

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 12 OF 2020

DISTRICT: - PARBHANI

- 1) **Vaibhav Venkat Chandle,**
Age : 25 years, Occu. Nil
- 2) **Ranjana Venkat Chandle,**
Age-52 years, Occu. : Household,
Both R/o Indewadi,
Tq. & Dist. Parbhani.

.. APPLICANTS.

V E R S U S

- 1) **The State of Maharashtra,**
Through it's Secretary,
Agricultural Department,
Mantralaya, Mumbai -32.
- 2) **The District Collector,**
Parbhani, Tq. & Dist. Parbhani.
- 3) **The Commissioner of Agricultural,**
Krushi Bhavan, Shivani Nagar, Pune.
- 4) **The Divisional Joint Director of
Agricultural,** Latur Division, Latur.
- 5) **The District Superintendent
Agricultural Officer,** Parbhani
Tq. and Dist. Parbhani.
- 6) **The Taluka Agricultural Officer,**
Parbhani, Tq. & Dist. Parbhani.

.. RESPONDENT.

APPEARANCE : Shri H.P. Jadhav, learned Advocate
for the applicant.

: Shri D.R. Patil – learned Presenting
Officer for the respondents.

CORAM : **V.D. DONGRE, MEMBER (J)**
DATE : **26 .11.2021**

ORDER

Son and widow respectively of the deceased Government servant viz. Venkat Chandle, who died in harness have filed the present Original Application for seeking appointment on compassionate ground to the son of deceased employee by setting aside the impugned order dated 31.12.2019 (part of Annexure 'A-15' collectively, page-123 of paper book) issued by respondent No. 4 i.e. the Divisional Joint Director of Agricultural, Latur Division, Latur, refusing to substitute the name of the widow by her son.

2. The applicant Nos. 1 & 2 are respectively son and widow of the deceased Government servant viz. Venkat Digambarrao Chandle. The said Venkat Digambarrao Chandle was working in the office of respondent No. 6 i.e. the Taluka Agricultural Officer, Parbhani as Agricultural Assistant. He died in harness on 14.10.2004 keeping his family behind him. He was only earning member of his family.

3. The applicant No. 2, who is widow of the deceased Government servant, who was educated up to SSC made an

application to respondent No. 6 dated 30.9.2005 (Annexure 'A-2') for appointment on compassionate ground for herself. Subsequently, by letter dated 22.12.2006 (Annexure 'A-3') she submitted requisite documents. Her name was taken in the waiting list at Sr. No. 92. Her name ought to have been at Sr. No. 80 as Sr. No. 81 to 91 had made application after her. By letter dated 5.2.2011 (Annexure 'A-4') addressed to respondent No. 4 i.e. the Divisional Joint Director of Agricultural, Latur Division, Latur, she raised objection. However, she did not hear anything about her compassionate appointment for years together.

4. Applicant No. 2, therefore, wrote letter dated 10.7.2014 (part of Annexure 'A-5' collectively) to respondent No. 4 seeking compassionate appointment to her son i.e. applicant No. 1, who was then 21 years of old and was taking education in last year in Polytechnic College. The applicant No. 2 persuaded the said demand by subsequently sending representation dated 24.9.2014 and by submitting on record requisite documents. Nothing happened thereafter. The applicant No. 2, therefore, again made representation dated 13.10.2017 to the respondent No. 4 (Annexure 'A-6').

However, no action was taken either to give appointment to applicant No. 1 or applicant No. 2. Thereafter by letter dated 5.4.2018 (Annexure 'A-7'), respondent No. 4 informed the applicant No. 2 that her name was deleted from the waiting list in terms of Government Resolution dated 21.9.2017, as she crossed 45 years of age.

5. The applicant No. 2 thereafter made representations dated 10.5.2018, 4.9.2018 and 15.3.2019 (Annexure 'A-8' collectively) to the respondent No. 4 seeking appointment to her son on compassionate ground by taking his name in the waiting list. She also made representation to the respondent No. 3, the Commissioner of Agricultural, Pune on 24.4.2019 (Annexure 'A-9') for substituting her name by name of her son and giving him appointment on compassionate ground. However, none of the respondents responded to her representations. The applicant No. 1 also sent his representation dated 4.10.2019 to respondent Nos. 3 & 4 seeking appointment on compassionate ground (part of annexure 'A-15' collectively, page 123 of paper book). The respondent authorities refused to substitute the name of the applicant No. 2 by name of applicant No. 1 contending that

such substitution is not allowable in view of G.R. dated 21.9.2017.

6. It is the contention of the applicants that the impugned decision of the respondent No. 4 is against the principles of natural justice and settled law. It is specifically contended that bar to substitute the name of legal representative by another legal representative is ultra vires. It is also against the settled principle of law. Applicants were pursuing the claim since long and in any case well before the deletion of name of applicant No. 2 on account of crossing the age of 45 years. Moreover, the substitution was sought for well before 45 years of age of the applicant No. 2. In view of the same respondents ought to have considered the name of the applicant No. 1, Vaibhav Venkat Chandle, for taking his name in waiting list for giving appointment on compassionate ground. Hence, this Original Application.

7. Affidavit in reply on behalf of respondent Nos. 1 and 3 to 6 is filed by Popat Kundlikrao Mane, Assistant Administrative Officer in the office of the Divisional Joint Director of Agriculture, Latur Division, Latur. He has denied adverse contentions raised by the applicants in the present

Original Application. It is however, not disputed that the deceased Venkat Chandle died in harness while working in the office of respondent No. 6 on 14.10.2004. Even in the correspondence the respondents have not disputed the said fact. The claim of the applicants is denied and resisted on the ground that there is no provision for substitution of the name of the legal representative by another name of legal representative as per the provisions of G.R. dated 21.9.2017 and earlier GRs. The name of the applicant No. 2 is struck off from the waiting list on attaining the age of 45 years and in terms of requisite G.R. dated 6.12.2010 and subsequent G.R. dated 21.9.2017. In the circumstances, the present Original Application is liable to be dismissed.

8. I have heard the arguments advanced by Shri H.P. Jadhav, learned Advocate for the applicants and Shri D.R. Patil, learned Presenting Officer for the respondents at length.

9. Considering the rival facts on record the case revolves around certain portion of G.R. dated 21.9.2017. The said G.R. is produced on page-43 of the paper book. It is the matter of record that this G.R. is issued consolidating about 41 earlier different GRs and circulars in respect of

compassionate appointment. In this matter, we are concerned with the alleged policy of the Government that no provision is made for substitution of the name of legal representative by another legal representative and such substitution is applicable only in case of death of such legal representative during the pendency of his application for appointment on compassionate ground. The relevant portion is incorporated in paragraph No. 21 of the said G.R., which is as follows: -

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

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नाव बदलण्याची तरतुद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल, मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दि. २०.०५.२०१५).”

10. Learned Advocate for the applicants strenuously urged before me that the contents of paragraph No. 21 of G.R. dated 21.9.2017 and such clause in earlier GRs is totally contrary

and illegal being against the principles of natural justice. He submitted that such clause was also there in earlier GR dated 20.5.2015, which GR is mentioned at Sr. No. 38 of G.R. dated 21.9.2017. In this regard, he has placed on record a copy of decision of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad dated 11.3.2020 in the matter of Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra & Ors. By the said decision the Hon'ble High Court has been pleased to declare the said clause unjustified and it is directed that it be deleted. In view of the same, he submitted that the said similar clause, which is clause 21 in the G.R. dated 21.9.2017 is no more there and, therefore, the respondents have wrongly acted on them and issued the impugned communication dated 31.12.2019.

11. Learned Advocate for the applicants in order to substantiate his arguments has also placed reliance on various decisions of the Principal Seat of this Tribunal at Mumbai, which are as follows: -

- (a) O.A. No. 645/2017 in the matter of Manoj Ashok Damale Vs. the Superintending Engineer & Administrator, Command Area Development Authority, Nashik & Anr. decided on 2.4.2019;

(b) O.A. No. 239/2016 in the matter of Swati P. Khatavkar & Anr. Vs. the State of Maharashtra & Anr. decided on 21.10.2016; and

(c) O.A. No. 503/2015 in the matter of Shri Piyush Mohan Shinde Vs. State of Maharashtra & Ors. decided on 5.4.2016.

12. Learned Advocate for the applicants further placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad dated 9.12.2009 in W.P. No. 7793/2009 in the case of Vinodkumar Khiru Chavan Vs. the State of Maharashtra & Ors. He also placed reliance on the citation of the Hon'ble Supreme Court of India in the case of Sushma Gosain Vs. Union of India reported in 1989 AIR (SC) 1976.

13. On the other hand, learned Presenting Officer for the respondents while resisting the present Original Application submitted that the name of the applicant No. 2 i.e. the widow of deceased Government servant, is struck off from the waiting list on account of attaining the age of 45 years and more particularly in view of the provisions of the concerned G.R. dated 6.12.2010 and 21.9.2017. Moreover, the

application for substitution and appointment on compassionate ground was made only when applicant No. 1 became 21 years old and not immediately within one year of attaining the age of majority as contemplated in requisite G.Rs. In view of the same, claim of the applicant No. 1 is time barred and cannot be considered. In view of the same, he justified the impugned order.

14. Considering the rival facts as stated hereinabove, it is evident that the applicants are legal representatives of the deceased Venkat Chandle, who died in harness on 14.10.2004 while working in the office of respondent No. 6 i.e. Taluka Agriculture Officer, Parbhani, as Agricultural Assistant. The applicant No. 2 is widow of the said deceased, who made an application for compassionate appointment on 30.9.2005 (Annexure 'A-2'), which was made within prescribed period of one year from the date of death of the Government servant. Her name was included in the waiting list at Sr. No. 92. She made grievance that her name ought to have been at Sr. No. 80 as Sr. Nos. 81 to 91 were persons, who made application for compassionate appointment after her application.

15. It is further evident that the applicant No. 2 attained the age of 45 years on 1.7.2017. In view of the same, the respondent No. 4 i.e. the Divisional Joint Director of Agriculture, Latur Division, Latur, by letter dated 5.4.2018 (Annexure 'A-7') informed her that her name was deleted from the waiting list on that ground. However, before that in the year 2014 itself when the applicant No. 2 - the widow of the deceased Government servant wrote a letter dated 10.7.2014 (part of Annexure 'A-5' collectively, page- 31 of paper book) seeking appointment on compassionate ground to her son i.e. the applicant No. 1 Vaibhav Venkat Chandle. At that time the applicant No. 1 Vaibhav Venkat Chandle was 21 years old and was taking education in the last year in Polytechnic College. She also made representation dated 13.10.2017 to the respondent No. 4 (Annexure 'A-6') pursuing appointment to herself or to her son i.e. applicant No. 1. However, nothing happened and as per letter dated 5.4.2018 (Annexure 'A-7') name of the applicant No. 2 i.e. Ranjana Venkat Chandle was deleted as she attained the age of 45 years on 1.7.2017. Further by the impugned letter dated 31.12.2019 (Annexure 'A-15' collectively) substitution was refused.

16. In the facts and circumstances as above, the matter would revolve around mainly clause 21 of Government Resolution dated 21.9.2017 (page 43 of paper book) and also clause 10 (आ) and 11 of the said Government Resolution. The said clause Nos. 10 (आ), 11 and 21 are reproduced herein under for ready reference.

“(१०) अर्ज करण्यासाठी मुदत:-

(आ) सेवेत असताना दिवंगत झालेल्या कर्मचा-यांच्या कुटुंबातील अज्ञान वारसदाराच्या बाबतीत एकाने सज्ञान म्हणजे १८ वर्षांचा झाल्यावर एक वर्षाच्या आत अनुकंपा नियुक्तीसाठी परिपूर्ण अर्ज सादर करणे आवश्यक आहे. (शासन निर्णय, दि. ११/९/१९९६ व शासन परिपत्रक, दि. ०५.०२.२०१०).

(११) अनुकंपा नियुक्तीसाठी वयोमर्यादा:-

(अ) किमान वयोमर्यादा - १८ वर्ष (शासन निर्णय, दि. ११/९/१९९६).

(आ) कमाल वयोमर्यादा - वयाच्या ४५ वर्षापर्यंतच्याच उमेदवारांना अनुकंपा नियुक्ती अनुज्ञेय असेल. त्यामुळे प्रतिक्षा सूचीतील उमेदवारांना वयाच्या ४५ वर्षापर्यंत नियुक्ती न मिळाल्यास त्यांची नावे वयाची ४५ वर्ष पूर्ण होताच आवश्यक ती नोंद घेउन प्रतीक्षासूचीतून काढून टाकण्यात यावीत.

(शासन निर्णय, दि. २२.०८.२००५ व दि. ६.१२.२०१०).

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

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नाव बदलण्याची तरतुद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल, मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा

कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दि. २०.०५.२०१५).”

17. In the case in hand the application for substitution was made in the year 2014 i.e. before the applicant No. 2, Ranjana Venkat Chandle, attained the age of 45 years, which she attained only on 1.7.2017. Before that even her name was shown in the waiting list at Sr. No. 92. It is a matter of record that as per the ratio laid down in the citation of the Hon'ble Bombay High Court of Judicature at Bombay Bench at Aurangabad in the case of **DNYANESHWAR RAMKISHAN MUSANE VS. THE STATE OF MAHARASHTRA & OTHERS in W.P. No. 6267/2018 decided on 11th March, 2020**, it is already declared that the said clause imposing prohibition for substituting the name of one legal representative by another legal representative is unjustified and it is directed to be deleted.

18. That apart when the substitution was sought for the applicant No. 1, Vaibhav Venkat Chandle, he was 21 years old. It is contended on behalf of the respondents that application ought to have been made on behalf of the applicant No. 1 i.e. son of the deceased Government servant,

within one year of attaining the age of 18 years by him. However, considering the abovesaid clause 10 (3A) of the G.R. dated 21.09.2017, it is evident that the said limitation of one year is applicable when the legal representative is required to make application after the death of the earlier legal representative, who made application for appointment on compassionate ground. That is not the case here. In view of the same, submissions made on behalf of the respondents in this regard are totally misconceived and not sustainable in the eyes of law.

19. As per the settled law, it is true that the compassionate appointment is not source of recruitment and same is offered for survival of the family members of the Government servant, who died in harness.

20. However, in the case in hand the matter revolves around interpretation of clause 21 of the Government Resolution dated 21.9.2017, which is consolidated G.R. of earlier 41 GRs and circulars. By the ratio laid down in the above said case law in the matter of **DNYANESHWAR RAMKISHAN MUSANE VS. THE STATE OF MAHARASHTRA & OTHERS**, the said imposition of condition

is subsequently declared to be unjust and illegal and it is directed to be deleted. In the circumstances, the impugned order dated 31.12.2019 (part of Annexure 'A-15' collectively) issued by the respondents is totally erroneous. When the said condition is said to be unjustified and illegal, it cannot be acted upon. In the facts and circumstances, the said imposition of prohibition about substitution shall be said to be unjustified and erroneous. The case law relied upon by the learned Advocate for the applicant show consistent view that there cannot be bar for substitution. The said impugned decision dated 31.12.2019, in the facts and circumstances, is arbitrary and not sustainable in the eyes of law and, therefore, the same deserves to be quashed and set aside and issue appropriate direction. I, therefore, proceed to pass the following order: -

ORDER

The present Original Application is allowed.

(ii) The impugned communication dated 31.12.2019 (part of Annexure 'A-15' collectively, page) issued by respondent No. 4, the Joint Director of Agriculture, Latur Division, Latur, to the applicant No. 2, Ranjana V. Chandle, refusing to substitute name of her son i.e. applicant No. 1, Vaibhav V. Chandle, in place of her

name, is hereby quashed and set aside. Consequently, respondent authorities are directed to substitute the name of applicant No. 1, Vaibhav V. Chandle in place of applicant No. 2, Ranjana V. Chandle, in the waiting list of the compassionate appointment seeker relegating to the date of requisite application of 24.9.2014 (Page 32 of paper book) and further consider the name of applicant No. 1 for appointment on compassionate ground in accordance with law as per his seniority.

(iii) There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 26.11.2021

O.A.NO.12-2020(SB-Compassionate appointment)-HDD-2021