

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

ORIGINAL APPLICATION NO. 99 OF 2022

DISTRICT : OSMANABAD

Rohit Changdev Mote,)
Age : 24 Years, Occu. : Education,)
R/o. Chikundra. Tq. Tuljapur, Dist. Osmanabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through : Secretary,)
Social Justice & Special Assistant Department,)
Mantralaya, Mumbai-32.)
2. **The Commissioner,**)
Social Welfare Commissionerate,)
Maharashtra State, Charchpath,)
Pune-411001.)
3. **The Regional Dy. Commissioner,**)
Social Welfare Department,)
Aurangabad.)
4. **The Assistant Commissioner,**)
Social Welfare, Osmanabad.)
5. **The Special District Social Welfare Officer,)**
Osmanabad, Administrative Building,)
Osmanabad.)
6. **The Warden,**)
Govt. Girls Hostel, Umarga,)
Dist. Osmanabad.)
7. **The District Collector,**)
Collector Office, Main Road, Osmanabad.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

CORAM : **Shri A.N. Karmarkar, Member (J)**
RESERVED ON : **04.02.2025**
PRONOUNCED ON : **18.03.2025**

O R D E R

1. By filing present Original Application, the applicant has prayed for quashing and setting aside impugned letter dated 01.11.2021 issued by respondent No. 7, thereby rejecting the request of applicant for substitution of his name in place of his mother in the waiting list for appointment on compassionate ground. The applicant is also seeking relief to direct the respondents to include his name in place his mother in the waiting list prepared for appointment on compassionate ground for Class-III cadre.

2. One Changdev Gangaram Mote i.e. father of the applicant was working with respondent No. 6 on the post of Peon /Watchman. He died in harness on 22.03.2007. The applicant was minor at that time. The applicant's mother had submitted application to respondent No. 6 for appointment on compassionate ground. The said application was forwarded by respondent No. 5 to respondent No. 7 – The Collector, Osmanabad vide letter dated 09.06.2008. The respondent No. 7-

Collector, Osmanabad sent letter dated 28.01.2008 with direction to submit fresh proposal after fulfilling requirements/queries. On 06.08.2010, respondent No. 6-the Warden, Govt. Girls Hostel, Umarga submitted proposal for appointment of mother of the applicant to respondent No. 5-Special District Social Welfare Officer, Osmanabad with recommendation, who then forwarded the said proposal to respondent No. 7-the Collector, Osmanabad. Respondent No. 7 has again returned the said proposal with direction to submit fresh proposal along with seven required documents. In response to letter of respondent No. 5, mother of the applicant has submitted application with documents on 24.01.2011. Then the said proposal was forwarded to respondent No. 7-District Collector, Osmanabad on 04.03.2011. Subsequently, the name of applicant's mother was taken on waiting list. She waited for appointment for 13 years, but she did not get appointment.

Thereafter, the applicant has submitted application on 17.01.2020 to respondent No. 6 with a request to include his name in place of his mother for appointment on compassionate ground. The applicant has made necessary compliance. He is qualified for appointment on Class-III post. He has submitted application for substitution of his name before crossing age of 45

years by his mother. The respondent No. 7 has issued impugned letter dated 01.11.2021 informing that as per G.R. dated 21.09.2017, name of the applicant cannot be substituted in the waiting list as prayed.

The applicant has contended that the Hon'ble High Court has held in W.P. No. 6267/2018 that name of a person on waiting list cannot be substituted is unjustified. The mother and sister of the applicant have given consent for appointment to the applicant. The object of compassionate appointment is violated by the respondents. The compassionate appointment is required to be given immediately, but no appointment order was issued in favour of applicant's mother till she attains the age of 45 years, which resulted in to injustice. Thus the applicant has prayed to allow the present Original Application.

3. Respondent Nos. 1 to 6 have filed their affidavit in reply (Page No. 103 of paper book). According to them, they have considered the application of mother of the applicant and the applicant has failed to clear the queries in time. The applicant has prayed for substitution by filing application dated 17.01.2020 on the ground that no appointment was given to his mother. There is a restriction imposed vide G.R. dated

21.09.2017 that the name of legal representative of deceased employee cannot be considered in place of another legal representative, whose name happened to be on waiting list. Only in case of death of a person on waiting list, other legal representative can be considered. The application of the applicant was rightly rejected on 01.11.2021.

4. The applicant has also filed rejoinder affidavit and reiterated several contentions as raised in the Original Application. According to the applicant, even after compliance of several queries in the year 2014, no appointment order was given to the applicant's mother till 2020 and as such, there is negligence on part of respondents.

5. I have heard Shri K.B. Jadhav, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondents. Both the parties have submitted as per their respective contentions.

6. Learned counsel for the applicant has submitted that immediately after death of applicant's father in the year 2007, the applicant's mother has forwarded application for getting appointment on compassionate ground, but the respondents have not given appointment to her till the year 2020. So the

present applicant has filed application for substitution of his name in place of his mother on 17.01.2020. According to the applicant, this application was filed even before crossing the age of 45 years by his mother. In support of his submissions, learned counsel for the applicant has relied on the decision of Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors. in W.P. No. 6267/2018** and the judgment of this Tribunal in **O.A. No. 214/2017 (Chetan Vinayakrao Kangarkar Vs. The State of Maharashtra and Ors.)**. He has also relied on the decision of Hon'ble Supreme Court in a case of **Smt. Sushma Gosain and Ors. Vs. Union of India and Ors., AIR 1989 SC 1976** and submitted that if there is no suitable post for appointment, supernumerary post should be created.

On the other hand, learned Presenting Officer has submitted that the applicant's mother has not made available documents in compliance of the letter dated 06.05.2014 (Annexure A-9, page No. 30 of paper book). He has also submitted that the applicant's father died in the year 2007 and the circumstances regarding financial condition must have been changed. According to him, the policy at relevant time needs to be considered. He has relied on the decision of Hon'ble Supreme

Court in **Civil Appeal No. 8540/2024 (Tinku Vs. State of Haryana and Ors.)**, dated **13.11.2024** and submitted that the decision of the Hon'ble High Court in respect of appointment on compassionate ground / substitution can be taken on the basis of policy, which was in existence at the relevant time.

7. It is undisputed fact that the applicant's father died on 22.03.2007 and he was working as Peon/Watchman with respondent No. 6. It is also admitted that the application for compassionate appointment was filed by the applicant's mother and her name was listed in the waiting list. It is their main contention that the applicant has failed to clear the query in time. It appears from Annexure A-2 (page No. 19 of the paper book) that the respondent No. 5 has forwarded application of applicant's mother for compassionate appointment vide letter dated 09.06.2008. It appears from the communication dated 06.07.2010 (Annexure A-4, page No. 21 of paper book) that the applicant's mother had submitted documents as required by the department. Again necessary documents were provided by the applicant's mother on 24.01.2011 (Annexure A-7, page No. 24 of paper book). It is apparent that till January, 2020, the applicant's mother was not offered any job. The impugned order dated 01.11.2021 (Annexure A-12, page No. 44 of paper book)

itself shows that the name of applicant's mother was at Sr. No. 5 in the list for compassionate appointment.

The present applicant has forwarded application dated 17.01.2020 (Annexure A-10, page No. 31 of paper book) to respondent No. 6 for substitution of his name in place of his mother for compassionate appointment due to constant illness of his mother. Consent letter of other family members and affidavit were also accompanied with that application dated 17.01.2020. The impugned order shows that the Social Welfare Department had forwarded the application of the applicant to respondent No. 7-The Collector, Osmanabad on 05.07.2021. The proposal of the applicant for substitution was rejected on the ground that there is no such provision in the policy of the Government / G.R. dated 21.09.2017.

It is clear from the documents on record that before offering job to the applicant's mother, the present applicant has requested for substitution of his name for compassionate appointment due to illness of his mother. The applicant has relied on the decision in a case of **Dnyaneshwar s/o Ramkishan Musane** (cited supra), in which the Hon'ble High Court of Bombay, Bench at Aurangabad in para No. 5 has held as under:-

“5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view that the prohibition imposed by the Government Resolution dated 20.05.2015 that name of any legal representative of deceased employee would not be substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the fundamental rights guaranteed by Article 14 of the Constitution of India. As the per the policy of the State Government, one legal representative of deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution dated 20.05.2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the list in place of the other legal representative who had submitted his/her application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated. It is not the case of respondent no.2 that petitioner's mother was given appointment on compassionate ground and then she resigned and proposed that petitioner should be given appointment. The name of petitioner's mother was in waiting list when she gave up her claim and proposed that the petitioner should be considered for appointment on compassionate ground.”

Similarly in present matter also no job was offered to the applicant's mother till application for substitution was given by

applicant, though the name of applicant's mother was on wait list.

8. Learned counsel for the applicant has relied on the recent judgment of Full Bench of Hon'ble High Court of Bombay, Nagpur Bench in **W.P. No. 3701/2022 (Kalpana Wd/o Vilas Taram & Anr. Vs. The State of Maharashtra and Ors.) and other connected W.Ps.** dated 28.05.2024. The Hon'ble High Court has answered the reference question No. (i) as under :-

Sr. No.	Questions	Answer
(i)	<i>Considering the object of compassionate appointment, to provide immediate succour to the family of the deceased employee who dies in harness, as is spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra) whether the view taken in Dnyaneshwar Musane and other similar matters as indicated above would be correct ?</i>	<i>The view taken in the case of Dnyaneshwar Musane (supra) by the Division Bench of this Court and other similar matters, is correct and is in consonance with the object of compassionate appointment spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra)</i>

The Hon'ble High Court in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra) in para Nos. 41 and 42 has held as under :-

"41. It may be noted there may be a number of reasons justifying the request for substitution of name in consonance with

the object of compassionate employment. Though, it is difficult to anticipate every such situation, few are stated hereunder as illustrations:

- i) The widow of the employee, aged 41 years or more applies with an expectation that before she attains age of 45 years, she would get employment. However, because of delay in appointment, her son/daughter attains the minimum age of 18 years*
- ii) If the member who is beyond 18 years of age and is pursuing his studies, applies for appointment but because no appointment is made immediately he may have reached a particular stage in his academic career where pursuing further academic course is far more important for future prospects and consequently, the family members instead of him, seek employment in favour of any other member of the family.*
- iii) On making an application by one of the members of the family and before the appointment is made, family realizes that for certain reasons another member is more appropriate and suitable for an appointment.*
- iv) On making the application such member of the family becomes incapacitated physically or medically.*
- v) The widow of the deceased employee applies as the son/daughter is a minor. But, before the appointment is made, the son/daughter attains age of 18 years and the family takes a decision that it would be more appropriate to seek employment for the son/daughter.*

42. In any of the above eventuality denial to substitute the name amounts to denial to grant compassionate appointment contrary to the scheme.”

The case of the present applicant can be said to be covered by the illustration Nos. (iii), (iv) and (v). So in view of the judgment of Full Bench of Hon'ble High Court of Bombay,

Nagpur Bench in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra), it cannot be said that there is any substance in the submissions or contentions of the respondents that the application of the present applicant was rightly rejected due to absence of provision for substitution. Hon'ble Bombay High Court has held that the substitution is permissible.

9. Learned Presenting Officer has invited my attention to letter dated 06.05.2014 (Annexure A-9, page No. 30 of paper book), which is communication by the Collector and submitted that applicant's mother has not made necessary compliance. It has to be noted that this communication is not addressed to the applicant. It is addressed to Social Welfare Department. So, it is difficult to say that there was any fault on the part of mother of applicant. Secondly, in view of the contention in the impugned order, the name of the applicant's mother was already there in the waiting list. So it will be difficult to accept that there is substance in the submissions of learned Presenting Officer.

Learned Presenting Officer has tried to relied on the decision in a case of **Tinku Vs. State of Haryana and Ors.** (cited supra). This matter appears to be pertaining to Haryana Compassionate Assistance to the Dependents of Deceased

Government Employee, Rules 2006. The rejection of claim for appointment on compassionate ground in that matter was that from the date of death of the Appellant's father till he having become major, 11 years had passed rendering the claim time barred. For this purpose reliance was placed on the Government instructions dated 22.03.1999 where a minor dependent of a deceased government employee gets the benefit provided he/she attains age of majority within a period of three years from the date of death of the government employee. So this judgment can be distinguished on facts and cannot be made applicable to the case of the applicant.

10. For the reasons stated above, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is allowed.
- (ii) Impugned letter dated 01.11.2021 issued by respondent No. 7, thereby rejecting the request of the applicant for substitution of his name in place of his mother is hereby quashed and set aside.
- (iii) The respondents shall include the name of the applicant in the waiting list prepared for compassionate appointment

within a period of one month from the date of this order
and shall take further steps in accordance with law.

(iv) There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad

DATE : 18.03.2025

KPB S.B. O.A. No. 99 of 2022 ANK Compassionate Appointment