

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 194/2020

Shrikant S/o OmakrGourkhede,
Age 31 years, Occ:Nil,
R/o Village At Post Ridhora,
Post :Ridhora, Tq. Katol,
District : Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Rural Development,
And Public Works,
Mantralaya, Mumbai-400 032.
- 2) The Chief Engineer,
Public Works Regional Division,
Nagpur.
- 3) Superintending Engineer,
Public Works Circle,
Nagpur.
- 4) Executive Engineer,
Public Works Department
Division No.2,
Nagpur.
- 5) Sub Divisional Engineer,
Public Works Sub Division,
Katol, TahsilKatol,
District : Nagpur.

Respondents

ShriA.B.Moon, Ld. counsel for the applicant.
ShriH.K.Pande, Ld. P.O. for the respondents.

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

Dated: - 17th March 2022.

JUDGMENT

Judgment is reserved on 11th March, 2022.

Judgment is pronounced on 17th March, 2022.

Heard Shri A.B.Moon, learned counsel for the applicant and Shri H.K.Pande, the Ld. P.O. for the Respondents.

2. Case of the applicant is as follows:-

Father of the applicant who was working as Majoor in the respondent department died in harness on 15.3.1997 leaving behind wife, son, present applicant and seven daughters. Mother of the applicant filed application (Annexure A-3) dated 25.6.1997for giving appointment on compassionate ground. Respondentno.4 wrote a letter to respondent no.3. By letter dated 08.09.1998(Annexure A-5) respondent no.3 intimated mother of the applicant that her name was included in common seniority list and it was at Sr.no.44. However, mother of the applicant did not get appointment. On attaining majority the applicant applied on

20.2.2008 (Annexure A-7) for appointment on compassionate ground. His mother had, by swearing an affidavit before Tehsildar, Katol, given her consent for such substitution. The applicant was informed by letter dated 12.6.2008 (Annexure A-8) that his mother was required to execute a bond that she was giving up her seniority in the list and would have no objection to consider claim of her son from the date of application made by him. Such indemnity bond (Annexure A-10) was executed and submitted to authorities. The applicant still did not get appointment. Hence, this application.

3. Affidavit in reply of respondent 1 to 4 is at pages 53 to 57. To this reply G.R.s. date 23.4.1976, 22.8.2005, 6.12.2010 and 21.9.2017 are attached.

4. It was submitted by Advocate Shri A.B.Moon for the applicant that what was perceived to be a bar on substitution of one legal heir by another no longer remains in view of several Judgments passed by this tribunal and the Bombay High Court. To support this submission the applicant has relied on the following judgments.

- 1) Judgment of this tribunal dated 21.10.2016 in O.A.No.239/2016.

- 2) Judgment of this tribunal dated 23.1.2020 in O.A.No.863/2017.
- 3) Judgment of Bombay High Court dated 5.7.2018 in W.P.No.2168/2017.
- 4) Judgment of Bombay High Court dated 5.7.2019 in W.P.No.2169/2017.

So far as the question for determination i.e. substitution of one legal heir of the deceased by another is concerned, reliance may be placed on following rulings:-

(i) **DnyaneshwarRamkishanMusane 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.”

(ii) **Smt.Vandanawd/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 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) **NagmiFirdosMohammadSalim and another V/s State of Maharashtra and others (judgment dated 15.12.2021 delevered 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 **DnyeshwarRamkishanMusane** (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/w/o Shankar Nikure and one another V/s State of Maharashtra and two others).”*

4) The respondents have relied on the judgment of this tribunal dated 1.11.2018 in O.A.No.252/2018 where in it is held that a dependent who was minor at the time of death of the employee must apply for appointment on compassionate ground within one year from attaining majority. In this case the applicant applied for substitution after obtaining consent of his mother who had initially applied for appointment on compassionate ground. Therefore, the ruling sought to be relied upon by the respondent will not be applicable.

For the reasons discussed above the application deserved to be allowed. Hence, this order.

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to consider application dated 20.2.2008 (Annexure A-7) for giving appointment to the applicant by including his name in the common seniority / waiting list subject to fulfilment of eligibility criteria and as per Rules.
- (iii) No order as to costs.

(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 : Raksha Shashikant Mankawde.

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

Judgment signed on : 17/03/2022.

and pronounced on

Uploaded on : 17/03/2022.