

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 160 / 2020 (S.B.)**

Ankit S/o Arvind Dachewar,
Aged about 21 years, Occupation:-Unemployed,
R/o Nehru Chowk,
Anchaleshwar Ward,
Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Water Resource Department,
Mantralaya, Mumbai- 32.
- 2) Zilha Jalsandharan Adhikari,
Mrud Aani Jalsandharan Vibhag,
Near Zilha Stadium,
Chandrapur.
- 3) District Collector,
Chandrapur.

Respondents

Shri R.R.Dawda, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the Respondents.

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

JUDGMENT

Judgment is reserved on 09th March, 2022.

Judgment is pronounced on 15th March, 2022.

Heard Shri R.R.Dawda, Id. counsel for the applicant and Shri H.K.Pande,
Id. P.O. for the Respondents.

2. Case of the applicant is as follows. Shri Arvind Dachewar, father of the applicant was serving as Junior Clerk on the establishment of respondent no. 2. He died in harness on 02.03.2008. On 14.04.2008 mother of the applicant submitted

application (Annexure-1) for appointment on compassionate ground. By letter dated 23.05.2008 (A-2) respondent no. 2 forwarded said proposal to respondent no. 3 for further action. Mother of the applicant filed application (Annexure-3) to process the matter quickly. By letter (Annexure-4) respondent no. 3 informed her that her name was included in common seniority list at Sr. No. 357. On attaining the age of 40 years her name was deleted from the list. On 24.07.2010 she submitted application (A-6) to relax the condition of age and give her appointment or consider name of her son, present applicant, on his attaining the age of 18 years. On 23.06.2015 the applicant, who had attained majority, applied for appointment on compassionate ground (A-8). By letter dated 11.02.2016 (A-10) respondent no. 2 informed that such substitution of one legal heir by another for giving appointment on compassionate ground was not permissible in view of G.R. dated 22.08.2005 and guidelines dated 31.03.2006. By filling application (A-11) the applicant again requested respondent no. 2 to consider him for appointment on compassionate ground. Rejection of this representation was communicated to the applicant by letter dated 07.09.2016 (A-12). The applicant has impugned (A-10) which is the communication whereby rejection of his representation was communicated to him.

3. Reply is not filed by the respondents.

4. It was submitted by Adv. Shri R.R.Dawda that the condition in the G.R. not permitting substitution of a person for giving appointment on compassionate ground has been declared to be arbitrary and hence the impugned communication (A-10) deserves to be quashed and set aside. In support of this submission reliance is placed on the Judgement dated 18.07.2018 passed by the Bombay High Court in W.P. No. 13932/2017 State of Maharashtra & Ors. Vs. Smt. Anusaya & Another. In this case it is held :-

"In view of the aforesaid, we modify the impugned judgment and order and direct the name of respondent no. 2 Shubham V. More be included in the waiting list for compassionate appointment in Group-D category at the appropriate position taking into consideration the date of the respondents application dated 11.02.2014. This means that the name of respondent no. 2 shall be entered into waiting list as directed by the MAT, but not in place of respondent no. 1 - his mother's name. Rather, the

name of respondent no. 2 will be entered in the said list by according it due seniority on the basis of application dated 11.02.2014."

The applicant has further relied on following judgment of this Tribunal:-

A. Judgment dated 23.01.2020 passed by this Tribunal (Mumbai Bench) in O.A. No. 863/2017.

B. Judgment dated 15.11.2021 passed by the Aurangabad Bench of this Tribunal in O.A. No. 205/2019.

C. Common Judgment dated 21.01.2019 passed by the Mumbai Bench of this Tribunal in O.A. Nos. 427/2016 and 509/2018.

These Rulings support case of the applicant. Further, in the following rulings legal position in respect of substitution and perceived Bar under G.R. dated 20.05.2015 is laid down as under:-

(i) *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 20.5.2015 that if name of 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."

(ii) *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 Nos. 2 and 3 could not point out to us any 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."

(iii) Nagmi Firdos Mohammad 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 present in G.R. dated 20.5.2015 and it has been held in **Dnyaneshwar 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. In the instant case mother of the applicant had applied for appointment on compassionate ground. At that time the applicant was minor. When mother of the applicant attained the age of 40 years her name was deleted from the common seniority list. On attaining majority the applicant applied for appointment on compassionate ground. Considering this chronology question of limitation cannot be successfully agitated.

6. For all these reasons the application deserves to be allowed. Hence, the order:-

ORDER

1. Application is allowed.

2. The impugned order dated 11.02.2016 (A-10) is quashed and set aside. The respondents are directed to include name of the applicant in common seniority list prepared for giving appointment on compassionate ground and consider his claim for appointment on compassionate ground for any Class-III/IV post subject to fulfilment of eligibility criteria in accordance with Rules. This exercise shall be completed within two months from today.

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 : 15/03/2022.
and pronounced on

Uploaded on : 16/03/2022.