

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 343/2020**

- 1.Smt. Jaymala Anantrao Anasane  
Age 45 years, Occ.-Household
2. Mayur Anantrao Anasane  
Aged 21 years, Occ. – Education  
Both R/o. Kothari Watika No.4,  
Malkapur Tq. & Dist. Akola

**Applicant.**

**Versus**

- 1) State of Maharashtra through,  
Additional Chief Secretary,  
Home Department, Mantralaya,  
Mumbai 400 032
- 2) Superintendent of Police,  
Akola Dist. Akola

**Respondents**

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Shri V.B.Bhise, Ld. counsel for the applicant.  
Shri H.K.Pande, Ld. P.O. for the respondents.

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

**Dated: - 08<sup>th</sup> April 2022.**

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**JUDGMENT**

**Judgment is reserved on 05<sup>th</sup> April, 2022.**

**Judgment is pronounced on 08<sup>th</sup> April, 2022.**

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

2. Case of the applicant is as follows –

Anantrao Anasane was holding the post of Police Constable. He died in harness on 08.07.2006. Applicant No.1, wife of the deceased submitted application (Annexure A-1) on 16.08.2006 to appoint her on compassionate ground. She then gave her consent (Annexure A-5) to serve on a Group-D post. Her name was included in the waiting list. On 03.04.2017 she made an application (Annexure A-7) that in her place name of her son, applicant no.2, be considered for giving an appointment on compassionate ground as he had attained majority on 23.05.2017. She received no communication from the respondent department. Hence, this application.

3. Reply of respondent no.2 is at pp.24 to 28. He has resisted the application on the ground of the following clause in G.R. dated 20.05.2015 (Annexure R-1)-

क) अनुकंपा तत्वावरील प्रतीक्षा सूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नाव अनुकंपाधारकांच्या प्रतीक्षा सूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षा सूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षा सूचीमधील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही.

4. It was submitted by Shri V.B. Bhise, learned counsel for the applicant that in view of legal position laid down in the following rulings the application deserves to be allowed.

(i) **Dnyaneshwar Ramkishan Musane 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.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 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) *Nagmi Firdos Mohammad Salim 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 preset in G.R. dated 20.5.2015 and it has been held in **Dnyeshwar 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).”

5. In view of this legal position, the application will succeed.

Hence, the order.

### **ORDER**

(i) Application is allowed.

- (ii) The respondents are directed to consider application dated 03.04.2017 (Annexure A-7) for giving appointment to applicant no.2 on compassionate ground by including his name in the common seniority / waiting list subject to fulfilment eligibility criteria and as per Rules.
- (iii) No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 08/04/2022.

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 Member (J).

Judgment signed on : 08/04/2022.  
and pronounced on

Uploaded on : 08/04/2022.\*