

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 570 OF 2021
(Subject – Compassionate Appointment)**

DISTRICT : NANDED

Shivkumar S/o Bhimrao Chamkure,)
Age : 31 years, Occu. : Labourar,)
R/o : Dhobi Galli, Mukhed, Tq. Mukhed,)
Dist. Nanded.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai-32.)
2. **The Commissionerate of Agriculture,**)
Commissionerate of Agriculture,)
M.S. Central Building, 3rd Floor,)
Pune-411 001.)
3. **The District Collector, Nanded,**)
Tq. and Dist. Nanded.)
4. **The District Superintendent**)
Agricultural Officer,)
Nanded, District Nanded.)

... **RESPONDENTS**

APPEARANCE : Shri C.R. Thorat, Counsel for Applicant.

: Shri S.K. Shirse, Presenting Officer for
respondents.

CORAM : **Hon'ble Justice Shri P.R. Bora, Vice Chairman**

DATE : **15.09.2023.**

ORAL - ORDER

1. Heard Shri C.R. Thorat, learned counsel appearing for the applicant and Shri S.K. Shirse, learned Presenting Officer appearing for respondent authorities.

2. Mother of the applicant was in Government Service as Class-IV employee. She died on 05.10.2015. Father of the applicant perhaps died prior to death of mother of the applicant. After demise of mother, eldest son namely Shankar applied for appointment on compassionate ground. The application was filed by him well within period of limitation i.e. one year and accordingly, his name was included in the wait list at Sr. No. 9 maintained at the office of respondent No. 4. As is revealing from the contentions raised in the O.A., name of Shankar Bhimrao Chamkure was removed on the ground that he crossed the age of 45 years. The name was removed on 21.09.2020. Thereafter on 30.09.2020, the present applicant viz. Shivkumar made an application seeking substitution of his name in place of his elder brother and to give him appointment on compassionate ground. It is the contention of the applicant that he is complying with the conditions, which are required for appointment on compassionate ground i.e. age, qualification etc.

3. It is the grievance of the applicant that when the name of his elder brother was in the waiting list and since it was removed as because he crossed the age of 45 years, the respondents were under an obligation to accept the request of the applicant to substitute his name in place of his elder brother.

4. Learned counsel for the applicant has relied upon the judgment of the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors.** Learned counsel submitted that the respondents in the affidavit in reply have raised the only defense that as per the G.R. dated 21.09.2017 substitution is not provided and as such, request of the applicant could not be considered. Learned counsel pointed out that the aforesaid clause in the aforesaid G.R., which was there in the earlier G.R. dated 20.05.2015 also was directed to be deleted by the Division Bench of the Hon'ble Bombay High Court in the case of **Dnyaneshwar Ramkishan Musane** (cited supra). According to the learned counsel, in the circumstances, the refusal on the ground of not having provision for substitution cannot be sustained and deserves to be set aside and consequently, the directions are required to be issued for inclusion of name of the applicant in place of his elder brother in

the waiting list of the candidates held eligible for to be appointed on compassionate ground maintained by respondent No. 4.

5. The respondent Nos. 1, 2 & 4 have filed affidavit in reply to resist the contentions raised in the Original Application and prayers made therein. Perusal of the affidavit in reply reveals that only ground, which has been raised to oppose the contentions raised in the O.A. is that the G.R. dated 21.09.2017 does not contain any such provision allowing substitution. No more defense has been raised by the respondents.

6. Learned P.O. in the circumstances has prayed for passing appropriate order.

7. After having heard the learned counsel for the applicant and learned P.O., I brought to the notice of the learned counsel for the applicant, the judgment delivered by the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad on 20.08.2022 in **W.P. No. 4451/2021 (Mangalabai Janardhan Shinde & another Vs. The State of Maharashtra and Another)**. In the aforesaid W.P., the petitioners therein had challenged the conditions in the Government Resolutions dated 20.05.2015 and 21.09.2017 prohibiting substitution of name in the waiting list for compassionate appointment. In the said matter, Zilla

Parishad (Respondent No. 1 in the said W.P.) had rejected the request of the petitioner No. 1 for substitution of her name with petitioner No. 2 i.e. her son in the waiting list for compassionate appointment on the ground that there is no such provision. In the said matter also the petitioners relied upon the judgment in the case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors., 2020(5) Mh. L. J. 381**. The respondent Zilla Parishad had filed the affidavit resisting petition inter alia on the ground that petitioner No. 1 has already crossed age of 45 years. No doubt, another ground was also raised by the Zilla Parishad that there is no provision for substitution of name in the waiting list. The Hon'ble Division Bench, though observed that in view of the judgment in the case of **Dnyaneshwar Ramkishan Musane** (cited 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, it further observed that apart from the issue of substitution of name of mother with that of son, there was another issue of 'the mother crossing the age of 45 years'. The said age restriction is imposed in paragraph No. 11 of the G.R. dated 21.9.2017. Admittedly, the petitioners had not challenged the said provision imposed in paragraph No. 11. Thus, removal of name of the mother from the

waiting list on her crossing age of 45 years was not challenged in the said Writ Petition.

8. In the above circumstances, the Hon'ble Division Bench dismissed the said Writ Petition on the aforesaid ground holding that 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. I deem it appropriate to reproduce herein below the observations made and findings recorded by the Hon'ble Division Bench of the Bombay High Court in paragraph Nos. 12 to 16 of the said judgment, which read thus: -

"12. 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.

*13. 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 and another** (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.*

*14. Relying on the decision in the case of **Nagmi Firdos Mohammad Salim and another** (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 and another** (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 Mohammad Salim and another** (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 and another** (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.

15. As has been rightly pointed out by Mr. Shinde, learned A. G. P. right of compassionate appointment cannot be postponed indefinitely. The observations of the Supreme Court in the case of **Sanjay Kumar** (supra) relied upon by Mr. Shinde, in para No. 3 of the judgment are as under :

“We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education & Anr. v. Pushpendra Kumar & Ors.* supra. It is also Significant to notice that on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

16. *It may well be argued that request for substitution of name was submitted on 12.09.2017 i. e. before the petitioner No. 1 attained age of 45 years. However, we would not permit such technical argument to prevail over the larger objective behind grant of compassionate appointment. In our opinion, if the respondents are directed to substitute the name of the petitioner No. 1 with that of petitioner No. 2 on account of the request being made prior to the petitioner No. 1 attaining age of 45 years, the same would result in a situation where the name of the representative of the deceased being continued in the wait list for indefinite period of time, which is obviously cannot be objective behind grant of compassionate appointment. The objective is to provide immediate financial assistance to the family of the deceased. Keeping the name of the substituted representative in the waiting list endlessly would completely frustrate such objective. In the wait list as on 31.08.2020, the name of the petitioner No. 1 figured at Sr. No. 47. Now, if we permit her name to be substituted by the name of the petitioner No. 2, the same would mean that the petitioner No. 2 would be waiting for compassionate appointment for substantially longer period of time henceforth. By now period of nine years has lapsed from the death of the employee. This would completely frustrate not only the objective behind compassionate appointment, but also specific stipulation in the G. R. dated 21.09.2017 for removal of name from the waiting list on attaining age of 45 years. What cannot be done directly is sought to be done in an indirect manner here. By substituting name of son in place of mother, who has already crossed age 45 years, we cannot permit the provision of age bar of 45 years being frustrated.”*

9. In the present matter also the applicant has admittedly not raised any challenge either to the removal of the name of his elder brother on the ground of his attaining the age of 45 years or to clause No. 11 of G.R. dated 21.9.2017. The facts reveal that earlier elder son namely Shankar of deceased Government servant i.e. brother of the present applicant had applied for the appointment on compassionate ground and his name was also included in the waiting list maintained for the

candidates eligible to be appointed on compassionate ground. The name of brother of the applicant was removed from the wait list on 21.9.2020 on account of his crossing age of 45 years and only thereafter on 30.9.2020 the applicant preferred an application praying for substituting his name in place of his brother. It is thus evident that the date on which the applicant made an application seeking appointment on compassionate ground by substituting his name in place of his brother, the name of his brother was not existing in the waiting list and was removed from the said list on 21.9.2020 on account of crossing age of 45 years.

10. In the above circumstances, as has been observed by the Hon'ble Division Bench of the Bombay High Court in the case of **Mangalabai Janardhan Shinde & another Vs. The State of Maharashtra and Another** (cited supra) since the brother's name was not existing in the wait list, there would be no occasion for substitution of the name of the applicant in place of his elder brother.

11. For the reasons discussed hereinabove, the prayer made by the applicant seeking substitution of his name in place of his brother in the wait list for compassionate appointment

cannot be accepted. The Original Application, therefore, deserves to be dismissed and is accordingly dismissed without any order as to costs.

PLACE : Aurangabad.
DATE : 15.09.2023

(Justice P.R. Bora)
Vice Chairman

KPB S.B. O.A. No. 570 of 2021 PRB Compassionate Appointment