

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 96/2023(S.B.)

- 1) Smt. Sunita Wd/o Vijay Bode,
Aged 48 yrs. Occupation : Nil.
- 2) Pankaj S/o Vijay Bode,
Aged 26 yrs. Occupation : Nil.
Both R/o Rahul Nagar, Bicchu Tekadi,
Near Kanchan Londry, Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Director General of Police,
Government of Maharashtra,
Shahid Bhagat Singh Marg,
Colaba, Mumbai-01.
- 3) Commissioner of Police,
Amravati City, Head Quarter, Amravati.

Respondents

Shri N.D.Thombre, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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

Dated: - 17th October, 2023.

JUDGMENT

Judgment is reserved on 13th October, 2023.

Judgment is pronounced on 17th October, 2023.

Heard Shri N.D.Thombre, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicants is as follows. Vijay Bode was working as Police Constable. He died in harness on 24.02.2001. His wife, applicant no.1 applied for appointment on compassionate ground. On 02.01.2009 applicant no.1 filed an application (Annexure A-2) that her son, applicant no.2 who was then minor, be considered in her place for appointment on compassionate ground, on attaining majority. Reply to this application for substitution was received by applicant no.1 which stated that for want of provision name of her minor son, applicant no.2 could not be entered in waiting list. On 19.12.2013 applicant no.1 had submitted an application (Annexure R-1) to include name of applicant no.2 in her place for appointment on compassionate ground. By communication dated 21.01.2014 (at P.27) she was informed that her

request could not be granted because on attaining age of 40 years her name was deleted from the waiting list, and there was no provision for substitution. On 15.04.2014 (Annexure A-3) application dated 14.03.2014 made by the applicant no.1 was forwarded to respondent no.2 with following endorsement-

प्रति,

पोलीस महासंचालक, म.रा. मुंबई

२/- श्रीमती सुनिता विजय बोंडे यांना वयाची ४० वर्ष पुर्ण झाल्याने त्यांचे नाव कमी करण्यात आल्याने त्यांच्या जागेवर त्यांचा मुलगा पंकज विजय बोंडे अनुकंपा नियुक्ती रद्द झाल्याने शमापित करण्याबाबत अर्ज योग्य त्या कार्यवाही करीता सोबत जोडून सादर आहे.

3. On 16.06.2014 respondent no.2 wrote to respondent no.1 as follows (Annexure A-4)-

उपरोक्त विषयास अनुसरून शासनास सादर करण्यात येते की, पोलीस आयुक्त, अमरावती यांच्या स्थापनेवरील पो.शि. विजय बोंडे यांचे दि.२४.०२.२००१ रोजी अपघाती निधन झाले होते. त्यांच्या निधनानंतर श्रीमती सुनिता बोंडे यांनी अनुकंपा तत्वावर नोकरी मिळण्यास केलेल्या विनंतीवरून पोलीस आयुक्तांनी त्यांचे नांव प्रतीक्षासूचीत घेतले होते. परंतु, श्रीमती बोंडे यांनी वयाची ४० वर्ष पूर्ण केल्याने शासन नियमानुसार पोलीस आयुक्तांनी त्यांचे नांव अनुकंपा नियुक्तीच्या प्रतीक्षासूचीतून दिनांक ०४.८.२००८ च्या पत्रान्वये कमी केले असल्याचे श्रीमती बोंडे यांना कळविले होते. त्यानंतर

श्रीमती बोंडे यांनी त्यांचा मुलगा नामे पंकज यास अनुकंपा तत्त्वावर नियुक्ती मिळण्याबाबत विनंती केली होती. परंतु, त्यांचा मुलगा त्यावेळी अज्ञान असल्याने त्यांचे नांव प्रतीक्षासूचीत घेता येणार नाही, असेही पोलीस आयुक्तांनी त्यांना कळविले होते. आता तो मुलगा १८ वर्षांचा झाला असल्याने श्रीमती बोंडे यांनी मुलास अनुकंपा तत्त्वावर नोकरी मिळण्याबाबत दि.१८.०२.२०११ रोजी पोलीस आयुक्त कार्यालयास विनंती अर्ज सादर केला आहे.

२. पोलीस आयुक्त, अमरावती यांचे क्र.गाआआमा/पशा-३/बोंडे/समापित /३६८६/२०१४. दिनांक ०५.०४.२०१४ चे पत्र श्रीमती बोंडे यांच्या दिनांक १४.०३.२०१४ च्या विनंती अर्जासह सोबत जोडले आहे. नामनिर्देशन बदलण्याची तरतूद शासनाच्या प्रचलित धोरणात नसली तरी नैसर्गिक न्यायाच्या दृष्टीकोनातून श्रीमती बोंडे यांच्याऐवजी त्यांचा मुलगा पंकज यांचे नांव अनुकंपा तत्त्वावरील प्रतीक्षासूचीत घेण्याबाबतचे अधिकार शासनास आहेत. तरी याबाबत शासनाचे यथायोग्य आदेश लवकर प्राप्त करून ह्या कार्यालयास कळवावेत, अशी विनंती आहे.

4. On 09.08.2022 applicant no.2 applied (Annexure A-6) for giving him appointment on compassionate ground. By the impugned communication (Annexure A-7) applicant no.2 was informed as follows-

उपरोक्त संदर्भ व विषयान्वये कळविण्यात येते कि पोशि/२२४० विजय बोंडे यांचा दि. २४.२.२००१ रोजी अपघाती मृत्यु झाला. त्यांच्या मृत्यु नंतर श्रीमती सुनिता बोंडे, विधवा पत्नी यांचे विनंती अर्जावरून नाव अनुकंपा प्रतीक्षासूचीमधे नोंदविण्यांत आले. त्यांनी वयाची ४० वर्ष पूर्ण

केल्याने व ४० वर्षापर्यंत नियुक्ती न मिळाल्याने शासन निर्णय, सामान्य प्रशासन विभाग दिनांक २२.८.२००५ मधील २ (२) तरतूदीनुसार प्रतिकासूची मधुन नाव कमी करण्यांत येवुन तसे या कार्यालयाचे पत्र दि.४.८.२००८ अन्वये श्रीमती सुनिता बोंडे यांना लेखी कळविले आहे.

मयत कर्मचा-याचा मुलगा १८ वर्षाचा झाल्यानंतर त्यांनी अनुकंपा तत्वावर नोकरीमध्ये समाविष्ट करण्याची विनंती केली आहे. परंतु शासन निर्णय, सामान्य प्रशासन विभाग दिनांक २२.८.२००५ मध्ये नमुद प्रमाणे मा. सर्वोच्च न्यायालयाने दिलेल्या निर्णयानुसार अनुकंपा तत्वावरील नियुक्ती हा कर्मचा-याच्या कुटुंबाचा "वारसा हक्क" होत नाही. तसेच शासन निर्णय, सामान्य प्रशासन विभाग दिनांक २१.९.२०१७ मधील नियम ३ (२१) व (२४) नुसार प्रतिकासूची मधील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही. तसेच नियम ३ (२६) अन्वये अर्जास झालेला विलंब क्षमापित करणे आणि या व्यतिरिक्त कोणत्याही अटी शिथिल करण्याची शक्ती शासनाकडे राहणार नाही असे स्पष्टपणे नमुद आहे.

त्यामुळे अर्जदार श्री. पंकज विजय बोंडे यांची विनंती शासन तरतूदीमध्ये बसत नसल्यामुळे विनंती अमान्य करण्यात येत आहे.

Hence, this O.A..

5. Stand of respondent no.3 is that G.Rs. dated 22.08.2005, 20.05.2015 and 21.09.2017 (Annexure R-4) do not provide for substitution and hence the impugned order cannot be faulted.

6. I have referred to the facts of the case about which there is no dispute.

7. In support of their case the applicants have relied on the Judgments of this Bench dated 27.04.2022 (in O.A.No.181/2020 decided on 27.04.2023 and in O.A.no.1141/2022 decided on 20.06.2023).

8. 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.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 Mohmmad 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 present 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. Vandanawd/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.

(vi) & (vii) In **“Mangalabai Janardhan Shinde and Another Vs. State of Maharashtra and Another 2022 SCC Online Bom 1694”** 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 Mohmmad 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.

Judgment in the case of Mangalabai (Supra) is dated 20.08.2022. On 22.08.2022 Nagpur Bench of the Hon'ble Bombay High Court, 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.

9. For the reasons discussed hereinabove, the O.A. deserves to be allowed. Hence the order :-

ORDER

The O.A. is allowed.

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. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 17/10/2023
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 : 17/10/2023.
and pronounced on : 17/10/2023.