

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 149 / 2021 (S.B.)**

1. Smt. Mala wd/o Sunil Wankhade,
Aged about 50 years, Occupation:-Household,
2. Ms. Radhika d/o Sunil Wankhade,
Aged about 22 years, Occupation:-Education,
Both R/o Anuradha Colony,
Near Deshmukh Floor Mill,
Hanuman Mandir Road, Gunwant Wadi,
Amravati, Tq. and Dist. Amravati-444 604.

Applicants.**Versus**

- 1) The State of Maharashtra,
through its Principal Secretary,
Water Resource Department,
Having office at 15th Floor, New Administrative Building,
Hutatma Rajguru Chowk,
Madam Cama Road, Mantralaya
Mumbai- 32.
- 2) The Superintendent Engineer (Mechanical),
Mechanical Circle, Vainganga Nagar, (U & S)
Ajani Nagpur, Tq. and District Nagpur-440 003.
- 3) The Executive Engineer,
Production & Erection (Gate Erection)
Division No. 1, Amravati Division, Amravati,
Tq. and Dist. Amravati-444 602.
- 4) The Superintendent Engineer,
Upper Wardha Project Circle Amravati,
Upper Wardha Vasahat, Shivaji Nagar,
Amravati, Tq. and Dist. Amravati-444 602.

Respondents

Shri G.R.Sadar, Id. Advocate for the applicants.**Shri A.P.Potnis, Id. P.O. for the Respondents.**

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 04st April, 2022.

Judgment is pronounced on 08th April, 2022.

Heard Shri G.R.Sadar, Id. counsel for the applicants and Shri A.P.Potnis, Id. P.O. for the Respondents.

2. Case of the applicants is as follows. Shri Sunil Wankhade, husband of applicant no. 1 died in harness on 03.04.2008. He was employed as a Motor Driver. Applicant no. 2 is daughter of the deceased. Applicant no. 1 submitted application dated 18.09.2008 (A-1) to appoint her on compassionate ground. It was accepted and processed. On 15.08.2016 applicant no. 2 attained majority. Therefore, on 04.08.2017 she, applicant no. 2, submitted application (A-4) along with necessary documents for giving her an appointment on compassionate ground. Her mother, applicant no. 1, gave consent for the same. However, the matter did not progress. Applicant no. 2 then received the impugned communication dated 05.08.2019 (A-8) containing the following :-

“kk l u fu.kz dkd 21@9@2017 P; k vuqk kus ifjf'k"V v e/khy
vuqkd 21 e/ksvuqdk rRokojhy ifr{kk l phojhy menokjkpsfu/ku
>KY; kl ifr{kk l phrhy menokjk, oth R; kb; k dVpkrhy vU; ik=
okj l njkpsuko vuqdk/kkj dK; k ifr{kk l phe/ksl keou ?ks; kr ; kosv l s
uem dsysvks i jarqo; kph e; khk vksy/kMx; kurj R; kps i k= menokjkps
uko vuqdk kl kBh l ekfo"V dj.; kckr uem ukgh-

djhrk dq jkf/kdk l quy oku [kMs; kpk vtZ vuqdk kl kBh xtg;
/kjr k ; s ukgh- ; k i=kl kcr 'kk l ufu.kz kph i r o vko'; d dlxni=
l qHk ekfgrh djhrk ns; kr ; s vks"

Hence this application.

3. Reply of respondent no. 3 is at pages 65 to 69. According to the respondent the application is time barred and appointment on compassionate ground cannot be claimed as of right.

4. I have referred to the ground on which claim of applicant no. 2 was declined by the respondent department vide the impugned communication. This ground is not at all valid in view of what is held in the following rulings:-

"1. Dnyaneshwar Ramkishan Musane V/s State of Maharashtra and others 2020 (5), Mh.L.J.

In this case, it is held-

"We hold that the restriction imposed by the G.R. dated 20.05.2015 that if name 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."

2. Smt.Vandana wd/o Shankar Nikure and one another V/s State of Maharashtra and two others (Judgment dated 24.8.2021 delivered by Division

**Bench of Bombay High Court in W.P.
No.3251/2020).**

In this case it is held-

“Though the respondents have been submitting that the policy of the State regarding prohibition of substitution of names of the persons in the waiting list made for giving compassionate appointments by the names of other legal heirs is in existence since the year 1994, learned counsel for the respondent no. 2 could not point out to us specific provision made in this regard in any of the G.Rs, except for the GR dated 20.5.2015. It is this submission that since it is not mentioned in these G.Rs that such substitution is permissible, it has to be taken that the substitution is impermissible.

The argument cannot be accepted as what is not specifically and expressly prohibited cannot be said to be impermissible in law. When the policy of the State is silent in respect of a particular aspect, a decision in regard to that aspect would have to be taken by the Competent Authority by taking into consideration the facts and circumstances of each

case. The reason being that it is only the express bar, which takes away the discretion inherently available to the authority by virtue of nature of function that the authority has to discharge and so absence of the bar would leave the discretion unaffected. That being the position of law, the argument that the earlier GRs also could not be understood as allowing the substitution of name of one legal heir by the name of another legal heir cannot be accepted and is rejected."

3. Nagmi Firdos Mohmmad Salim and another V/s State of Maharashtra and others (judgment dated 15.12.2021 delivered by Division Bench of Bombay High Court in W.P.No.4559/2018)

In this case, both the aforesaid rulings of the Bombay High Court were considered and it was held-

"We have considered the rival contentions and we have perused Clause 21 of the G.R. dated 21.9.2017.

In that Clause, it has been stated that there is no policy of permitting change of name that is existing on the waiting list, maintained by the concerned Employer. However, in the event of death of such

*person who is on the waiting list, such change is permissible. It is however seen that a similar Clause as Clause 21 was preset in G.R. dated 20.5.2015 and it has been held in **Dnyeshwar Ramkishan Musane** (Supra) that such restriction for substitution of name of a family member was unreasonable and it was permissible for the name of one legal representative to be substituted by the name of another legal representative of the deceased employee. We find that the aforesaid position has been reiterated in W.P. No.3251 of 2020 decided on 24.8.2021 at this Bench (Smt. Vandana wd/o Shankar Nikure and one another V/s State of Maharashtra and two others)."*

5. The applicant has further relied on the following :-

"A. **Government Resolution dated 21.09.2017.**

B. **2020 (5) Mh.L.J. 646**

Mahek s/o Laxman Pusollu vs. State of Maharashtra & Ors.

C. **Judgment & Order dated 15.11.2021 in O.A. No. 205/2019**

Vaijnath Mallikarjun Karadkhele Vs. State of Maharashtra & Ors. (Aurangabad Bench)

D. Judgment & Order dated 23.01.2020 in O.A. No. 863/2017

Smt. Chhaya Vishwas Bhosale Vs. State of Maharashtra & Ors. (Mumbai Bench)

E. Judgment & Order dated 29.01.2020 in O.A. No. 1015/2017

Shri Dipak Bhikaji Kambale Vs. State of Maharashtra & Ors. (Mumbai Bench)"

6. These rulings fully support contention of the applicant that claim of applicant no. 2 deserves to be considered for giving her appointment on compassionate ground. Hence the order:-

ORDER

1. The Original Application is allowed.
2. The respondents are directed to consider the application dated 31.07.2017 for giving appointment to applicant no. 2 on compassionate ground by including her name in the common seniority/ waiting list subject to fulfilment of eligibility criteria, and as per Rules.
3. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 08/04/2022.
and pronounced on

Uploaded on : 11/04/2022.