

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 225 of 2021 (SB)

APPLICANT : Yogesh S/o Ramkrishna Thakare,
Aged about 23 years, Occupation : Nil,
R/o.Birsa Munda Chowk, Sendurwafa,
Sakoli, District- Bhandara - 441802.

// Versus //

RESPONDENTS: 1) The State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
10th Floor, b-Wing,
G.T. Hospital Complex Building, Mumbai –
400032.

2) Deputy Director of Health Services
Nagpur Circle, Nagpur.

3) District Civil Surgeon,
General Hospital, Bhandara.

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

Shri M. I. Khan, learned P.O. for respondents.

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

Date of Reserving for Judgment : 22nd April,2022.

Date of Pronouncement of Judgment : 29th April,2022.

JUDGMENT

(Delivered on this 29th day of April, 2022)

Heard Shri R.M. Fating, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

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

The father of the applicant namely Ramkrishna Budhaji Thakare was working as a 'Ward Servant' (Kakshsevak) under the Medical Superintendent, Rural Hospital Lakhandur, District Bhandara. He died in harness on 23.12.2010. On 02.08.2011, the applicant made an application for appointment on compassionate ground before the respondent authority. On 07.12.2011, it was informed to the applicant that he is minor below the age of 18 years and therefore his name cannot be taken on waiting list. Therefore, his mother applied for compassionate appointment on 21/03/2012. Her name was taken on waiting list. She was at Sr.No.4 and also included at Sr.No.205 in the consolidated waiting list, maintained by the Collector, Bhandara. Thereafter, the applicant attained the age of majority on 20/09/2014. Therefore, he preferred an application on 22/12/2015 for grant of appointment on compassionate ground.

After completion of 18 years of age, the applicant's name has been included in the waiting list of compassionate appointment in place of his mother by respondent no.2 and the same is appeared at Sr.No.40 in the waiting list, showing seniority as on 01/01/2017. Thereafter the applicant's name appeared every year in the seniority list upto the year 2020. Lastly his name was shown at Sr.No.21 in the waiting list. On 20/07/2020, the respondent no.2 communicated the applicant directing him to submit original documents for verification for appointment on the post of Junior Clerk.

3. However, on 17/08/2020 the respondent no.2 sent letter to the applicant asking him as to why his name should not be deleted from the waiting list in view of the provisions of G.R. dated 21/09/2017. The applicant has stated that as he was minor and therefore his name was not included in the year 2011. His mother attained the age of 45 years, therefore, her name was deleted and substituted the name of applicant. In spite of the fact that the name of applicant has already been empanelled in the waiting list. The respondents have made communication on 18/02/2021 whereby the name of the applicant was deleted in view of the Govt. G.Rs. dated 20/5/2015 and 29/9/2017.

4. The application is strongly opposed by the respondents. It is submitted that the applicant was minor and therefore the name of applicant's mother namely Smt. Rekha R. Thakre was taken in the seniority list for appointment on compassionate ground. It is submitted that as per date of birth of Smt. Rekha R. Thakre i.e. 17/04/1971 she had completed 45 years on 17/04/2016, therefore, as per Clause no.2 (2) in the Govt. G.R. dated 22/8/2005, the name of Smt. Rekha was deleted from the waiting list of compassionate appointment and the same was communicated to her. Thereafter, the applicant applied to substitute his name. His name was entered in the waiting list, but lateron it was noticed that substitution of the name of applicant was not permissible in view of G.R. dated 20/5/2015. Hence, the name of applicant was deleted from the waiting list, therefore, O.A. is liable to be dismissed.

5. Heard Shri R.M. Fating, learned counsel for the applicant. 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 High Court and this Tribunal. The Hon'ble High Court in Writ Petition No.6267/2018 in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra**

and others 2020 has held that the restriction imposed by the G.R. 20/05/2015 that if name 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 High Court held that the G.Rs. of 2015 and 2017 cannot apply retrospectively. He has also pointed out the Judgment of this Tribunal in case of **Sangita D/o Shankar Bagmare Vs. State of Maharashtra & Ors.**, in O.A.10/2019.

6. The Hon'ble Supreme Court in case of **Supriya Patil Vs. State of Maharashtra** in which the Hon'ble Supreme Court has observed as under—

“ (3) We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empanelled for appointment under the Compassionate

Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”

7. The learned counsel for the applicant has submitted that the respondents have not provided any service to the mother of applicant after completion of 45 years her age. Her name was deleted and in place of her name, the name of applicant was substituted. The learned counsel for the applicant has submitted that in view of the Judgment of Hon'ble Bombay High Court and the Judgment of Hon'ble Supreme court in case of **Supriya Patil Vs. State of Maharashtra**, (cited supra) the deletion of the name of applicant is not legal and proper and hence prayed to allowed the O.A.

8. Heard Shri M.I. Khan, learned P.O. for the respondents. He has submitted that in view of the G.R. dated 20/5/2015 the substitution of the name of applicant is not permissible and therefore his name is rightly deleted.

9. The G.R. of 2017 is nothing but the collection of the all G.Rs. from the year 1994 in respect of appointment on compassionate ground. In this G.R. the contents of G.R. of 2015 is reproduced in clause 21 which is reproduced as under –

“(२१) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कूटुंबातील 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).

10. In the G.R. of 2015 in Clause (क) the guidelines are given for not substitution. The Clause (क) reads as under-

“(क) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कूटुंबातील 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 उमेदवाराचे 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.

11. The mother of the applicant was not given appointment. After completion of 45 years age, her name was deleted. The name of applicant was substituted. When he was called for appointment and before issuing the appointment order, the decision was taken that the substitution was not legal and proper in view of the G.Rs. of 2015 and 2017. This action of the respondents appears to be illegal. The Hon'ble Bombay High Court in case of **Dyneshwar S/o Ramkishan Musane** (cited supra) held that the restriction imposed by the G.R. 20/05/2015 that if the name 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 that view of the matter, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communications dated 17/8/2020 and 18/2/2021 are hereby quashed and set aside.

(iii) It is hereby declared that the applicant is entitled for appointment on compassionate ground as per the 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 of compassionate appointment.

(v) No order as to costs.

Dated :- 29/04/2022.

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

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 Member (J).

Judgment signed on : 29/04/2022

Uploaded on : 29/04/2022