

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.861 OF 2022

DISTRICT : SOLAPUR

Shri Shubham Yuvraj Manjare,)
Age 21 years, occ. Student, At & Post Devagaon,)
Taluka Barshi, District Solapur)..Applicant

Versus

1. The Superintendent of Police (Rural), Solapur)
2. The State of Maharashtra,)
Through the Chief Secretary, Home Department,)
Mantralay, Mumbai)..Respondents

Shri R.H. Patil – Advocate for the Applicant

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

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 14th July, 2023

PRONOUNCED ON: 24th July, 2023

J U D G M E N T

1. Heard Shri R.H. Patil, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Applicant prays that impugned order dated 3.3.2021 passed by respondent no.1, rejecting the application of the applicant for appointment on compassionate ground, be quashed and set aside and respondents may be directed to give appointment to the applicant on compassionate grounds as per application dated 20.8.2019.

3. Ld. Advocate for the applicant submits that father of the applicant Shri Yuvraj Shivaji Manjare was working as Police Constable at Solapur wherein he met with an accident and expired on 12.4.2000. At that time the applicant was minor. The applicant's mother made an application for compassionate appointment on 23.8.2000 and her name was included in the waiting list. Her application was not considered by the Superintendent of Police, Solapur and by order dated 28.7.2015 her application was rejected and her name was deleted from the waiting list on attaining the age of 45 years. Her request for substitution of her son's name in the waiting list was also rejected.

4. Ld. Advocate submits that the applicant was minor and on attaining majority he has made an application on 20.8.2019 to respondent no.1 for compassionate appointment. He again made a representation on 6.1.2021. The respondent no.1 passed the impugned order dated 3.4.2021 rejecting the application of the applicant for compassionate appointment holding that the name of mother of the applicant was deleted as she attained the age of 45 years and there is no provision of substitution or adding names of legal heirs as per GR dated 20.5.2015. Therefore, this OA is filed challenging the order dated 3.4.2021.

5. Ld. Advocate for the applicant relied on the judgment of the Hon'ble Bombay High Court, Aurangabad Bench in Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra & Ors. 2020(5) Mh.L.J. 381 wherein it is

held that restriction imposed by the GR dated 20.5.2015 is unjustified and it is directed that it be deleted. It is held in para 6 that:

“6. In this view of the matter, we find that the restriction imposed by the Government Resolution dated 20.05.2015 that name of legal representative of deceased employee cannot be considered in place of another legal representative of that deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground, is unjustified.

6. Ld. Advocate for the applicant then relied on the judgment and order dated 22.4.2022 passed by the Aurangabad Bench of the Hon'ble High Court in W.P. No.5612 of 2021 in Chavan Shubham Diliprao & Ors. Vs. State of Maharashtra & Ors. wherein in para 8 it is observed that:

“8. Insofar as the ground of being age barred, we find that Vandana Chavan and Rekha Warkad are age barred. By an order delivered by this Court in Dnyaneshwar Ramkishan Musane vs. State of Maharashtra and others, 2020(5) Mh.L.J. 381, this Court has concluded that the Government Resolution dated 20th May, 2015, prohibiting alteration in the name of eligible candidate, is held to be unsustainable. In particular set of facts, this Court has held that change in the candidate by way of replacement, subject to the eligibility of the candidate, is permissible.”

7. Ld. Advocate for the applicant also relied on the judgment and order dated 4.8.2022 passed by this Tribunal in OA No.996 of 2021 Smt. Suvarna Sanjay Shinde Vs. The State of Maharashtra & Ors. wherein it is observed that:

“13. Despite the aforesaid directions of the Hon’ble High Court, instead of taking remedial measures, the respondent no.2 rejected the claim of the applicant on the basis of same stipulation in GR which is held unjustified and directions were also given to delete the same. Now, this is high time that the Government should take remedial measures so as to advance the aim and object of the scheme of appointment on compassionate grounds.

14. (C) The Respondent No.2 – Collector, Kolhapur is directed to revive and restore the name of the applicant in the waiting list for issuance of appointment order subject to fulfillment of eligibility criteria on suitable post in accordance to Rules.”

8. Ld. PO submits that earlier his claim was rejected on 28.7.2015 and it was not challenged by the applicant. Ld. PO refers to last para of the letter dated 28.7.2015 issued by respondent no.1. Ld. PO submits that although the Hon’ble High Court has struck down the GR dated 20.5.2015 thereafter a consolidated GR dated 21.9.2017 was issued by the GAD. He states that there is no provision for substitution. Ld. PO therefore prays that the OA may be dismissed.

9. Ld. Advocate for the applicant submits that the subsequent GR dated 21.9.2017 only reiterates earlier provisions. Therefore, he states that the GR has been directed to be deleted.

10. Ld. PO submits that the order of the Hon’ble High Court in *D.R. Musane* (supra) has struck down the GR dated 20.5.2015. However, it has not struck down the subsequent GR dated 21.9.2017.

11. Ld. Advocate for the applicant has referred to para 10 of the judgment of this Tribunal in *S.S. Shinde* (supra). He states that both the

GRs are considered by this Tribunal in the order dated 4.8.2022. Para 10 reads as under:

“10. GR dated 21.9.2017 is consolidated GR whereby all earlier GRs regulating terms and conditions of the scheme of compassionate appointment are again reiterated. Indeed, the stipulation of deleting name of heir from the waiting list on attaining the age of 45 years was initially incorporated in earlier various GRs including GR dated 20.5.2015.”

12. In this connection it is important to take note of decision of the Hon'ble High Court in *D.R. Musane* (supra). In this case the name of widow was taken in waiting list but on attaining the age of 45 years her name came to be deleted and request of the son to substitute his name in place of his mother was rejected. The Hon'ble High Court held that restriction imposed by GR dated 20.5.2015 is unjustified and observed in the order that:

“I] 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.

13. In the light of the aforesaid facts and the ratio laid down in *D.R. Musane* (supra), I pass the following order.

14. The Original Application is allowed and the impugned order dated 3.3.2021 passed by respondent no.1 is hereby quashed and set aside.

The Respondent No.1 is directed to substitute the name of the applicant in place of his mother in the waiting list. No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
24.7.2023

Dictation taken by: S.G. Jawalkar.

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