

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.268 OF 2023**

**DISTRICT : MUMBAI**

1. Smt. Mahananda Arvind Chopade, )  
Age 50 years, occ. Nil, )
  
2. Kum. Poornima Arvind Chopade, )  
Age 21 years, occ. Nil, )  
Both R/o 201, A Wing, Sai Paradise, )  
Dr. Ambedkar Chouk, Naik Nagar, )  
Katrapp Badlapur (East), Tal. Ambarnath, )  
District Thane )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Secretary (Revenue), )  
Revenue & Forest Department, Mantralaya, )  
Mumbai 400032 )
  
2. The Collector, Court Naka, Thane 400601 )
  
3. The Secretary (Services), )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )..Respondents

Shri C.T. Chandratre– Advocate for the Applicant

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

CORAM : Smt. Medha Gadgil, Member (A)  
RESERVED ON : 16<sup>th</sup> January, 2024  
PRONOUNCED ON: 30<sup>th</sup> January, 2024

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

1. The applicants challenge removal of name of the applicant no.1 from the waiting list maintained for offering appointment on compassionate ground after attaining the age of 45 years. The applicants also seek inclusion of the name of applicant no.2 in the waiting list for appointment in Group-C post in place of applicant no.1.

Brief facts of the case:

2. The applicant no.1's husband Shri Arvind Narayan Chopade was working as Stenographer (Lower Grade) in the office of respondent no.1. He died in harness on 14.7.2012. The applicant no.1 and her 3 daughters are heirs and legal representatives of deceased Shri Arvind N. Chopade.

3. Subsequently applicant no.1 applied on 3.9.2012 for appointment on compassionate ground and her name was included in the waiting list. The applicant no.1 states that she has 3 children details of which are as under:

	<u>Name</u>	<u>Date of Birth</u>
(i)	Ulka Arvind Chopade	17.11.1998
(ii)	Poornima Arvind Chopade	15.12.2001
(iii)	Anupama Arvind Chopade	28.2.2006

All the above 3 daughters are unmarried and taking education and nobody is in service.

4. Ld. Advocate for the applicants submits that applicant no.1 applied to respondent no.2 for appointment on compassionate ground on 3.9.2012 as per the scheme framed by GR dated 26.10.1994. The applicant no.1 was found eligible for appointment on compassionate ground in Group-C and her name was taken in the waiting list at Sr. No.25 and her name was considered from 14.9.2012 but no appointment was given till 6.2.2018, when she attained the age of 45 years. Applicant no.1 by application dated 17.9.2019 requested respondent no.2 to include the name of applicant no.2 in the waiting list. Respondent no.2 on 28.11.2019 submitted a proposal to respondent no.1 seeking guidance whether to include name of applicant no.2 in the waiting list maintained for offering appointment on compassionate ground. Ld. Advocate for the applicant submits that decision on this proposal is still pending. In the meanwhile by order dated 29.11.2019 respondent no.2 removed the name of applicant no.1 from the waiting list stating that applicant no.1 had crossed the age of 45 years.

5. Ld. Advocate for the applicants further pointed out that applicant no.2 attained majority on 15.12.2019 but applied on 17.9.2019 requesting the respondents to take her name in the waiting list. This was followed by request letters dated 31.12.2019, 15.1.2020, 22.9.2020, 10.2.2021, 13.9.2021 and 20.12.2021.

6. Ld. Advocate for the applicants pointed out GRs dated 20.5.2015 and 21.9.2017 and states that there is no provision to substitute the names of legal representatives in the waiting list to be maintained for offering appointment on compassionate ground. However, he pointed out that the Hon'ble Bombay High Court, Bench at Aurangabad was pleased to observe in the order dated 11.3.2020 in W.P. No.267/2018 that the prohibition imposed by GR dated 20.5.2015 is arbitrary, irrational,

unreasonable and violative of Article 14 of the Constitution of India. He therefore prays that name of the applicant no.2 be included in the waiting list.

7. In response to my query applicant has submitted affidavit dated 29.12.2023 stating that other two daughters have given their No Objection Certificate for appointment of applicant no.2. The applicant no.2 also has given undertaking that if she is given appointment on compassionate ground she will look after her mother and sisters.

8. Ld. Advocate for the applicant relies on the judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra, W.P. No.6267 of 2018 decided on 11.3.2020** and the judgment of this Tribunal in **OA No.229 of 2023, Snehal Sharad Chaudhari Vs. The State of Maharashtra decided on 15.9.2023.**

9. This is a case of compassionate appointment and the very objective of the scheme is to alleviate the financial difficulties of the distressed family due to the loss of sole earning member of the family.

10. In **Dnyaneshwar R. Musane Vs. State of Maharashtra, W.P. No.6267 of 2018 decided on 11.3.2020** the Hon'ble Bombay High Court, Bench at Aurangabad considered G.R. dated 20.05.2015 which inter-alia states that where name of one legal representative of deceased employee is in waiting list, then another heir cannot request for substitution of name in the waiting list. Hon'ble High Court held that the said condition in G.R. dated 20.05.2015 is totally unjustified and directions were issued to delete the same. Hon'ble High Court held as under:-

*“We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of 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.”*

11. Ld. PO while opposing the contentions of the Ld. Advocate for the applicants relied on the affidavit in reply dated 12.9.2023 filed by Nilima Sahebrao Suryawanshi, Tahsildar (Revenue), in the office of Collector, Thane. It is stated in the affidavit that:

*“10.1 As per notification dated 31.7.2014 Thane District has been divided into Thane and Palghar District on 1.8.2014. In the year 2015 as per seniority our office appointed 11 compassionate candidates. As per letter issued by GAD dated 23.1.2018 the waiting list in the Thane have come from offices of Palghar, Vasai, Dahanu, Talasari, Javhar, Wada, Makhada and Vikramgad in the Thane District. Our office had issued directions to the Palghar Collector for inclusion in the common waiting list of the newly created Palghar District.*

*10.2 Accordingly on 11.2.2019 our office has prepared and published Thane District wise compassionate candidates list as per the last working office area of the deceased employee. Therefore, compassionate candidates could not be recruited as the process of district wise division of Thane-Palghar was going on.”*

12. Ld. PO pointed out that GRs dated 20.5.2015 and 21.9.2017 clearly states that no substitution of name is allowed.

13. I have considered submissions of both the sides. At this juncture, it would be also apposite to refer the decision of Hon'ble Supreme Court in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** which is squarely applicable to the present situation. In that case also, the name of widow was empanelled under the compassionate appointment scheme but later it was declined on account of crossing the age. Thereafter, her daughter made an application for substitution of her name in place of widow. The claim was opposed on the ground that the family had already managed to survive for 10 years, and therefore, there was no immediate necessity. The Hon'ble Supreme Court held that only because family had managed to survive 14 years, it cannot be the reason for rejection and whether the family pulled on begging or borrowing should not have been the consideration. In Para No.3, the Hon'ble Supreme Court held as under:-

*“3. We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”*

10. In this case it is seen that after the death of the deceased, his wife was not given appointment till she attained the age of 45 years.

11. In view of the judgment of the Hon'ble Bombay High Court in *Dnyaneshwar R. Musane* (supra), the substitution is permissible. The unreasonable restrictions imposed by the GR dated 21.9.2017 is not the obstacle for substitution of name of applicant. Hence, the following order:

**ORDER**

- A) The Original Application is allowed and the impugned order dated 29.11.2019 is quashed and set aside.
- B) The Respondent No.2 is directed to substitute the name of applicant no.2 in place of her mother in the same seniority waiting list for appointment on compassionate ground within one month from today and communicate the same to the applicant no.2 within two weeks thereafter.
- C) No order as to costs.

**Sd/-  
(Medha Gadgil)  
Member (A)  
30.1.2024**

Dictation taken by: S.G. Jawalkar.