

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 960 of 2020 (S.B.)

- (1) Smt. Sadhana widow of Bhojram Warthi,
Aged about 48 years, Occ. Household,
- (2) Darshan son of Bhojram Warthi,
Aged about years, Occ. Nil,

Both resident of Om Nagar, near S.S.J. College,
At post Arjuni Mor, District Gondia.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary, General Administration
Department, Mantralaya, Mumbai-32.
- 2) The Additional Commissioner,
Tribal Development Department, Nagpur Division,
Nagpur.
- 3) The Project Officer,
Integrated Tribal Development Project,
Deori, District Gondia.

Respondents.

Shri Vikas Kulsange, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.

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

Dated :- 02/03/2023.

J U D G M E N T

Heard Vikas Kulsange, learned counsel for the applicants
and Shri S.A. Sainis, learned P.O. for the respondents.

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

The father of applicant no.2 and husband of applicant no.1 namely Bhojram Kisan Warthi was in employment with the respondents in the Primary Ashram School at Koranbhitola, Tah. Arjuni (Mor), District Gondia. He was working as an Assistant Teacher. On 27/02/2012, Bhojram Warthi died while he was in employment with the respondents.

3. On 10/04/2012, the applicant no.1 moved an application for appointment on compassionate ground. On 04/12/2019, the applicant no.1 visited the office of respondent no.3. She was informed that since she had attained the age of 45 years, her name is removed from the waiting seniority list for appointment on compassionate ground, as per communication dated 23/04/2019. On 29/11/2016, the applicant no.1 moved an application for substitution the name of her son, i.e., applicant no.2 in her place for appointment on compassionate ground, when he would attain the age of majority. The said application was rejected on the ground that there is no provision of substitution in the G.R. dated 21/09/2017. Hence, the applicants approached to this Tribunal for the following main relief –

“(a) quash and set aside the order dated 02/01/2020 passed by respondent no.2, Additional Commissioner, Nagpur (Annex-A-5) and also order dated 31/07/2020 passed by respondent no.1, Project Officer, Gondia (Annex-A-7) further be pleased to command said

respondents to provide employment to applicant no.2 on compassionate ground. ”

4. Heard Shri S.A. Sainis, learned P.O. for the respondents. The O.A. is strongly opposed by the respondents. It is submitted that as per the G.R. dated 20/05/2015, the substitution is not permitted.

5. Heard Vikas Kulsange, learned counsel for the applicant. He has pointed out the Judgment of 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**, decided on 11/03/2020. He has also pointed out the Judgments of this Tribunal in O.A. Nos. 464/2022 and 572/2022. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others** has specifically directed the Government of Maharashtra to delete the unreasonable restriction imposed by the G.R. dated 20/05/2015. The operative part of the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others** 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.”

6. In view of the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & 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 same seniority list and same serial number in which the name of

applicant no.1 was shown for appointment on compassionate ground and provide him appointment on compassionate ground, as per the rules.

(iii) No order as to costs.

Dated :- 02/03/2023.

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 : 02/03/2023.