

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 217/2022(S.B.)

1. Ketan S/o Rajesh Pardakhe,
Age 22 Years, Occupation-Nil
2. Manisha Wd/o Rajesh Pardakhe,
Aged 46 Years, Occ. – Police Patil;

Both (1) & (2) R/o C-7B, Shivam Kunj,
Barde Layout, Near Borgaon Post Office, Borgaon
Chowk, Nagpur-440013

Applicant.

Versus

1. The Commissioner of Police, Nagpur
Office of the Police Commissioner, Nagpur.
Civil Lines, Nagpur-440001
2. The Superintendent of Police,
Wireless Office, East Zone,
Katol Naka Chowk, Katol Road, Nagpur.
3. The Collector,
Nagpur District, Collectorate Office,
Civil Lines, Nagpur-1.
4. State of Maharashtra,
Through the Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai-400 032.

Respondents

Shri R.S.Giripunje, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 18th November, 2022.

JUDGMENT

Heard Shri R.S.Giripunje, learned counsel for the applicant and
Shri V.A.Kulkarni, learned P.O. for the Respondents.

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

The father of the applicant namely Rajesh Namdeo Pardakhe was working as Assistant Sub-Inspector in the Police Department. He died in harness on 13.03.2010. The wife of deceased applied for compassionate appointment on 26.03.2010. Her name was taken on seniority list for appointment on compassionate ground. The applicant no.1 after attaining the majority applied for substitution. The applicant no.2 has cross the age of 45 years and therefore, it was informed to her by the letter dated 20.12.2021 stating that she has crossed the age of 45 years and therefore, her name was deleted. Before deletion of the name of applicant no.2, the applicant no.1 applied on 21.12.2017 for substitution of his name in place of the

name of his mother. Instead of substitution the respondents informed the applicants that name of applicant no.2 is deleted from the seniority list and the name of applicant no.1 cannot be substituted in view of Government Resolution of 2015. Hence, this O.A. for direction to the respondent to enter the name of applicant no.1 in the seniority list in place of the name of his mother and provide the service on compassionate ground.

3. O.A. is strongly opposed by the respondent no.3. It is submitted that as per Government Resolution dated 21.09.2017 (G.R. dated 20.05.2015) the substitution is not permissible. Therefore, the O.A. is liable to be dismissed.
4. Heard Advocate Shri R.S.Giripunje for the applicant, he has pointed out the decision of Bombay High Court, Bench at Aurangabad in the case of ***Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others*** and submitted that Government was directed to delete the unreasonable restriction imposed in the G.R. dated 20.05.2015. The learned counsel for the applicant submitted that in the year 2017 itself the applicant no.1 applied for substitution of his name in place of the name of his mother. The respondent on 28.12.2021 informed the applicant no.2 stating that her name is deleted from the waiting list. Because

she has crossed age of 45 years. In the communication dated 24.12.2021 it was informed to the applicant no.2 that substitution of applicant no.1 is not permissible.

5. Heard P.O. Shri V.A.Kulkarni, as per his submission the respondents have abided the Guidelines given in the G.R. dated 20.05.2015. Substitution is not permissible hence the O.A. is liable to be dismissed.
6. Documents filed on record show that applicant no.1 applied for substitution of his name i.e. on 21.12.2017. The name of applicant no.2 was brought in the seniority list in the year 2010 itself. The respondent no.1 not provided any employment to applicant no.2. The respondent not considered for substitution of the name of applicant no.1 on the ground that there is restriction imposed in the G.R. dated 28.05.2015.
7. The Hon'ble Bombay High Court Bench at Aurangabad in the case of **Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others** has held that "the restrictions imposed in the G.R. dated 28.05.2015 for not substitution of the name of other legal heirs is unreasonable and therefore the State Government was directed to delete the same. Material portion of

the judgment in the case of **Dnyaneshwar Ramkishan Musane** is 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.**

In view of the judgment in the case of *Dnyaneshwar Ramkishan Musane Vs. The State of Maharashtra and Others* the applicant no.1 is entitled to get his name substituted in place of the name of his mother i.e. applicant no.2. Hence, the following order.

ORDER

- 1) The O.A. is allowed.
- 2) The respondents are directed to substitute the name of applicant no.1 in place of the name of his mother i.e. the applicant no.2 in the same seniority list in which the name of applicant no.2 was recorded. The respondents are directed to appoint the applicant no.1 on compassionate ground as per Rule.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 18/11/2022

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 : 18/11/2022.
Uploaded on : 22/11/2022.