

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 870 of 2018
WITH CIVIL APPLICATION NO.13/2021 (S.B.)

- (1) Saurabh S/o Mohan Hamane,
Aged about 19 years,
Occ. Student.
- (2) Smt. Madhuri wd/o Mohan Hamane,
Aged about 40 years,
Occ. Housewife.

Both R/o Civil Lines, Ingole Layout, Washim, Tah. and District Washim.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary, Ministry of Home Department,
Mantralaya, Mumbai-400 032.
- 2) The Superintendent of Police,
Washim, Tah. and District Washim.
- 3) Deputy Superintendent of Police,
Washim, Tah. and District Washim.
- 4) The District Collector, Washim,
Tah. and District Washim.

Respondents.

S/Shri P.B. Patil, D.M. Surjuse, Advs. for the applicants.
Shri A.P. Potnis, P.O. for the respondents.

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

Dated :- 22/11/2021.

JUDGMENT

Heard Shri P.B. Patil, learned counsel for the applicants
and Shri A.P. Potnis, learned P.O. for the respondents.

2. The applicants have challenged the order dated 22/5/2017 passed by the respondent no.3 and order dated 23/2/2018 passed by the respondent no.2. The facts of the present application in short can be summarised as under –

3. The deceased Mohan Hamane was working as a Police Constable. He died on 21/8/2009 while working as Police Constable under the establishment of respondent nos.2&3. The copy of death certificate of deceased Mohan Hamane is filed at Annex-A-1. The father of applicant no.1 was appointed on 12/2/1996 and died on 21/8/2009, thus, his total service period was 13 years, 6 months and 9 days as per the information provided by the respondent no.3 vide his letter dated 8/7/2015. The respondent no.2 issued certificate mentioning that there was no enquiry pending against the deceased. The applicant no.2, wife of deceased and mother of applicant no.1 applied in the prescribed format, i.e., Appendix-B for appointment on compassionate basis on 8/10/2009 i.e. within a period of 2 months from the death of her husband. The copy of said application is filed at Annex-A-4.

4. When the application dated 8/10/2009 was submitted, the applicant no.1 was aged about 12 years and was studying in 6th Standard. The applicant no.2 sworn affidavit on 4/11/2009 stating that she is having one son namely Saurabh and one daughter. On

21/7/2010, the applicant no.2, mother of applicant no.1 filed application before the respondent no.2 authority for considering the claim of applicant no.1 for service on compassionate basis in her place. The copy of application dated 21/7/2010 is filed at Annex-A-6. In the said application, she has stated that the applicant no.1 Saurabh is 13 years of age and studying in 7th Standard and therefore the applicant no.1 would have to take the responsibility of the family and prayed for considering the claim of her son after attaining the age of majority.

5. On 7/7/2016, the applicant no.2 has received the letter from the office of the Collector, Washim thereby informing her to remain present along with all the necessary documents in respect of her claim for compassionate service. The copy of letter dated 7/7/2016 is filed at Annexure-A-7. It is submitted that on 30/06/2016 the applicant no.1 has attained the age of majority and he becomes 18 years of age. Thereafter, he has moved the application dated 18/7/2016 before the respondent no.2 for considering his claim on compassionate basis. The copy of application dated 18/7/2016 is filed at Annexure-A-8.

6. On 3/9/2016, the respondent no.3 issued the letter thereby informing that the claim of applicant no.1 cannot be considered in place of his mother. The applicant no.2 has moved the application

dated 6/9/2016 to the respondent no.2 for considering the claim of the applicant no.1 in her place for compassionate appointment. The copy of application dated 6/9/2016 is filed at Annexure-A-10. The applicant no.2 has sworn affidavit on 19/9/2016 thereby she has waived / give up her claim for compassionate appointment and prayed for considering the name of applicant no.1. The copy of affidavit is at Annexure-A-11. Again the applicant no.2 moved another application to the respondent no.2 on 16/3/2017 for considering the claim of applicant no.1 in her place.

7. The respondent no.3 i.e. the Deputy Superintendent of Police, Washim with the approval of the respondent no.2, i.e., the Superintendent of Police, Washim has passed the order on 22/5/2017 thereby informed to the applicant no.2 that the claim of the applicant no.1 cannot be considered in place of applicant no.2, i.e., wife of the deceased Mohan Hamane. The copy of the order dated 22/5/2017 is filed at Annexure-A-13. The respondent no.2 has passed another order for not considering the name of the applicant no.1, because, there is no policy to that effect and specifically informed to the applicant no.1 stating that his name cannot be included in the waiting list of the candidates who are claiming the compassionate appointment in the Police Department. The copy of the order dated 23/2/2018 is filed at Annexure-A-14.

8. The respondents have rejected the applications of applicants only on the basis of G.R. dated 20/5/2015, therefore, the applicants moved this present application for direction to quash and set aside the order dated 22/5/2017 passed by the respondent no.3 and order dated 23/2/2018 passed by the respondent no.2 and also for direction to the respondent no.2 to consider the name of the applicant no.1 for compassionate appointment in place of applicant no.2 by including the name of applicant no.1 in the waiting list of candidates to be considered for compassionate appointment in the Police Department.

9. The reply is filed by the respondents and denied the claim of the applicants. It is submitted that in view of the G.R. dated 20/05/2015, the application of applicant no.1 to substitute his name in place of his mother for appointment on compassionate ground is rightly rejected.

10. Heard the learned counsel for the applicants. He has pointed out the decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.5944/2018, decided on 22/07/2019 in case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ors. Vs. State of Maharashtra & Ors.** and also pointed out the decision of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6267/2018, decided on 11/03/2020 in case of **Dnyeshwar R.**

Musane Vs. State of Maharashtra & Ors. He has also pointed out the Judgment of M.A.T., Bench at Mumbai in O.A. No. 396/2018, decided on 20/10/2020 in case of **Smt. Sangita R. Bhoite & Ano. Vs. State of Maharashtra & Ors.** and also the decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2014/2019, decided on 7/10/2020 in case of **Sumit B. Kamde & Ors. Vs. State of Maharashtra & Ors.**

11. The learned counsel for the applicants has submitted that in all the cited decisions, the application for correction / substitution of the name was prior to the G.R. dated 20/05/2015, but the Authority wrongly considered the said G.R. and rejected the applications filed much earlier to the said G.R. In the present case, the applicant no.2 applied for substitution of name of the applicant no.1 in the year 2010, but the respondent no.2 wrongly considered as the application filed in the year 2016. The applications dated 18/19-7-2016 and 6/9/2016 are only reminders, but respondents wrongly came to the conclusion that in view of the G.R. dated 20/05/2015, the name of the applicant no.1 cannot be substituted in place of his mother, i.e., the applicant no.2 and therefore his application came to be rejected.

12. During the course of argument, the learned counsel for the applicants has pointed out the applications dated 18/19-7-2016 and 6/9/2016. From perusal of both these applications, it is clear that the

applicant no.1 prayed that as per application dated 21/7/2010 his name be substituted in place of his mother i.e. the applicant no.2, but in the impugned order, the respondents have communicated that his name cannot be considered because his applications are after the G.R. dated 20/5/2015.

13. In case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ors. Vs. State of Maharashtra & Ors., (cited supra)** the Hon'ble Bombay High Court, Bench at Nagpur has held in para-5 that “ *in any case, the provisions contained in Government Resolution dated 20th May,2015 cannot be applied to the case of the petitioners as the change of names had been sought by them much earlier than this Government Resolution.*” The fact in case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ors. Vs. State of Maharashtra & Ors., (cited supra)** and fact in the present O.A. is near about the same. The applicant no.2 applied on 21/7/2010 for substitution of the name of applicant no.1 in place of her name. Therefore, it is clear that though the applicants made applications after the G.R. dated 20/05/2015, but they only reminded the respondents that as per the application dated 21/7/2010, the name of applicant no.1 be substituted in place of applicant no.2. The G.R. which is later on the first application dated 21/7/2010 cannot come into the obstacle of the applicants.

14. The respondents wrongly stated in the impugned orders that the applications of the applicants are dated 18/19-7-2016 and 6/9/2016. From reading of both the applications moved by the applicants, it is clear that they reminded the respondents that as per the application dated 21/7/2010 the name of applicant no.1 be substituted. Without reading properly the respondents have rejected the applications of the applicants stating that in view of the recent of G.R. dated 20/05/2015 their later applications dated 18/19-7-2016 and 6/9/2016 cannot be considered. In fact, the applicant no.2 moved the application on 21/7/2010 for substitution the name of applicant no.1 in her place and later applications dated 18/19-7-2016 and 6/9/2016 are only the reminders to the respondents.

15. The Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.5944/2018, decided on 22/07/2019 in case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ors. Vs. State of Maharashtra & Ors.** has held that the respondents authority cannot reject the claim of the applicant considering the G.R. of 2015 in respect of the applications moved earlier to that G.R.

16. The learned P.O. strongly objected the applications of applicants and relied on the decision of the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2879/2014, decided on 31/3/2015 in case of **Nanda wd/o R. Nitnaware & Ano. Vs. State of**

Maharashtra & Ors. The fact cited in the decision is very much different. In the said decision, the name of petitioner / applicant was removed after completion age of 40 years. It was the contention that the name of the applicant cannot be removed from the waiting list until he completes the age of 45 years. The decision cited by the Id. P.O. in case of **Nanda wd/o R. Nitnaware & Ano. Vs. State of Maharashtra & Ors** is not helpful to the respondents.

17. It is clear from the impugned orders passed by the respondents that they have not properly read the applications of the applicants. The respondents have wrongly passed the orders holding that in view of the G.R. dated 20/5/2015, the name of the applicant no.1 cannot be substituted in place of applicant no.2.

18. In view of the decision of Hon'ble Bombay High Court, Bench at Nagpur in case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ors. Vs. State of Maharashtra & Ors., (cited supra)**, decision of the Hon'ble Bombay High Court, Bench at Aurangabad in case of **Dnyeshwar R. Musane Vs. State of Maharashtra & Ors (cited supra)** and decision of Hon'ble Bombay High Court, Bench at Nagpur in case of **Sumit B. Kamde & Ors. Vs. State of Maharashtra & Ors. (cited supra)**, orders passed by the respondents are liable to be set aside.

19. It is prima facie clear that the respondents have passed wrong / illegal orders by not substituting the name of applicant no.1 in place of applicant no.2, therefore, it is liable to be quashed and set aside. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 23/2/2018 passed by the respondent no.2 and order dated 22/5/2017 passed by the respondent no.3 are hereby quashed and set aside.
- (iii) The respondent no.2 is directed to consider the name of applicant no.1, i.e., Saurabh Mohan Hamane for compassionate appointment in place of his mother, i.e., applicant no.2 by including the name of applicant no.1 in place of his mother, in the waiting list of candidates to be considered for compassionate appointment in the Police Department.
- (iii) In view of the final disposal, the C.A. No. 13/2021 is also disposed off.
- (iv) No order as to costs.

Dated :- 22/11/2021.

(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 : 22/11/2021.

Uploaded on : 24/11/2021.