

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 856/2022(S.B.)

1. Sangita Balkrushna Solanke,
Aged 46 years, Occ. – Household,
2. Akash Balkrushna Solanke,
Aged 22 years, Occ.- Education,
Both R/o. Saudamini Vasahat,
Khadki, Akola 444 004
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

Shri R.V.Shiralkar, Ld. Counsel for the applicants.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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

Dated: - 7th September 2023.

JUDGMENT

Judgment is reserved on 04th September, 2023.

Judgment is pronounced on 07th September, 2023.

Heard Shri R.V.Shiralkar, learned counsel for the applicants and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicants is as follows. Balkrushna Solanke, husband of applicant no.1 was serving as Hawaldar in the respondent department. He died in harness on 24.10.2007. On 19.12.2007 applicant no.1 submitted application (Annexure A-2) that one of her minor sons, be given appointment on compassionate ground on their attaining majority. Due to pressing need applicant no.1 again made an application on 21.02.2009 (Annexure A-3) for giving her appointment on compassionate ground. By letter dated 30.03.2017 (Annexure A-4) applicant no.1 was called upon to furnish documents necessary for giving her appointment on compassionate ground. On 27.04.2018 applicant no.2 attained majority. On 13.11.2018 applicant no.1 submitted application (Annexure A-5) stating therein as follows-

महोदय,

सविनय विनंती आहे की, माझे पती पोलीस विभागात पो.हेड कॉ. पदावर नोकरी करीत असताना दि.२४/१०/२००७ रोजी अपघात होवून मरण पावले आहेत. मला वरील संदर्भान्वये अनुकंपा तत्वावर पदभरती करीता पत्र मिळाले होते. परंतू मी

माझे भविष्याचा व माझे मुलांचा विचार करून सदरचे पद स्विकारले नाही. माझे शिक्षणसुध्दा परिपुर्ण नव्हते. सध्या मुलांचे वय १८ चे वर झाले असून माझा मुलगा नामे आकाश बाळकृष्ण सोळंके ह्यास माझे पतीचे जागेवर (पदावर) नियुक्ती मिळणेस विनंती.

To this application, application of applicant no. 2 for giving him appointment on compassionate ground, details of the family and “no objection” by elder brother of applicant no. 2, were attached.

On 20.07.2019 the impugned order (Annexure A-6) was passed rejecting application dated 13.11.2018. The impugned order stated:-

उपरोक्त संदर्भाकित विषयान्वये कळविण्यात येते की, आपले पती नामे बाळकृष्ण सोळंके, ब.नं. ११८ हे पोलीस विभागात कार्यरत असतांना त्यांचा अपघात झाल्यानंतर दिनांक २४/०७/२००७ रोजी त्यांचे निधन झाले आहे. दिवंगत कर्मचारी बाळकृष्ण सोळंके, यांचे निधन झालेनंतर आपण दिनांक १९/१२/२००७ अन्वये आपला मुलगा नामे आशिष किंवा आकाश यांना ते वयोगटात आलेवर त्यांचा अनुकंपा तत्वावर नोकरी मिळण्याकरीता या कार्यालयास अर्ज केला होता.

त्यानंतर दिनांक २५/०२/२००९ रोजी अर्ज सादर करून स्वतःला अनुकंपा तत्वावर नोकरी मिळणेबाबत विनंती केली होती. त्यान्वये आपली विनंती मान्य करून आपले नाव या कार्यालयाचे अनुकंपा प्रतिक्षायादीमध्ये अ.क.४८ वर घेण्यात आले होते. या घटकाचे आस्थापनेवरील वर्ग ४ (गट-ड) संवर्गातील रिक्त पदे भरतीकरीता आपणास बोलविण्यात आले होते. परंतु आपण सदर भरतीकरीता उपस्थित न राहता गैरहजर राहिलात.

त्यानंतर आता वरील संदर्भीय अर्ज करून आपला मुलगा नामे आकाश बाळकृष्ण सोळंके हा १८ वर्षांचे वर झाल्याने त्यांस आपले दिवंगत पतीचे जागेवर अनुकंपा तत्वावर नोकरी मिळणेकरीता अर्ज सादर केला आहे.

शासन निर्णय सामान्य प्रशासन विभाग क्र.अकंपा-१०१४/प्र.क्र.१६४/आठ दिनांक २०/०५/२०१५ व शासन निर्णय, सामान्य प्रशासन विभाग, दिनांक २१/०९/२०१७ मधील तरतूदीनुसार एकदा अनुकंपा प्रतीक्षा यादीत एका पात्र कुटुंबीयाचे नांव नोंदविण्यात आल्यानंतर केवळ नांव नोंदविलेल्या व्यक्तीचे निधन झाल्यासच दुस-या पात्र कुटुंबीयाचे नांव त्याचे ऐवजी घेण्याची तरतुद करण्यात आली आहे.

त्यामुळे या कार्यालयाकडून आपणास स्वतः अनुकंपा तत्वावर नेमणुकीकरीता बोलविण्यात आले असता आपण गैरहजर राहिलात व आता आपले ऐवजी आपला मुलगा नामे आकाश बाळकृष्ण सोळंके यांस आपले दिवंगत पतीचे जागेवर अनुकंपा तत्वावर नोकरी मिळणेकरीता या कार्यालयास केलेली विनंती ही वर नमुद शासन निर्णयात तरतूद नसल्याने अमान्य करण्यात येत आहे.

On 13.10.2020 and 20.05.2022 applicant no. 1 made representations (Annexure A-7, collectively) that applicant no. 2 be given appointment on compassionate ground.

Applicant no. 1 is suffering from various ailments as reflected in medical papers (Annexure A-9). The impugned communication dated 20.07.2019 (Annexure A-6) cannot be sustained in view of crystallized position of law that substitution of one dependent of

the deceased by another for giving appointment on compassionate ground is permissible. Hence, this O.A..

3. Stand of respondent no. 2 is that substitution as sought by the applicant is not permissible. Sustainability of this stand of respondent no. 2 will have to be tested in view of facts of the case as well as legal position laid down in the following rulings:-

(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 **Dnyneshwar 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).”*

The applicants would have in view of aforesaid legal position, succeeded had it been a case of simple substitution. However, in the facts and circumstances of the case following undisputed

chronology may be reiterated. Husband of applicant no. 1 died on 24.10.2007. On 19.12.2007 applicant no. 1 made an application that one of her sons, who were then minor, be given appointment on compassionate ground on attaining majority. On 21.02.2009 applicant no. 1 made an application that she be considered for appointment on compassionate ground. Pursuant to application dated 21.02.2009 name of applicant no. 1 was included in the waiting list. By letter dated 30.03.2017 applicant no. 1 was informed that she should remain present with relevant documents on 03.04.2017 for appointing her on compassionate ground. On 27.04.2018 applicant no. 2 attained majority. On 13.11.2018 applicant no.1 submitted an application that applicant no. 2 be considered for appointment on compassionate ground. This request was turned down by the impugned order dated 20.07.2019.

4. In the impugned order it was stated that name of applicant no. 1 was included in the waiting list (at Sr. No. 48) she was called for giving appointment but she remained absent. This is not disputed by the applicant.

5. It is the contention of the applicants that on 08.11.2011 applicant no. 1 had expressed her desire that appointment be given to

applicant no. 2, entry to this effect was taken in the concerned register and hence the respondents ought not to have proceeded to issue the communication dated 30.03.2017 to give appointment on compassionate ground to applicant no. 1. According to the applicants, since applicant no. 1 had expressed her intention on 08.11.2011 itself, there was no question of applying G.Rs. of 2015 or 2017 to which a reference is made in the impugned order.

6. In her representation dated 20.05.2022 applicant no. 1 stated :-

दिनांक 31/03/2022 रोजी माहितीच्या अधिकारा अंतर्गत मी दिनांक 08/11/2011 रोजी आपले कार्यालयातील अनुकंपाच्या रजिस्टरला माझ्या ऐवजी माझ्या मुलास नोकरी देण्यात यावी माझी तब्येत ठीक नसल्याने मी नोकरी करू इच्छित नाही अशी प्रत्यक्ष सिसोदे, अनुकंपा लिपिक यांनी नोंद घेतलेली आहे व मी त्यावर सही केलेली आहे अनुकंपाचे रजिस्टरच्या त्या पानाची छायांकित प्रत स्पष्ट मागितली असता ती मला पुरविली नाही उलट आपले पत्र क्रमांक 8510/2022 दिनांक 25/04/2022 अन्वये पाठविलेल्या उत्तर पत्रकामध्ये माहितीचा तपशीला मध्ये आपले लिपिक दिनांक 08/11/2021 असे तसेच आम्ही वरीलप्रमाणे पानाची प्रत मागितली असता पत्रामध्ये मोघममध्ये अभिलेखाची पडताळणी केली अनुकंपाच्या रजिस्टरमध्ये श्रीमती संगीता बाळकृष्ण सोळंके यांची स्वतःच्या नावाची नोंद घेतलेली आहे व सन 2011 मध्ये मुलाच्या नावाची नोंद घेण्याबाबत अथवा नाव बदलणे बाबत कुठेही नोंद आढळून आलेली नाही असे दिशाभूल करून

तारखेचा स्पष्ट उल्लेख न करता मोघम माहिती कळविली आहे हे दिसून येत आहे

7. To sum up, initially applicant no. 1 applied for giving appointment on compassionate ground to one of her sons, on their attaining majority. Then she applied for giving her appointment on compassionate ground. Pursuant to the latter application her name was included in the waiting list. This was followed by communication dated 30.03.2017. Applicant no. 1 did not respond to it at all. According to her, letter dated 30.03.2017 ought not to have been issued because on 08.11.2011, as per her request, entry was taken in the concerned register to consider claim of applicant no. 2 for appointment on compassionate ground by way of substitution. Assuming that this version is true, request for substitution could not have been considered for want of clear and proper application and also for the reason that applicant no.1 had declined to accept appointment offered to her. In these facts, I do not find any infirmity in the impugned order disallowing substitution. The O.A. is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 07/09/2023
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 : 07/09/2023.
and pronounced on