided on 11/03/2020, in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra and others** has held that the restriction imposed by the G.R. 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. In another Judgment, in the case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ano. Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High

Court, Bench at Nagpur held that the G.Rs. of 2015 and 2017 cannot apply retrospectively.

8. The learned counsel for the applicant has submitted that the applicant submitted the application in the year 2014 and therefore those G.Rs. cannot apply retrospectively. He has also pointed out the Judgment of this Tribunal in the case of **Sangita D/o Shankar Bagmare Vs. State of Maharashtra & Ors.**, in O.A. No.10/2019.

9. Heard Shri S.A. Sainis, learned P.O. for the respondents. As per his submission, the name of brother of applicant namely Tathagat Devidas Dahiwale was on the waiting list. As per the waiting list, he was called for documents verification for the appointment on compassionate ground, but he refused to accept the said employment. Therefore, substitution of name of applicant in his place was not proper. Moreover, in view of the G.Rs. of 2015 and 2017 substitution is not permissible, hence, the O.A. is liable to be dismissed.

10. There is no dispute that the deceased employee namely Devidas Dahiwale was working with respondent no.2. During the employment, he died on 21/02/2009 leaving behind his wife, son and daughter. Son of the deceased namely Tathagat Devidas Dahiwale applied for appointment on compassionate

ground. He was called for documents verification so as to give him an employment, but said Tathagat was not in a position to accept the employment due to his mental condition, therefore, he requested the respondents to substitute the name of his sister, i.e., the applicant. The respondents have processed the application made by the applicant alongwith the required documents, i.e., the consent letters of her brother, mother. She has submitted the affidavit of her mother and brother. As per the affidavit, brother of applicant due to mental condition not accepted the employment. Thereafter, the applicant's name was published in the waiting list by the respondents of the year 2017. She was at Sr.No.35 in the waiting list. Her name was continuously appeared in the waiting list till the year 2020. Lastly her seniority was shown at Sr.No.21, but by letter dated 13/8/2020 she was called to give explanation and by communication dated 18/02/2021 her name was deleted.

11. From the perusal of the impugned communications, it appears that the applicant's name was deleted on the ground that G.Rs. of 2015 and 2017 not permitted the substitution of name in the waiting list of compassionate ground.

12. In the case of **Dnyaneshwar s/o Ramkishan Musane** (cited supra), the Hon'ble Bombay High Court, Bench at Aurangabad has given specific direction to the Government. The operative part of the order 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."*

13. In view of the Judgment of Hon'ble Bombay High Court in the case of **Dnyaneshwar s/o Ramkishan Musane** (cited supra) the restriction imposed by G.R. of 2015 cannot be said to

be valid for deletion of the name of applicant. In the case of **Smt. Pushpabai Wd/o Rajesh Bisne** (cited supra), the Hon'ble Bombay has held that the G.R. of 2015 cannot be given retrospective effect. From the perusal of G.R. of 2017, it appears that it is a reproduction of all earlier G.Rs. including the G.R. of 2015. The material portion of G.R. of 2017, reads as under –

“(२१) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे -

कर्मचा-याच्या मृत्युनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीतील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मुळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दिनांक २०/०५/२०१५)

14. The applicant applied in the year 2014 for substitution of her name in place of her brother, therefore, the G.R. of 2015 cannot be given retrospective effect. This Tribunal has also relied on the said Judgments in the O.A. No.10/2019.

15. The name of applicant was deleted on the ground of G.R. of 2015 stating that the substitution in the waiting list of compassionate appointment is not permitted. In view of the



Judgments cited supra, the impugned communications are liable to be quashed and set aside. In that view of the matter, the following order –

**ORDER**

(i) The O.A. is allowed.

(ii) The impugned communications dated 13/08/2020 (Annex-A-17) and 18/02/2021 (Annex-A-21) issued by the respondent no.2 are hereby quashed and set aside.

(iii) It is hereby declared that the applicant is entitled for appointment on compassionate ground as per seniority in the waiting list published in the year 2020.

(iv) The respondents are directed to issue appointment order in favour of the applicant on compassionate ground as per seniority in the waiting list published in the year 2020.

(v) No order as to costs.

**Dated** :- 29/04/2022

dnk.

**(Justice M.G. Giratkar)**  
**Member (J).**

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 Member (J).

Judgment signed on : 29/04/2022

Uploaded on : 29/04/2022<sub>ok</sub>