

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

ORIGINAL APPLICATION NO. 686 OF 2021

DISTRICT : NANDED

Mahesh s/o Gajanan Premalwad,)
Age : 20 Years, Occ. : Education,)
R/o. Near Tahsil Office, Umri, Tq. Umri,)
Dist. Nanded.)

.... APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Department of Home, Maharashtra)
State, Mantralaya, Mumbai-32.)
2. **The Special Inspector General of Police,))**
Nanded Range, Nanded.)
3. **The Superintendent of Police,**)
Nanded, Dist. Nanded.)
4. **Additional Superintendent of Police,)**
Nanded, Dist. Nanded.)

... RESPONDENTS

APPEARANCE : Shri M.B. Kolpe, learned counsel for Applicant.

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

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **14.02.2025**

PRONOUNCED ON : **16.04.2025**

O R D E R

1. By filing present Original Application, the applicant has prayed for quashing and setting aside impugned

communication dated 25.02.2019 issued by respondent No. 4. He has also prayed for direction to respondents to forthwith include the name of the applicant in the list of compassionate appointment on basis of his application dated 30.06.2018.

2. The father of the applicant viz. Gajanan Madhavrao Premalwad was working as Police Constable in Nanded District. Deceased Gajanan was posted at Dharmabad Police Station. He died due to heart attack while performing his duties on 01.11.2001. The mother of the applicant applied for appointment on compassionate ground to the respondents. She was called upon to appear for document verification on 16.12.2011. The applicant's mother was informed that she was selected on Class-IV post of Peon. The mother of the applicant forwarded representation on 09.08.2012 that due to ill-health, she is unable to join the services and would waive her right to her son, who is minor.

The applicant's mother has made complaint to Superintendent of Police, Nanded in respect of irregularities committed while making appointment on compassionate ground on 01.01.2017. An enquiry was initiated. The notice was issued to the applicant's mother for enquiry and her statement was

recorded on 29.11.2017 and additional statement was recorded on 10.01.2018.

3. The applicant had filed application for getting appointment on compassionate ground along with relevant documents. He was communicated on 25.02.2019 that since the name of mother of the applicant is on wait list, the said name may not be substituted in view of G.R. dated 20.05.2015. The mother of the applicant has again filed representation informing that the said G.R. is not applicable to the case of present applicant, as the claim of applicant's mother is of the year 2001. According to the applicant, the contention of respondents that the substitution is no permissible is perverse and contrary to the settled principle of law. The applicant and his family members are below poverty line. Thus the applicant has prayed to allow the present Original Application.

4. Respondent Nos. 1 to 4 have filed their affidavit in reply (page No. 41 of paper book). It is undisputed fact that applicant is the son of deceased Gajanan. It is also undisputed that the applicant's mother had earlier filed application for getting appointment on compassionate ground. It appears from affidavit in reply of respondent Nos. 1 and 4 that previously

name of widow of deceased was included in the wait list for compassionate appointment. The applicant has also placed on record letters sent by the office of Superintendent of Police, Nanded and the office of Special Inspector General of Police dated 12.12.2011 intimating the mother of applicant to attend the office of Special Inspector General of Police, Nanded along with original documents, as the procedure regarding appointment on compassionate ground is to be complied with. Same type of letter was forwarded to the applicant's mother on 24.07.2012. The applicant has placed on record a copy of letter dated 09.08.2012, by which the applicant's mother informed the office of Superintendent of Police, Nanded that since the death of her husband she is suffering from mental and physical illness and she is unable to do the work of post, on which she was selected. Applicant's mother was informed that she reserves her claim for compassionate appointment for her son.

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

6. Learned Presenting Officer has specifically submitted that the applicant's mother was called upon to attend the document verification so as to complete the procedure for appointment on compassionate ground. But she refused to attend. According to him, it is not the case that the State has not offered job to the applicant's mother. He has also invited my attention to the copy of statement of applicant's mother dated 29.11.2017, wherein she has stated that she was communicated about her selection of Class-IV post and she received the letter in that respect. So it is submitted by learned P.O. that the applicant is not entitled to get appointment on compassionate ground. For that purpose, learned Presenting Officer has placed reliance on the judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 11821/2019 (Akshaykumar Balaji Kesgire Vs. The State of Maharashtra and Ors.)**.

In that matter, the claim of the applicant for compassionate appointment was rejected on the same ground of prohibiting change of name of applicant for compassionate appointment as per G.R. dated 20.05.2015. The petitioner in that matter had preferred Writ Petition No. 8285/2018 and when it came up for hearing on 23.07.2018, the petitioner therein made a statement that he would prosecute the application with the

authority and the said writ petition was accordingly disposed of. So the petitioner in that matter has made fresh application dated 02.04.2019, which was rejected by letter dated 16.05.2019 referring to the earlier rejection letter dated 13.10.2016. So the petitioner in that matter has challenged the said subsequent order. In that matter the petitioner's mother was being offered compassionate appointment by respondent No. 2 in that matter and she voluntarily decided not to take up the same, for which no specific reason was assigned in her letter. But in the instant matter the applicant's mother in her application dated 09.08.2012 has specifically mentioned the reason that she is suffering from mental and physical illness since the death of her husband and she would not be in a position to do work on the post on which she would be selected. Same fact is stated by the mother of the applicant in her statement dated 29.11.2017 before the Additional Superintendent of Police, Nanded in connection with the enquiry pertaining to irregularities in appointment on compassionate ground. So the above citation referred by the learned Presenting Officer cannot be made applicable to the present case.

7. It appears from the document at Annexure A-6 (page 20 of the paper book) that the present applicant has forwarded

application for compassionate appointment on 27.06.2018. His date of birth is 08.04.2000. So it is clear that immediately after attaining the age of majority, the present applicant has filed application for appointment on compassionate ground. Copies of affidavit and heir-ship certificate were attached along with the said application. The applicant was communicated by impugned order dated 25.02.2019 that there is no provision of any substitution of name of candidate on waiting list. So his claim cannot be considered. So it is clear that the name of applicant's mother was in the waiting list. She has already communicated about her inability on the ground of physical and mental illness. It is not the case of respondents that they have deleted the name of applicant's mother from the waiting list. Letter of Dy. Superintendent of Police, S.P. Office, Nanded dated 25.02.2019 (page No. 31 of paper book) shows that as per the application of mother of applicant dated 24.06.2002, her name was included in the wait list of compassionate appointment seekers. It is not the case of respondents that in view of Clause (C) of G.R. dated 20.05.2015, they have communicated the applicant's family about details of policy of compassionate appointment, though it is expected.

8. So far as the ground of rejection of claim about absence of provisions of substitution of name is concerned, learned counsel for the applicant has relied on the decision in a case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors. in W.P. No. 6267/2018**, 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.

9. 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). 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 will be difficult to accept that the impugned communication is legal, proper and correct.

10. Learned Presenting Officer has tried to rely on the decision in **Civil Appeal No. 8540/2024 (Tinku Vs. State of Haryana and Ors.), dated 13.11.2024**. 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. Learned P.O. has also relied on the decision of Hon'ble High Court of Bombay, Bench at Nagpur in **W.P. No. 3184/2022 (Subham Surendra Kumar Ishrawat Vs. The State of Maharashtra and Ors.)**. According to learned P.O. long period has been lapsed after death of father of the applicant and crises which arose on account of death of father now would have been overcome. In that case, the Hon'ble High Court has considered the judgment of Hon'ble Apex Court in a case of **Umesh Kumar Nagpal Vs. State of Haryana and others (1994) 4 SCC 138**, the judgment of Full Bench of Hon'ble High Court in **Writ Petition No. 3907 of 2021 (Smt. Nilima Raju Khapekar Vs. The Executive Director, Bank of Baroda, Baroda and others) decided on 22.04.2022** and also in the case of **The State of West Bengal Vs. Debabrata Tiwari and others Etc. Etc. 2023 LiveLaw (SC) 175**. But the Full Bench of Hon'ble High Court of Bombay, Nagpur Bench in **W.P. No. 3701/2022 (Kalpana Wd/o Vilas Taram & Anr.** (cited supra) has answered reference in para No. 51, which is already reproduced in para No. 9.

The Hon'ble High Court in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra) in para Nos. 32 and 33 has held as under :-

32. *It is pertinent to note that, there is no provision in the scheme formulated by the State of Maharashtra, making the family disentitled to claim a compassionate appointment if the appointment is not made in a specified period. In other words there is no provision in the scheme to make the family disentitled because of cessation of immediacy due to lapse of a specified period.*

33. *It is to be noted that, the Hon'ble Supreme Court of India in the case of Debabrata Tiwari (supra) has held that where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance. Despite this, no provision is made by the government, specifying the period within which if the appointment is not made, such claim would be inconsiderable, worthless or nugatory on the ground of delay in making appointment.*

The above citation referred by learned Presenting Officer is not helpful for them.

11. 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 communication dated 25.02.2019 issued by respondent No. 4 is hereby quashed and set aside.

- (iii) The respondents shall include the name of 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 : 16.04.2025

KPB S.B. O.A. No. 686 of 2021 ANK Compassionate Appointment Substitution