

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 162/2023 (S.B.)

Vedant Hemant Shelke,
Aged about 23 years,
Occupation : Student,
R/o Plot no.32, Hingna Road,
MIDC, Digdoh (Urban),
Tah. & Dist. Nagpur .

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai - 32.
- 2) The District Collector Nagpur,
Tah. & Dist. Nagpur.
- 3) Commandant office, S.R.P.F.
Division -4, Dist.Nagpur.

Respondents

Ms.N.S.Pathan, Id. Counsel for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated :- 23.11.2023.

JUDGEMENT

Heard Ms.N.S.Pathan, ld. counsel for the applicant and Shri M.I.Khan, ld. P.O. for the Respondents.

2. Case of the applicant in short is as under-

The father of the applicant namely Hemant Natthuji Shelake was serving with the respondent no.3, S.R.P.F. Nagpur. He died on 07.08.2005. That time applicant was minor. Mother of applicant i.e. the wife of deceased namely Vanita Hemant Shelke applied for appointment on compassionate ground within limitation period. Her name was recorded in the waiting seniority list. The mother of applicant applied on 19.08.2014 to include the name of applicant in the waiting seniority list and provide the employment on compassionate ground. The respondents have informed by letter dated 15.12.2022. The applicant's mother applied for the first time on 19.08.2014 after completion of the age of 18 years of the applicant. Thereafter, again the applicant applied on 18.10.2021 and, thereafter, on 29.10.2021. The applicant has challenged the communication dated 15.12.2022 and prayed to appoint him on compassionate ground.

3. The O.A. is opposed by the respondents. It is submitted that the name of applicant's mother was removed from waiting seniority list because she had completed 40 years of age. It is submitted that as per

the G.R. dated 20.05.2015, substitution is not provided. Hence, the application of the applicant was rejected.

4. During the course of submission, learned counsel for the applicant relied on the Judgment of **the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6267/2018 in the case of Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others.**

The Hon'ble Bombay High Court Bench at Aurangabad has passed the following order-

"I) We hold that the restriction imposed by the Government Resolution dated 20.05.2015 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) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.

III) The respondent no.2 - Chief Executive Officer is directed to include the name of the petitioner in the waiting list of persons seeking appointment on compassionate ground, substituting his name in place of his mother's name.

IV) The respondent no.2 - Chief Executive Officer is directed to consider the claim of the petitioner for appointment on

compassionate ground on the post commensurate with his qualifications and treating his seniority as per the seniority of his mother.

V) Rule is made absolute in the above terms.

VI) In the circumstances, the parties to bear their own costs."

5. As per the Judgment of the Hon'ble Bombay High Court, unreasonable restrictions imposed by the G.R. dated 20.05.2015 was directed to be removed. But the State Government not complied the direction given by the Hon'ble High Court till date.

6. The learned P.O. has submitted that in recent Judgment in Writ Petition 2865/2022, the Bombay High Court Bench at Aurangabad not relied on the Judgment of the **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others**. Now, there is no dispute that there is contrary decision of the Bombay High Court of two Benches and now the matter is referred to the full Bench for the decision on the point of substitution of the name as per G.R. dated 20.05.2015.

7. The learned P.O. has pointed out the Judgment in Writ Petition No.9197/2022 decided on 03.02.2022. In the said Judgment the Hon'ble High Court has held that after 22 years from the death of the employee wrongly direction was given to appoint on compassionate ground. After 22 years that family was not entitled for immediate financial assistance in form of compassionate appointment.

8. The learned P.O. has pointed out letter dated 07.08.2014 and submitted that the mother of applicant was called for the service process but she remained absent and now the applicant cannot again claim appointment on compassionate ground.

9. The applicant had specifically stated in the application dated 19.08.2014 that she had completed 40 years and because of ill-health she could not claim the appointment on compassionate ground and, therefore, she requested to appoint her son/the applicant on compassionate ground.

10. There is no dispute that the respondents have not provided any service on compassionate ground to the mother of applicant and also to the applicant. The substitution is rejected only on the ground that as per the G.R. dated 20.05.2015 substitution is not provided. The material portion of para 9 of the reply (P.35) is reproduced below-

9. At the time of inclusion of the applicant's name in the compassionate waiting list, his mother's age was 30 years 10 months 1 day as on 20.11.1974 as per her date of birth. As per GR. dated 22/08/2005 since compassionate appointment is permissible to candidates up to the age of 40 years, the applicant's mother's name was included in the compassionate waiting list as an eligible heir, but Smt. Vanita Hemant Shelke, before

crossing the age limit, she had informed the office to include her son's name in the compassionate list instead of her. But as per G.R. dated 21.09.2017 after the death of the employee after the name of his eligible family members is taken in the waiting list of the compassionate person instead the name of another eligible heir is not taken in the waiting list. That is, as there is no provision for changing the name in the waiting list in the current policy, their request has not been accepted.

10. The Hon'ble High Court, Bench at Aurangabad in the case of *the Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others* has specifically held that the condition mentioned in the G.R. dated 20.05.2015 is directed to be deleted. The Government of Maharashtra not deleted the said unreasonable restrictions. The Judgment in the case of Dhyaneshwar Musane till date not quashed and set aside. Therefore, the following order is passed.

ORDER

1. The O.A. is allowed.
2. The communication dated 15.12.2022 issued by the respondent no.3 is hereby quashed and set aside.

3. The respondents are directed to include the name of the applicant in place of her mother in waiting seniority list for appointment on compassionate ground and provide the employment as per Rules.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated :- 23/11/2023.
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 23/11/2023.
and pronounced on