

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1116/2022(S.B.)

Simran Manoj Baviskar,
Aged 24 years, Occ.: Student,
R/o Plot No.22,Khan Society,
Nirmal Colony, Godhani Railway,
Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai – 32.
- 2) The Collector,
Tah: & Dist.Nagpur
- 3) Superintendent of Police (Rural),
Tah. & Dist.: Nagpur.

Respondents

Shri M.D.Raut and Adv.N.S.Pathan, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated: - 28th March 2023.

JUDGMENT

Judgment is reserved on 24th March, 2023.

Judgment is pronounced on 28th March, 2023.

Heard Shri M.D.Raut, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. Manoj Baviskar, father of the applicant was holding the post of Nayak in the respondent department. He died in harness on 16.03.2013 whereupon his wife / mother of the applicant, Smt.Shabana had applied for appointment on compassionate ground. She did not get the appointment. She submitted applications [Annexures A-2, collectively and A-4] that since she had crossed 45 years her daughter, the applicant, be considered for appointment on compassionate ground. By letter dated 17.02.2021 (Annexure A-3) mother of the applicant was informed by respondent no.3 that her claim for appointment on compassionate ground had lapsed as she had crossed the upper age limit of 45 years. With covering letter dated 07.01.2022 (Annexure A-5) respondent no.3 forwarded the proposal to respondent no.1 to consider request of the applicant to include her name in the waiting list for appointment on compassionate ground, as a special case. The applicant did not, however, get any relief. Hence, this O.A.

3. Stand of respondent no.3 is as follows-

As the mother of the applicant has completed the age of 45 years in pursuance of G.R. dated 06.12.2010 her name came to be removed and the same was

communicated to her vide communication dated 17.12.2021 After deleting the name of the mother of the applicant, she applied to the respondents for including the name of the applicant in her place. The request of the mother of the applicant is rejected on the ground that, there is no provision to include the name of other legal heir in place of existing nominee as per government resolutions dated 20.05.2015 and 21.09.2017. Compassionate appointment is not heritable right and cannot be enforced as a matter of right. The applicants are in receipt or retirement benefits of the deceased employee and are also getting handsome pension. The immediate need of survival is not attracted in the present case. Moreover the case of the applicants would be governed by the latest Government Resolution wherein there is no provision for substitution unless and until the person dies whose name is included in the waiting list. In absence of the same the original application deserves to be dismissed.

4. The issue involved in this O.A. can be decided in light of what is held in the following rulings of Hon'ble Bombay High Court-

(i) *Dnyaneshwar Ramkishan Musane V/s State of Maharashtra and others 2020 (5), Mh.L.J.381*

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) Naqmi 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)."

In "Mangalabai Janardhan Shinde and Another Vs. State of Maharashtra and Another 2022 SCC Online Bom 1694" it is held –

11. *After having heard learned counsels for the parties, the short issue that arises for consideration before us is whether name of first applicant can be substituted after crossing age of 45 years by another name in view of the judgment in the case of Dnyaneshwar Ramkishan Musane (supra) and in the case of Prashant Bhimrao Desai (supra). The restriction on substitution of name of ward in the waiting list in the G.R. dated 20.05.2015 has already been set aside by this Court in the case of*

Dnyaneshwar Ramkishan Musane (supra) and in the case of Prashant Bhimrao Desai (supra). This Court expected the State Government to revise its policy of compassionate appointment with regard to restriction on substitution of name and to issue revised guidelines.

12. On account of the judgments in the case of Dnyaneshwar Ramkishan Musane (supra) and in the case of Prashant Bhimrao Desai (supra) the position that stands today is that there is no restriction on substitution of name of ward in the wait list for compassionate appointment.

13. However, we have a different conundrum before us. Apart from the issue of substitution of name of mother with that of son, there is another difficulty of mother crossing the age of 45 years. The said restriction is imposed in para No.11 of the G.R. dated 21.09.2017. The petitioners have not challenged the provision. The challenge to the G.R. dated 21.09.2017 is restricted to condition No.21, which imposes restriction on substitution of name in the wait list. Thus the condition of removal of name of the representative from the waiting list on crossing age of 45 years is not challenged in the present petition.

14. Situation, therefore, that emerges is that even though the name of the petitioner no.2 could have been substituted in place of the petitioner No.1 in accordance with the judgment in the case of Dnyaneshwar Ramkishan Musane (supra) and in the case of Prashant Bhimrao Desai (supra), on account of mother crossing age of 45 years, her name is required to be struck off removed from the waiting list. Since the mother's name would not remain in the wait list, there would be no occasion for substitution of her name with that of petitioner No.2.

15. Relying on the decision in the case of Nagmi Firdos Mohammad Salim (supra), Mr.Tope has submitted before us that the factual situation in that case is similar to that of present one. He submits that this Court has taken into consideration both aspects of impressibility of substitution of name as well as crossing the age of 45 years and, therefore, present petition deserves to be allowed in the light of the order in the case of Nagmi Firdos Mohammad Salim (supra). On going through the said decision, we find that this Court has essentially dealt with aspect of substitution of name of representative in the waiting

list. Even though in that case also the mother had crossed age of 45 years, this Court has not gone into the legality of para 11 of the G.R. dated 21.09.2017, which prescribes the age bar of 45 years. Therefore, it cannot be said that the decision in Nagmi Firdos Mohammad Salim (supra) is an authoritative pronouncement on the issue of permissibility of substitution of name even after crossing the age bar of 45 years. On the other hand, we have considered the combined effect of the two conditions of substitution of name and crossing the age of 45 years in the present judgment. We are therefore of the considered opinion that decision in the case of Nagmi Firdos Mohammad Salim (supra) cannot be said to lay down a law to the effect that substitution of name of a representative is permissible even after crossing the age of 45 years. The decision is therefore clearly distinguishable.

Judgment in the case of Mangalabai (Supra) is dated 20.08.2022. On 22.08.2022 Nagpur Bench of the Hon'ble Bombay High, in the case of Sharad son of Namdeo Vs. the State of Maharashtra took a view identical to the one taken in Nagmi Firdos (Supra) to conclude that substitution of one dependent by

another was permissible even after the first dependent had crossed the upper age limit. I respectfully rely on the judgments of the Bombay High Court in Nagmi Firdos and Sharad son of Namdeo.

5. In view of legal position laid down in above referred rulings, the O.A. deserves to be allowed. Hence, the order.

ORDER

The respondents are directed to consider the case of the applicant for appointment on compassionate ground on its own merits - within two months from the date of receipt of this order.

The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 28/03/2023
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 Member (J) .
Judgment signed on : 28/03/2023.
and pronounced on