

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 848/2023(S.B.)**

- 1) Kiran Prakash Gongale,  
Age 39 yrs. Occu. House wife,  
R/o. Ashi, Tal.-Chamorshi,  
Dist.-Gadchiroli.
- 2) Princi D/o.Prakash Gongale,  
Age 21 yrs. Occu. Nil,  
R/o. Ashti, Tal.-Chamorshi,  
Dist. – Gadchiroli.

**Applicants.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai - 32.
- 2) The State of Maharashtra,  
Through its Director General of  
Police Department,  
Mumbai – 32.
- 3) The Superintendent of Police,  
Police Superintendent Office Gadchiroli.

**Respondents.**

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Shri G.Gadge, Ld. Counsel for the applicants.  
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri M.A.Lovekar, Member (J).**  
**Dated: - 11<sup>th</sup> January, 2024.**

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### **JUDGMENT**

**Judgment is reserved on 09<sup>th</sup> January, 2024.**

**Judgment is pronounced on 11<sup>th</sup> January, 2024.**

Heard Shri G.Gadge, learned counsel for the applicants and  
Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicants is as follows. Husband of applicant no.1 who was serving in the respondent department succumbed to an attack by Naxals on 16.07.2007 when he was working in Gadchiroli District. Applicant no.1 submitted an application dated 25.10.2007 (Annexure A-3) for appointment on compassionate ground. At that time applicant no.2 and other children of applicant no.1 (and the deceased) were minor. On 22.11.2013 applicant no.1 made an application (Annexure A-4) that her name for appointment on compassionate ground be substituted by the name of her elder daughter, applicant no.2. In the meantime name of applicant no.1 was included in the waiting list. On 14.12.2022 applicant no.1 submitted an application

(Annexure A-9) that applicant no.2 be considered in her place for appointment on compassionate ground as she, applicant no.2 had attained age of 21 years. By the impugned communication dated 10.01.2023 (Annexure A-10) aforesaid request of applicant no.1 was turned down. It was communicated -

वरील विषयान्वये आपणास कळविण्यात आहे की, आपण अनुकंपा प्रतिक्रियादीमधील नाव बदलण्याकरीता विनंती केलेली आहे.

त्याअनुषंगाने "अनुकंपा नियुक्तीचा उद्देश कुटुंबावर ओढावणा-या आर्थिक आपत्तीत कुटुंबियांना तातडीने मदत मिळणे आहे. अनुकंपा तत्वावर नियुक्ती देतांना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा या योजनेच्या मागील भूमिका लक्षात घेऊन जो कर्मचारी मृत झालेला आहे. त्याच्या कुटुंबियांना तात्काळ उद्भवणा-या पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घेणे आवश्यक आहे. मा.सर्वोच्च न्यायालयाने दिलेल्या विविध निर्णयानुसार अनुकंपा तत्वावरील नियुक्ती हा कर्मचारी यांच्या कुटुंबाचा "वारसा हक्क" होत नाही. तसेच विशिष्ट कालावधी उलटून गेल्यावर अनुकंपा नियुक्ती अनुज्ञेय राहत नाही. अनुकंपा धोरणामध्ये प्रतीक्षासूचीमधील नाव बदलण्याची तरतुद नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपा धारकांच्या प्रतीक्षासूचीमध्ये समाविष्ट करण्याची तरतुद करण्यांत आलेली आहे. सद्यःस्थितीत या अनुषंगाने शासनाकडून मा.उच्च न्यायालय, औरंगाबाद येथे पुनर्विलोकन याचिका क्र.२२९४६/२०२२ दाखल करण्यात आली असल्याने प्रतीक्षासूचीवरील

उमेदवारांचे नाव बदलण्याची बाब विचाराधीन नाही." असे शासन स्तरावरून अवगत करण्यात आल्याचे पोलीस महासंचालक यांचे कार्यालयाकडून कळविण्यात आले आहे.

करीता अनुकंपा तत्वावर नामनिर्देशन बदलण्याच्या प्रकरणामध्ये वरीलप्रमाणे आपली धारणा निश्चीत व्हावी.

Hence, this O.A..

3. By filing reply respondent no.3 resisted the O.A. on the ground that substitution as sought by the applicants was not permissible.

4. The issue involved in this O.A. can be decided in light of what is held in the following rulings of Hon'ble Bombay High Court -

(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 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).”*

- (iv) Shri Sanjay Ramdas Dhote and Another –Vs- State of Maharashtra & 3 Others( decided by Hon’ble Bombay High Court, Bench at Nagpur in W.P. No.1003/2022 ). In this ruling it is held –

*“ We find that the reliance placed by respondent no.4 on the Government Resolution dated 20.05.2015 to reject the request of the petitioner is against the law laid down by the Dnyaneshwar Ramkishan Musane V/s State of Maharashtra and Ors., wherein Government Resolution dated 20.05.2015 to the extent of prohibiting the substitution of name, has been quashed. The petitioners have also relied upon judgment in the case of Jayesh s/o Jivan Dange –Vs- The State of Maharashtra, through its Secretary, Rural Development Department, Mantralaya, Mumbai and Ors. wherein the coordinate bench of this Court of which one*

*of us ( A.S. Chandurkar, J.) was a member, by referring to the judgment of Dnyaneshwar's case (supra) observed that the substitution of name of the petitioner therein could not have been rejected by placing reliance upon Government Resolution dated 20.05.2015."*

- (v) **Shubhangi Vitthal Kamodkar -Vs- The State of Maharashtra & Ors. (2023(4) ALL MR 190 )**. In this case, it is held that substitution of name in wait list for giving compassionate appointment cannot be refused by taking recourse to G.R. dt.21/09/2017 since such rigid restriction makes it impossible to implement policy of the Government laid down in that behalf.

Hence, the order.

**ORDER**

1. The O.A. is allowed.
2. The respondents are directed to include name of applicant no.2 in the waiting list for appointment on compassionate ground and take further steps in accordance with law.
3. No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 11/01/2024  
rsm.

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 : 11/01/2024.  
and pronounced on : 12/01/2024.