

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.296/2022

DISTRICT:- BEED

Madhuri d/o Uttamrao Choudhari,
Age : 29 years, Occu. : Household,
R/o. Samata Nagar, Parli-Vaijenath,
Tq. Paril, Dist. Beed.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through the Principal Secretary,
Ministry of Agriculture,
Mantralaya, Mumbai-32.

2) The Sub-Divisional Agricultural Officer,
Sub-Divisional Agriculture Office,
Ambajogai, Tq. Ambajogai, Dist. Beed.

3) District Superintendent Agriculture Officer,
District Superintendent Agricultural Office,
Beed, Tq. & Dist. Beed.

4) Divisional Joint Director of Agriculture,
Divisional Joint Director of Agriculture Office,
Kotla Colony, Kranti Chauk, Aurangabad.

5) Taluka Agriculture Officer,
Agricultural Office, Parli-Vaijenath,
Tq. Parli, Dist. Beed.

...RESPONDENTS

APPEARANCE :Shri Amar V. Lavte, Counsel for
Applicant.

:Shri I.S.Thorat, Presenting Officer for
the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on: 25-09-2023.

ORAL ORDER :

1. Heard Shri Amar V. Lavte, learned Counsel for applicant and Shri I.S.Thorat, learned Presenting Officer for the respondents.

2. By filing the present O.A. the applicant has challenged the order dated 10-08-2021 passed by respondent no.3 whereby he has rejected the request for substitution of the name of her brother Yogesh is included in the waiting list maintained of the candidates eligible to be given appointment on compassionate ground. It appears that the said order was tested before the appellate officer i.e. respondent no.2, however, he also turned down the request vide his order dated 17-08-2021. Both these orders are questioned in the present O.A. The applicant has also prayed for allowing the application filed by her on 01-07-2021 for her appointment on compassionate ground.

3. The facts involved in the present matter in brief are thus:

[i] Father of the applicant was in the employment of the State Government and he died while in service on 28-10-2012. After his demise his elder son Yogesh made an application on 30-11-2012 seeking appointment on compassionate ground. Name of said Yogesh was included in the waiting list maintained by the respondents of the candidates eligible to be appointed on compassionate ground.

[ii] Subsequently, on 01-07-2021 the present applicant made an application and requested for substituting her name in place of her elder brother Yogesh. In the said application it was stated by the present applicant that since her elder brother Yogesh is pursuing his further education instead of him she shall be given appointment on compassionate ground and therefore her name be substituted in place of said Yogesh. Said application has been turned down by respondent no.3 vide order passed by him on 10-08-2021 stating that since the application made by one of the legal heirs of the deceased Government servant, namely, Yogesh is pending, the request made by the applicant for substituting her name and

to give appointment to her in place of her brother cannot be accepted.

[iii] The applicant thereafter preferred a representation to respondent no.2 requesting appointment on compassionate ground. Respondent no.2 also vide his order dated 17-08-2021 rejected the said request. Applicant has challenged both these orders before this Tribunal by filing the present O.A.

4. Learned Counsel appearing for the applicant submitted that in view of the judgment of the Division Bench of the Hon'ble Bombay High Court in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. the State of Maharashtra & Ors., [(2020)5, Mh.L.J.,381]**, decided on 11-03-2020, rejection of her application cannot be sustained. Learned Counsel pointed out that the Division Bench of the Hon'ble Bombay High Court has turned down the clause/condition which debars the substitution of one legal heir by another for appointment on compassionate ground. Learned Counsel submitted that having regard to the ratio laid down in the said judgment, the orders which are impugned in the present O.A. cannot be sustained.

Learned Counsel further submitted that, based on the judgment in the case of **Dnyaneshwar S/o Ramkishan Musane**, *cited supra*, several orders have been passed by this Tribunal whereby the rejection of substitution has been set aside and the directions are issued for substituting the name of one legal heir with another. Learned Counsel submitted that same order requires to be passed in the present matter also.

5. Respondent nos.1 to 5 have filed common affidavit in reply and have thereby opposed the contentions raised in the O.A. as well as the prayer made therein. Relying on the provisions made in the G.R. dated 21-09-2017 respondents have supported the impugned orders. According to them there is no provision for substituting the name of one legal heir whose name is appearing in the waiting list by another legal heir except in the case of death of the said legal heir whose name is included in the waitlist earlier.

6. Shri I.S.Thorat, learned P.O. appearing for the State Authorities submitted that apart from the fact that in the G.R. dated 21-09-2017 there is no provision for substitution, even otherwise, the request of the applicant

does not deserve any consideration having regard to the scheme of the compassionate appointment. Learned P.O. submitted that facts which have come on record through the pleadings in the O.A. as well as through the arguments made on behalf of the applicant, the present applicant cannot be held entitled for the appointment on compassionate ground. Learned P.O. in the circumstances has prayed for rejecting the O.A.

7. I have considered the submissions made on behalf of the applicant as well as the respondents. I have also gone through the documents placed on record by the parties. In so far as the facts are concerned there appears no dispute. Admittedly, Government servant died on 28-10-2012 and within the stipulated period the elder son of the deceased, namely, Yogesh made an application seeking appointment on compassionate ground. Undisputedly, his name was included in the waitlist maintained of the eligible candidates to be given appointment on compassionate ground. The fact of submitting application by the present applicant on 01-07-2021 is also not in dispute. The application has been rejected vide the impugned orders by relying on the G.R. dated 21-09-2017.

8. In so far as the ground on which respondent no.2 and respondent no.3 both have rejected the request of the applicant for her appointment on compassionate ground by substituting her in place of her elder brother Yogesh is concerned, the reason as has been assigned is wholly unsustainable. In the case of **Dnyaneshwar S/o Ramkishan Musane**, *cited supra*, the Division Bench of the Hon'ble Bombay High Court has specifically dealt with the issue of substitution and the request for substituting the name of one legal heir by another whose name is appearing in the waitlist. Hon'ble Bombay High Court in the said judgment has directed the Government to delete the said provision. In the circumstances in so far as the reason which has been assigned for rejecting the claim of the applicant is concerned, rejection cannot be sustained on the said ground.

9. However, the facts and circumstances which have come on record cannot be lost sight of and cannot be simply ignored. The Hon'ble Supreme Court and the Hon'ble Bombay High Court have consistently held that the compassionate appointment is not a source of recruitment. It is a provision or a scheme by the State or Public Sector

Undertaking to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis. If the facts and circumstances in the present matter are considered, it does not appear to me that the applicant deserves to be considered for giving her appointment on compassionate ground.

10. Following facts are material to be noted. Firstly that, the elder son of the deceased who made application seeking appointment on compassionate ground though did not receive such appointment till the year 2021, there is nothing on record to show that the said Yogesh was pursuing his request or following up the matter for getting such appointment. It has also come on record that said Yogesh was pursuing his education. Today, in the course of arguments, it is revealed that Yogesh has completed his Graduation in Pharmacy during the intervening period. It is further revealed that the applicant, who made an application on 01-07-2021, has completed her Post Graduation in Engineering. It is also revealed that in the intervening period younger son of the deceased has completed his MBBS and has also done his Post

Graduation from the Government Medical College, Nagpur. He has done his MBBS course from a private medical college.

11. From the facts as aforesaid, it is quite evident that even after the death of the Government servant, his family was quite in a position to bear the expenses for education of the children in the family. As noted hereinabove, elder son Yogesh, who applied for appointment on compassionate ground and whose name was included in the waiting list, completed his graduation in Pharmacy. The daughter of the deceased i.e. the present applicant completed her graduation in Engineering and thereafter also completed her post-graduation in Engineering. The younger son completed his MBBS from a private medical college and post-graduation from Government Medical College, Nagpur. Admittedly, in the relevant period none of the legal heirs of the deceased was employed on compassionate ground. It is further significant to note that, in the present application it is nowhere the contention of the applicant that the family of the deceased Government servant, namely, Uttamrao Choudhari is in need of appointment on compassionate

ground. It is also not the case of the applicant that the family of the deceased Government servant is under financial distress. Tenor of the pleadings in the O.A. demonstrate that appointment on compassionate ground has been sought as if it is a right vested in the legal heirs of the deceased Government servant suffering death while in service.

12. What is the object and what shall be the considerations for giving appointment to any of the legal heirs of the deceased Government servant suffering untimely death while in service are explained by the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138**, after having considered the earlier decisions of the Hon'ble Apex Court on the said subject. I deem it appropriate to reproduce hereinbelow some portion from the said judgment which is relevant in the context of the present matter, which reads thus:

"7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a

provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source”

13. From the considerations as above carved out by the Hon'ble Apex Court, it is quite evident that the person seeking appointment on compassionate ground is under obligation to bring on record sufficient facts and evidence showing that after the death of the Government servant his

family is in financial crisis. Applicant has not brought on record any such evidence. In fact, there is no such pleading in the O.A. It is also not the case of the applicant that the dependents of the deceased Government servant are deprived of means of the livelihood.

14. After having considered the facts and circumstances involved in the present matter, it does not appear that the family of the deceased Government servant was in financial crisis after the death of the Government servant. On the contrary, the facts which have come on record sufficiently demonstrate that the family of the deceased must be possessing sufficient financial means so that the younger son of the deceased Government servant could do his MBBS from a private medical college and also post-graduation from Government Medical College; Nagpur, his elder son pursued the bachelor degree course in Pharmacy and his daughter completed the course of bachelor in engineering and thereafter post-graduation in Engineering. In the aforesaid circumstances, I see no rationale in the request of the applicant in seeking substitution of her name in place of her brother Yogesh for appointment on compassionate ground.

15. For the reasons stated above, though reason as has been assigned by the respondents refusing the request for substitution of name of the applicant in place of her elder brother cannot be sustained, the request of the applicant seeking appointment on compassionate ground also cannot be accepted. O.A. is therefore, liable to be dismissed and is accordingly dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 25-09-2023.