

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.1168 OF 2023**

**DISTRICT : KOLHAPUR**

1. Smt. Uma Prakash Patil, )  
Age 43 years, occ. Household, R/o A/P Padali, )  
Taluka Radhanagari, District Kolhapur )
2. Shri Vaibhav Prakash Patil, )  
Age 27 years, occ. Nil, R/o A/P Padali, )  
Taluka Radhanagari, District Kolhapur )..Applicants

Versus

1. The State of Maharashtra, )  
Through the Additional Chief Secretary, )  
Revenue & Forest Department, Mantralaya, )  
Mumbai 400021 )
2. The District Collector, Swarajya Bhavan, )  
Nagala Park, Kolhapur )
3. The Residential Deputy Collector, )  
Swarajya Bhavan, Nagala Park, Kolhapur )
4. The Sub-Divisional Officer, Karvir Sub-Division, )  
Bhavani Mandap, Kolhapur )
5. The Tahsildar, Taluka Karvir, Dist. Kolhapur )..Respondents

Shri P.S. Bhavake – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 21<sup>st</sup> March, 2024

PRONOUNCED ON: 15<sup>th</sup> April, 2024

### **J U D G M E N T**

1. By invoking Section 19 of the Administrative Tribunals Act, 1985 the applicants are challenging the impugned order dated 21.6.2023 issued by respondent no.3 whereby the name of applicant no.2 is deleted and the name of applicant no.1 is restored in the waiting list of candidates seeking appointment on compassionate ground. The applicants are also seeking directions to the respondents to grant appointment to applicant no.2 on suitable post by taking into consideration his qualification in view of the death of his father.

2. The husband of applicant no.1 and father of applicant no.2 viz. Prakash Ramchandra Patil was working in Class III post of Talathi and he unfortunately expired during service on 10.12.2009 leaving behind wife and two children. The date of birth of the applicant no.1 is 5.3.1980 and that of applicant no.2 is 28.4.1996. The applicant no.1 submitted application dated 11.12.2009 seeking appointment on compassionate ground. However, while the name of applicant no.1 was included in the waiting list she was not granted appointment and when applicant no.2 became major the applicant no.1 made an application dated 28.5.2014 to respondent no.4 requesting him to grant appointment to applicant no.2 on compassionate ground instead of her. The respondents considered the application of applicant no.1 and vide letter dated 28.9.2016 included the

name of applicant no.2 and removed the name of the applicant no.1 in the provisional waiting list of candidates seeking appointment on compassionate ground. Thereafter the waiting list of candidates seeking appointment on compassionate ground was published in which name of applicant no.2 was shown at Sr. No.9 for Class IV post. As the applicant no.2 had acquired degree of Bachelor of Arts in October, 2017, he made an application dated 21.2.2019 requesting respondent no.2 to include his name in the waiting list of candidates seeking appointment on compassionate ground in Class III instead of Class IV post. The respondents subsequently removed the name of applicant no.2 from the waiting list and re-included the name of applicant no.1 in the waiting list of candidates seeking appointment on compassionate ground on the ground that there is restriction on replacing names of candidates appearing in the waiting list with another legal heir of the deceased employee.

3. Ld. Advocate for the applicants challenge the deletion of name of applicant no.2 and prays that name of applicant no.2 be restored. He further pointed out that applicant no.1 is not aggrieved by inclusion of name of applicant no.2 in the waiting list instead of applicant no.1. He relied on the judgment of the Hon'ble Bombay High Court in **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra & Ors. 2020(5) Mh.L.J. 381**. He further pointed out GR dated 21.9.2017 which states that substitution is not permissible is prospective in operation and that the name of applicant no.2 was included in the waiting list on 30.8.2014 much prior to the said GR.

4. Ld. PO while refuting the contentions of the Ld. Advocate for the applicants refers to GR dated 21.9.2017. Para 21 of Annexure-A to the said GR dated 21.9.2017 reads as under:

“२१. अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे:-

कर्मचाऱ्याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबियांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नाव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेव निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र वारसदाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतल दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्ष पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दि. २०.०५.२०१५).”

5. He pointed out that name of applicant no.2 was inadvertently substituted in place of applicant no.1. Ld. PO relied on the judgment and order dated 27.4.2023 passed by this Tribunal in **OA No.462/2022 Smt. Mangal R. Khude & Anr. Vs. The State of Maharashtra & Ors.**

6. I have considered the submissions of both the sides. In this case it is seen that name of applicant no.1 still appears in the waiting list. The name of applicant was no.2 was inadvertently added in the year 2014. The object of compassionate appointment is to provide financial assistance to the distressed family on account of death of sole earning member. In this case it is seen that more than 15 years have elapsed since the death of the Government employee.

7. Thus, since the name of Applicant No.1 is already in waiting list and appointment is offered to her, if such request is allowed, it would result in anomalous situation and whole object of the scheme for compassionate appointment would be frustrated. Needless to mention that compassionate appointment is not right much less legally enforceable right, but it is by way of concession to the family of the deceased and such claim must be in consonance with the scheme. In scheme of compassionate appointment,

there is no such provision for substitution of name during the subsistence of the name of heir in the waiting list. As per scheme, it is only in a case of death of person whose name is waiting list, substitution is permissible.

8. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned communication dated 21.6.2023 is devoid of merit and O.A. liable to be dismissed. Hence, the order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

**Sd/-  
(Medha Gadgil)  
Member (A)  
15.4.2024**

Dictation taken by: S.G. Jawalkar.