

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.288 OF 2021

DISTRICT : NANDED

1) Shubham s/o. Kishanrao Shreebhate,
Age : 23 years, Occu. : Nil,
R/o. Taroda Khurd, Malegaon Road,
Tq. & Dist. Nanded.

2) Meena wd./o. Kishanrao Shreebhate,
Age : Major, Occu. : Nil,
R/o. Taroda Khurd, Malegaon Road,
Tq. & Dist. Nanded.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through Its Secretary,
Home Department,
Mantralaya, Mumbai-400 0032.

2) The Special Inspector General of Police,
I.G.P. Office, Nanded Range, Nanded,
Tq. & Dist. Nanded.

3) The Superintendent of Police,
S.P. Office, Nanded,
Tq. & Dist. Nanded.

...RESPONDENTS

APPEARANCE : Shri P.V.Suryawanshi, Counsel for
Applicant.

: Shri I.S.Thorat, Presenting Officer
for the respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

RESERVED ON : 16.01.2023.

PRONOUNCED ON : 07.02.2023.

ORDER

1. Heard Shri P.V.Suryawanshi, learned Counsel for the applicant and Shri I.S.Thorat, learned Presenting Officer representing respondent authorities.
2. Applicants have filed the present O.A. being aggrieved by communication dated 04-03-2021 whereby respondent no.3 has rejected the request for substituting the name of applicant no.1 in place of Ku. Pooja Kishanrao Shreebhate for giving him the appointment on compassionate ground for the reason that, in the G.R. dated 20-05-2015 there is no provision for substitution of the name of one legal heir with another.
3. Deceased Kishanrao Sadashiv Shreebhate was serving as Police Head Constable with respondent no.3. He died on 21-02-2016 while in service. After his death, applicant no.2 Meena i.e. widow of deceased Kishanrao Shreebhate made an application to respondent no.3 on 05-10-2016 requesting the said respondent to appoint her elder daughter, namely, Pooja on compassionate ground. Accordingly, the name of Pooja Kishanrao Shreebhate was included in the waiting list of candidates eligible for giving compassionate appointment. In the year 2021, Pooja was

called for her physical test, however, as she did not qualify the criteria of minimum height required for appointment on the post of Police Constable, she was not given the said appointment. Thereafter, applicant no.2 submitted an application with respondent no.3 to substitute the name of applicant no.1 in place of Pooja and requested for giving him appointment on compassionate ground. Said request, however, came to be rejected on the ground as mentioned above, aggrieved by the same, applicants have preferred the present O.A.

4. Shri P.V.Suryawanshi, learned Counsel for the applicants submitted that after the candidature of Pooja was rejected, applicant no.2 immediately made an application for substituting the name of her son Shubham (applicant no.1) in place of Pooja. Such an application was made on 22-02-2021. Learned Counsel submitted that till that time, name of Pooja was not removed from the waiting list. Learned Counsel submitted that the applicant no.2 initially also could have requested for giving appointment to applicant no.1 on compassionate ground after the death of her husband Kishanrao, however, the applicant no.1 was minor at the said time.

5. Learned Counsel submitted that in view of the law laid down by the Hon'ble Bombay High Court in the case of **Dnyaneshwar s/o. Ramkishan Musane V/s. The State of Maharashtra & Ors. (Writ Petition No.6267/2018 decided on 11-03-2020)**, the request for substitution could not have been rejected by respondent no.3 on the ground that in the G.R. dated 20-05-2015, there is no such provision for substitution. Learned Counsel brought to my notice that identical issue was raised before the Division Bench of the Hon'ble Bombay High Court Bench at Aurangabad in the case of Dnyaneshwar Musane, cited supra. While allowing the said Writ Petition, Hon'ble High Court has held that restriction imposed by Government Resolution dated 20-05-2015 that name of another legal representative of the deceased employee cannot be considered in place of the legal representative of that deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground, is unjustified. Learned Counsel in the circumstances has prayed for allowing the O.A.

6. Respondent nos.2 and 3 have filed the joint affidavit in reply. In the said affidavit, said respondents have referred to the Government Resolution dated 20-05-2015 and have contended that since there is no provision in the said G.R. for substitution of the legal heir, the request of the applicant cannot be considered. Learned P.O. in his arguments submitted that once the appointment is rejected for valid reasons to the legal heir of the deceased, whose name is included in the wait list, same cannot be substituted with the name of another legal representative of the deceased. Learned P.O., therefore, prayed for dismissal of the O.A. being devoid of any substance.

7. I have duly considered the submissions advanced by learned Counsel appearing for the applicants and the learned P.O. appearing for the State authorities. It is not in dispute that the name of Pooja i.e. daughter of the deceased Government employee, namely, Kishanrao Shreebhate was included in the waiting list of the candidates held eligible for giving them appointment on compassionate ground. It is also true that the said Pooja was called for her physical test and since she did not qualify the criteria of minimum height, was not given

appointment on the post of Police Constable. However, there is further no dispute that the name of Pooja was not thereafter removed from the waiting list of the candidates to be given compassionate appointment. On the contrary, during the course of hearing, learned Counsel for the applicant has placed on record communication dated 03-01-2023 addressed to said Pooja directing her to remain present on 12-01-2023 for her physical examination. It is, thus, evident that the name of Pooja was existing in the wait list even in the year 2023.

8. Respondents have not denied that the applicant no.2 made an application on 22-02-2021 to substitute the name of applicant no.1 i.e. Shubham in place of Pooja and to consider said Shubham for appointment on compassionate ground. The request for substitution has been rejected on the ground that in the G.R. dated 20-05-2015 governing the appointments on compassionate ground, there is no provision for substitution of name of one legal heir by another legal heir of the deceased. Hon'ble Bombay High Court in the case of Dnyaneshwar Musane, cited supra, has held the aforesaid condition in the G.R. dated 20-05-2015 to be unjustified and directed

the respondents to delete the said condition. In spite of the order passed by Hon'ble Bombay High Court as above, respondents have again refused the request of the applicants on the same ground.

9. I reiterate that when the name of Pooja was existing in the wait list of the candidates eligible for compassionate appointment and when a request was made in time for substitution of the name of the legal heir, in view of the law laid down by the Hon'ble Bombay High Court, respondent no.3 could not have rejected the said request. At the relevant time, name of the applicant no.1 could not be submitted for the reason that he was minor at that time. Thus, there was valid reason for seeking substitution of his name in place of Pooja, who otherwise also could not have been considered for her appointment on the post of Police Constable because of her less height. For the reasons stated above, the order of rejection dated 04-03-2021 cannot be sustained and deserves to be set aside. In the result, following order is passed:

ORDER

[i] Communication/order dated 04-03-2021 rejecting substitution of name of the applicant no.1 in place of his sister Ku. Pooja, is set aside.

[ii] Respondent no.3 is directed to substitute name of Shubham Kishanrao Shreebhate in place of Ku. Pooja Kishanrao Shreebhate in the waiting list of the candidates eligible for giving compassionate appointment and shall issue the order of appointment to him as and when his turn comes.

[iii] O.A. thus stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 07.02.2023.