

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 595 of 2019 (S.B.)**

1. Shri Parag S/o Gajanan Meshram,
Aged about 21 years, Occupation: Nil,
R/o Kardha, Tahsil and District Bhandara.
2. Smt. Lata Wd/o Gajanan Meshram,
Aged about 45 years, Occupation:-Household,
R/o Kardha, Tahsil and District Bhandara.

Applicants.**Versus**

- 1) The State of Maharashtra,
through its Chief Secretary,
Forest Department,
Mantralaya, Mumbai-32.
- 2) The Chief Conservator of Forest,
Nagpur Region, Nagpur.
- 3) The Deputy Chief Conservator of Forest,
Bhandara,
Dist. Bhandara.
- 4) The Collector, Bhandara,
District Bhandara.

Respondents

Shri A.Z.Jibhkate, Id. Advocate for the applicants.

Shri V.A.Kulkarni, Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.

Date of Reserving for Judgment : 04th May, 2022.

Date of Pronouncement of Judgment : 06th May, 2022.

JUDGMENT

(Delivered on 06th day of May, 2022)

Heard Shri A.Z.Jibhkate, ld. counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the respondents.

2. Government of Maharashtra has issued G.R. dated 21.09.2017, शासन निर्णय क्रमांक - अकंपा १२१७/प्र.क्र.१०२/आठ/(A-E, Pg. No. 70) by that G.R. in para no. 21, it is specifically mentioned that:-

“२१. अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे (शासन निर्णय दिनांक २०.०५.२०१५)”

3. The applicant's father Shri Sampat Meshram Gajanan has chawkidar in Bhandara Forest Division has expired on 12.05.2010. He left behind him dependant i.e. Smt. Lata Gajanan Meshram (Wife), Master Parag Gajanan Meshram (Son), Ku. Ashwini Gajanan Meshram (Daughter), Ku. Sonali Gajanan Meshram (Daughter). His wife has made application to D.C.F., Bhandara for appointment on affidavit to include the name of her son Shri Parag Gajanan Meshram on 27.09.2016 (P.B., Pg. No. 44). The applicant belongs to Dhiwar caste (P.B., Pg. No. 60).

4. After his death his wife Smt. Lata Gajanan Meshram name was included in the list for appointment on compassionate ground at Sr. No. 31 dated 30.11.2010 as per correspondence dated 14.07.2017 (A-D, Pg. No. 69). Since she has become old, she was left only two years to complete the upper limit of 45 years as per compassionate appointment Rule. Hence, she made application to D.C.F., Bhandara vide her application dated 29.09.__(A-4, Pg. No. 38) to include the name of her son Shri Parag Gajanan Meshram.

5. Respondent no. 3 vide his letter dated 27.08.2018 (A-1, Pg. No. 18) has refused to include her name since clause 27 of Government G.R. dated 27.09.2017 does not provide this. Section 21 reads as under:-

“२१. अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे (शासन निर्णय दिनांक २०.०५. २०१५)”

6. The Judgment delivered by this Tribunal in O.A. No. 224/2021, para nos. 6, 7, 8, 12 & 13 are below:-

“6. Heard learned counsel for the applicant Shri R.M. Fating. He has submitted that the name of applicant is

wrongly deleted from the waiting list. The G.Rs. of 2015 and 2017 are considered by the Hon'ble Bombay High Court and this Tribunal.

7. The Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6267/2018, decided on 11/03/2020, in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra and others** has held that the restriction imposed by the G.R. 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. In another Judgment, in the case of **Smt. Pushpabai Wd/o Rajesh Bisne & Ano. Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High Court, Bench at Nagpur held that the G.Rs. of 2015 and 2017 cannot apply retrospectively.

8. The learned counsel for the applicant has submitted that the applicant submitted the application in the year 2014 and therefore those G.Rs. cannot apply retrospectively. He has also pointed out the Judgment of this Tribunal in the case

of *Sangita D/o Shankar Bagmare Vs. State of Maharashtra & Ors.*, in O.A. No.10/2019.

12. In the case of *Dnyaneshwar s/o Ramkishan Musane* (cited supra), the Hon'ble Bombay High Court, Bench at Aurangabad has given specific direction to the Government. The operative part of the order is reproduced as under –

"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."

13. In view of the Judgment of Hon'ble Bombay High Court in the case of **Dnyaneshwar s/o Ramkishan Musane** (cited supra) the restriction imposed by G.R. of 2015 cannot be said to be valid for deletion of the name of applicant. In the case of **Smt. Pushpabai Wd/o Rajesh Bisne** (cited supra), the Hon'ble Bombay has held that the G.R. of 2015 cannot be given retrospective effect. From the perusal of G.R. of 2017, it appears that it is a reproduction of all earlier G.Rs. including the G.R. of 2015. The material portion of G.R. of 2017, reads as under-

“(२१) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे -

कर्मचा-याच्या मृत्युनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीतील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नांव

अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मुळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दिनांक २०/०५/२०१५)“

7. The Judgment delivered by this Tribunal in O.A. No. 225/2021, para nos. 6 & 7 are below:-

“6. The Hon’ble Supreme Court in case of **Supriya Patil Vs. State of Maharashtra** in which the Hon’ble Supreme Court has observed as under-

“(3) We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empanelled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”

7. The learned counsel for the applicant has submitted that the respondents have not provided any service to the mother of applicant after completion of 45 years her age. Her name was deleted and in place of her name, the name of applicant was substituted. The learned counsel for the applicant has submitted that in view of the Judgment of Hon'ble Bombay High Court and the Judgment of Hon'ble Supreme court in case of **Supriya Patil Vs. State of Maharashtra**,(cited supra) the deletion of the name of applicant is not legal and proper and hence prayed to allowed the O.A.”

8. In view of above Judgments of Hon'ble High Court and Hon'ble Supreme Court, Section 21 of G.R. dated 21.09.2017 i.e appointment on compassionate ground becomes illegal and respondent no. 1 is directed to delete/ modify that portion of G.R.. If such provisions are also in previous G.R. that should also be suitably modified.

9. Respondents have filed their reply on 09.11.2019 and they have taken shelter of G.R. dated 21.09.2017 in the impugned order dated 27.08.2018 (A-1, Pg. No. 18). The same defence has been taken. However, Hon'ble High Court and Hon'ble Apex Court have declared it illegal. Hence, the order:-

ORDER

- A. Impugned order dated 28.02.2017 (A-6, Pg. No. 63) is quashed and set aside.
- B. O.A. is allowed in terms of relief clause (8)-(i) & (ii).
- C. No order as to costs.

**(Shri Shree Bhagwan)
Vice-Chairman**

aps

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 Vice Chairman.

Judgment signed on : 06/05/2022.

and pronounced on

Uploaded on : 06/05/2022.