

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.8/2023  
IN  
ORIGINAL APPLICATION NO.462/2022**

1. Smt. Mangal Ramesh Khude )  
Resi : Athawad, Post. Chichondi )  
Patil, Tal. Dist. Ahmednagar 414201)
2. Shri Karan Ramesh Khude, )  
Resi : Athawad, Post. Chichondi )  
Patil, Tal. Dist. Ahmednagar 414201)

**....APPLICANTS**

**VERSUS**

1. The State of Maharashtra )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032 )
2. The Commissioner of Police, )  
New Mumbai, Sector 10, )  
Opposite RBI, CBD Belapur, )  
New Mumbai 400 614 )
3. The Director General of Police, )  
Maharashtra State, Mumbai, )  
Maharashtra Police Headquarter, )  
Shahid Bhagat Singh Marg, Colaba, )  
Mumbai 400 001 )

**....RESPONDENTS.**

Ms. Punam Mahajan, learned Counsel for the Applicants.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents

**CORAM : Justice Mridula Bhatkar (Chairperson)**

**DATE : 02.02.2024.**

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

1. Learned Counsel for the Applicant Ms. Mahajan has filed R.A. seeking review of order dated 27.04.2023 passed in O.A.No.462/2022 wherein the said O.A. was dismissed on the ground that the name of his mother is already taken in the waiting list and it cannot be substituted and as there is no provision of substitution of name during the subsistence of the name of the heir in the waiting list as. Learned Counsel could not produce any judicial decision or Government Policy to that effect. Learned Counsel has submitted that when the order dated 27.04.2023 was passed in O.A.No.462/2022 she could not lay hands over such decision.

2. Learned Counsel for the Applicant has placed reliance on the following judgments :

(i) Hon'ble High Court of Judicature, Bombay Bench at Aurangabad, **dated 27.02.2017 passed in W.P.No.1384 /2016, State of Maharashtra & Ors. Vs. Mohd Zakiyoddin Mohd Anisoddin**

(ii) Hon'ble High Court of Judicature, Bombay Bench at Aurangabad, judgment **dated 11.03.2020 passed in W.P.No.6767 /2015, Dnyaneshwar Ramkrishan Musane Vs. The State of Maharashtra & Ors.**

3. Learned P.O. has submitted that the application is beyond the scope of Review and does not contemplate order 47, Section 114 of the Civil Procedure Code. She has submitted that the applicant should have filed these judgments at the relevant time and therefore it is to be dismissed.

4. In the case of of **Zakiyoddin (supra)** the issue was whether the name of the Applicant can be substituted in the place of sister who has earlier applied for appointment on Compassionate Ground. In the order of **Zakiyoddin (supra)**, at paragraph 5 it is held that,

*“5) There cannot be dispute over the propositions of the Hon'ble Apex Court made in the cases cited supra. In the present matter State Government has specific policy to give appointment on compassionate ground to a dependent of the deceased employee. The policy cannot be that rigid that it makes impossible to implement of the policy. On this point learned counsel for the respondent Mohd. Placed reliance on the observations made by this Court in Writ Petition No.5073/2007 at this Bench (The State of Maharashtra & Ors. Vs. Smt. Anajli Vijay Naikwade & Another). Even when there was no Government Resolution to allow to change the candidate this Court had held that such substitute is possible if there is a policy to given appointment on compassionate ground. This Court also held that there cannot be such restrictions which are coming in the way of implementation of such policy. In view of the aforesaid policy of the Government, this Court holds that the Tribunal has not committed any error in setting aside the decision informed to the respondent Shri Mohd. Zakiyoddin in the aforesaid communication. It is not possible for this Court to interfere in the decision of the Tribunal. In the result, the petition stands dismissed.”*

5. In the case of **Musane (supra)**, the Government servant died. The Petition was filed by minor son and mother who had applied for appointment on Compassionate Ground and subsequently the mother gave up her claim. In paragraph 6, the Hon'ble Division Bench has considered that if there is name of only one legal representative of deceased employee 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 as it is unjustified. The relevant paragraph 6 is reproduced for reference,

*“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 deceased employee cannot be considered in place of another legal representative of that deceased employee whose name happens to be in the writing list for giving appointment on compassionate ground, is unjustified. Hence we pass the following order.”*

6. I have gone through the judgment of Single Bench dated 27.04.2023, at paragraph 6 of my predecessor who has made following query.

*“6. When Tribunal raised specific query to the learned Advocate for the Applicant as to how substitution is permissible and if there is any such judicial decision or Government policy to that effect, she fairly stated that there is no such decision or Government policy to substantiate her claim. All that, she stated that the Tribunal has rendered various decisions in which substitution was allowed in the circumstances where name of mother is deleted from the waiting list after attaining the age of 45 years. As such, it is only in a case where name of widow is deleted from waiting list after attaining the age of 45 years, in that situation, the Tribunal allowed the substitution. However, in the present case, the name of Applicant No.1 is still subsisting in the waiting list. Thus, it is not a case of substitution of heir after deleting the name of mother or other heir on attaining the age of 45 years. Where name is deleted from the waiting list on account of age bar for no fault on the part of heir, the substitution was allowed on the premises that where name is taken in the waiting list and continued years together without taking immediate steps for providing compassionate appointment, then deleting the name from waiting list would amount to denial of compassionate appointment.”*

*(emphasis placed)*

7. In view of the above, this Review Application is filed only on the basis of the two judgments dated 27.02.2017 and 11.03.2020 wherein Hon'ble High Court of Judicature, Bombay Bench at Aurangabad are on the identical points. Hence, as this material was not produced before the earlier Hon'ble Bench it is a good and sufficient ground to entertain this

Review Application as per Order 47 and Section 114 of the Civil Procedure Code. I am inclined to pass the following order :

**ORDER**

- (A) Review Application No.8/2023 is allowed.
- (B) Applicant's name is to be substituted with the name of her son within four weeks from the date of this order and the name of son is to be considered for appointment on compassionate ground there after within two months thereafter.

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**

prk