

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 61/2017 (S.B.)**

Smt. Vachchala Wd/o. Ashok Narad,
Aged about 48 years,
Occupation : Household,
R/o. Post Satak, Tq.Parshioni,
District – Nagpur.

Applicant.

Versus

- 1) State of Maharashtra
Through the Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.
- 2) Superintending Engineer & Co-ordination Office,
Vigilance Unit (Nagpur Co-ordination),
Water Resources Department, Nagpur.
- 3) Superintending Engineer & Administrator,
Command Area Development Authority,
Water Resources Department , Ajani, Nagpur.
- 4) The Collector, Nagpur District,
Nagpur.
- 5) The Collector, Bhandara,
Dist.Bhandara.

Respondents

Shri S.U.Nemade, Ld. counsel for the applicant.

Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated: - 10th March, 2023.

JUDGMENT

Judgment is reserved on 15th February, 2023.

Judgment is pronounced on 10th March, 2023.

Heard Shri S.U.Nemade, learned counsel for the applicant and Shri

M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant, in short, is as follows.

Her husband Ashok was holding a Class-IV post on the establishment of respondents 1 to 3. He died in harness on 14.03.2006. The applicant submitted an application for appointing her on a suitable post on compassionate ground. Her name was included in the waiting list. On 03.11.2008 the applicant submitted an application (Annexure A-8) that her son Mayur be considered for giving an appointment on compassionate ground in her place, on his attaining majority, his date of birth being 12.02.1999. By communication dated 30.03.2009 (Annexure A-9) the applicant was informed that either major daughter or her minor son, on attaining majority could apply for appointment on compassionate ground. By G.R. dated 06.12.2010 (Annexure A-7) upper age limit for appointment on compassionate ground was increased from 40 to 45. By letter dated 20.10.2012 (Annexure A-10) the

applicant was called upon to remain present for document verification on 31.10.2012. The applicant did not receive this letter. She was again called for verification of documents on 29.04.2013 by communication dated 15.04.2013 (Annexure A-11). By communication dated 17.06.2013 (Annexure A-13) it was informed that the applicant had completed 45 years on 15.11.2012 and her case for compassionate appointment could be considered only as a special case by the Government. By communication dated 10.01.2014 addressed to respondent no.1 (Annexure A-16) respondent no.2 reiterated this stand. By communication dated 21.03.2016 (Annexure A-18) the applicant was informed that there was no provision in G.R. dated 22.08.2005 to substitute one dependent by another and hence her prayer to substitute her name with that of her son Mayur could not be allowed. By communication dated 23.06.2016 (Annexure A-20) the applicant was informed that respondent no.1 had not taken any steps on recommendation dated 10.01.2014 (Annexure A-16).

3. In para 6 of his affidavit in reply (at page 81) respondent no.3 has admitted that after the death of her husband the applicant had applied for appointment on compassionate ground and deletion of her name from waiting list was deferred till she had attained 45 years in view of G.R. dated 06.12.2010 (Annexure A-7).

4. Record shows that on 03.11.2008 the applicant had applied for substitution of her name by that of her son Mayur who was at that point of time only 9 years old. The applicant desired that Mayur, on becoming major, should be considered in her place for appointment on compassionate ground. By communication dated 30.03.2009 (Annexure A-9) the department had informed the applicant that such substitution could be considered.

5. Following relevant facts need to be reiterated. On death of her husband the applicant applied for appointment on compassionate ground. She was 38 years old. By order dated 04.11.2008 (Annexure A-6) deletion of her name from the waiting list on completing 40 years was proposed as per G.R. dated 22.08.2005. However, by G.R. dated 06.12.2010 (Annexure A-7) upper age limit was increased to 45 years. On completion of 40 years, faced with the prospect of getting nothing, the applicant applied for substitution on 03.11.2008 keeping an eye on future because at this point of time her son Mayur was barely 9 years old. She was aware that Mayur's case could be considered only after he had become major. Eventually, when the applicant completed 45 years her name was deleted from the waiting list.

6. The applicant has prayed that she be deemed to have been appointed to any suitable post w.e.f. 23.05.2012 as, on the said date, she had not completed 45 years. She has prayed in the alternative that she be given an appointment

by disregarding upper age limit of 45 years, as a special case. Both these prayers lack merit.

7. Next prayer of the applicant is that of substituting her name with that of her son Mayur. By communication dated 21.03.2016 (Annexure A-18) this prayer was turned down.

8. In support of prayer for substitution, learned Advocate for the applicant has relied on the following Judgments and Rulings.

A. Judgment dated 23.01.2020 passed by this Tribunal (Mumbai Bench) in O.A. No. 863/2017.

B. Judgment dated 15.11.2021 passed by the Aurangabad Bench of this Tribunal in O.A. No. 205/2019.

C. Common Judgment dated 21.01.2019 passed by the Mumbai Bench of this Tribunal in O.A. Nos. 427/2016 and 509/2018.

These Rulings support case of the applicant. Further, in the following rulings legal position in respect of substitution and perceived Bar under G.R. dated 20.05.2015 is laid down as under:-

(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) Nagmi 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)."

9. The contesting respondents, on the other hand, have relied on "Mangalabai Janardhan Shinde and Another Vs. State of Maharashtra and Another 2022 SCC Online Bom 1694." In this case 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.

10. 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. The main reason for relying on these judgments is the fact that when name of the applicant was deleted from the waiting list on account of completing 45 years in the year 2012, her son Mayur was still minor, his age being 13 years and hence at this point of time his case for grant of appointment on compassionate ground could not have been considered.

Hence, the order

ORDER

1. The impugned order dated 21.03.2016 (Annexure A-18) is quashed and set aside.
2. The respondents are directed to consider the case of Mayur Ashok Narad for appointment on compassionate ground on its own merits – within two months from the date of receipt of this order.
3. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 10/03/2023

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 : 10/03/2023.
and pronounced on