

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 717/2017**  
**WITH C.A.No. 65/2018**

Akash S/o Khemdas Khadse  
Aged about 26 years, Occu: Nil  
R/o. Ambedkar Ward, Gautam  
Buddha Ward, Dist. Bhandara.

**Applicant.**

**Versus**

- 1) Superintendent of Police  
Bhandara, Dist. Bhandara.
- 2) The Secretary,  
Home Department, World Trade  
Centre, Cuffe Parade, Mantralaya  
Mumbai: 32
- 3) The Secretary,  
General Administrative Department,  
6<sup>th</sup> floor, Mantralaya, Mumbai: 32

**Respondents**

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Ms. M.P.Munshi, Ld. counsel for the applicant.  
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri M.A.Lovekar, Member (J).**  
**Dated: - 12<sup>th</sup> April 2022.**

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## **JUDGMENT**

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

**Judgment is pronounced on 12<sup>th</sup> April, 2022.**

Heard Ms. M.P.Munshi, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. In this application orders dated 10.03.2011, 17.03.2011 and 14.11.2014 (Annexures A-6, A-8 and A-10) respectively are impugned.

3. Case of the applicant is as follows. Father of the applicant, a Police Constable (Driver), died in harness on 20.06.2004. On 8.11.2004 his wife, mother of the applicant submitted an application (Annexure A-4) for appointment on compassionate ground. She did not get the appointment. Therefore, on 4.8.2008 she submitted an application (Annexure A-5) that instead of her, her son, the applicant be given an appointment on compassionate ground. By letters at Annexures A-6 and A-7 it was informed that there was no provision for such substitution. It was communicated to mother of the applicant that since she had crossed the age of 40 years, her name was deleted from the waiting list. Lastly, the applicant made a representation to respondent no.1 stating therein

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माझे वडील स्व.खेमदास लक्ष्मण खडसे पोलीस ब.नंबर ३६० हे पोलीस विभागात कार्यरत असतांनी दिनांक २०.६.२००४ रोजी हृदय विकाराने निधन झाले. माझी आई गं.भा. मिराबाई खेमदास खडसे यांची जन्म तारीख १०.०१.१९६० असून माझे वडीलाचे मृत्यू दिवशी दिनांक २०.६.२००४ रोजी आईचे वय ४४ वर्षे ६ महिने १० दिवस होते आणि अर्जदार आकाश खेमदास खडसे जन्म तारीख २९.०९.१९९२ असून वडील (खेमदास लक्ष्मण खडसे) मृत्यू दिवशी दिनांक २०.०६.२००४ रोजी वय १२ वर्षे २ महिने २१ दिवस होते.

आम्ही दोघे भाऊ व बहीन लहान असल्यामुळे माझी आई गं.भा.मिरा खेमदास खडसे यांनी मा.पोलीस अधिक्षक भंडारा कार्यालयाकडे अनुकंपा तत्वावर नोकरी मिळण्यासाठी दिनांक ०८.११.२००४ रोजी अर्ज सादर केला. तसेच दिनांक ०४.०८.२००८ रोजी आईचे ऐवजी अर्जदारास मुलास नौकरी देण्यांत यावी. यासाठी अर्ज सादर केला, परंतु आपले विभागाने याची दखल घेतली नाही.

अर्जदाराचे आईचे अर्ज दिनांक ०५.०३.२०११ नुसार मा.पोलीस अधिक्षक कार्यालयाने पत्र क्रमांक कक्ष.५/अनुकंपा.मिरा खडसे/२००८/१५०८/११ भंडारा दि.१०.०३.२०११ नुसार एका वारसानाचे नांव कमी करून दुस-या वारसाचे नांव नोंदणी करण्याबाबत तरतुद नाही. याबाबत आपणास या कार्यालयाचे पत्र क्रमांक कक्ष.४/अनुकंपा/२००८ दिनांक २१.०८.२००८ अन्वये स्वरुपात कळविण्यात आल्याचे कळविले आहे. परंतू दिनांक २२ ऑगस्ट २००५ चे शासन निर्णय अस्तित्वात येवूनही तब्बल तीन वर्षांनंतर मृत कुटुंबाच्या कर्मचा-यास कळविले आहे, हे शासन धोरणाचे विरुध्द आहे.

शासन सामान्य प्रशासन विभाग शासन निर्णय क्रमांक अकंपा-१००४/प्र.क्र. ५१/२००४/आठ दिनांक २२ ऑगस्ट २००५ मध्ये २(२) मध्ये ज्यांना वयाची ४० वर्षे पूर्ण झाली आहेत, त्यांची नावे सुचीतून काढून टाकण्यांत यावी. या अटीवर माझी आई गं.भा. मिराबाई खेमदास खडसे यांचे नांव यादीतून काढून टाकण्यांत आले.

Still his grievance was not redressed. Hence, this application.

4. In his reply filed to C.A.No.65/2018 respondent no.1 defended the impugned orders on the ground that there is no provision to allow substitution as sought initially by mother of the applicant and thereafter by the applicant himself.

5. In the following rulings the aforesaid ground is held to be unsustainable.

(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.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) *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 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/d/o Shankar Nikure and one another V/s State of Maharashtra and two others).”

Therefore, the application deserves to be allowed. Hence,  
the order:-

**ORDER**

- i) The O.A. is allowed. C.A.No. 65/2018 stands disposed of.
- ii) The impugned orders at Annexures A-6, A-8 and A-10 are quashed and set aside. The respondents are directed to consider application (Annexure A-12) filed by the applicant for giving appointment to him by including his name in the common seniority/ waiting list as per Rules and subject to fulfilment of eligibility criteria.
- iii) No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 12/04/2022

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 : 12/04/2022.  
and pronounced on  
Uploaded on : 12/04/2022.\*\*