

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

**ORIGINAL APPLICATION NO. 577 OF 2022**

**DISTRICT : JALGAON**

**Yogesh s/o Gopichand Salunkhe,** )  
Age : 27 Years, Occ. : Nil, )  
R/o. Galangi, Post-Velode, Tal. Chopda, )  
Dist. Jalgaon. )

**.... APPLICANT**

**V E R S U S**

**1. The State of Maharashtra,** )  
Through its Addl. Chief Secretary, )  
Home Department, )  
M.S. Mantralaya, Mumbai-32. )

**2. The Superintendent of Police,** )  
Jalgaon, 7, M.G. Road, Zilla Peth, )  
Pratap Nagar, Jalgaon. )

**... RESPONDENTS**

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**APPEARANCE** : Shri Avinash Deshmukh, learned counsel for  
Applicant.

: Shri A.P. Basarkar, Presenting Officer for  
respondent authorities.

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

**RESERVED ON** : **26.03.2025**

**PRONOUNCED ON** : **16.04.2025**  
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**O R D E R**

1. By filing present Original Application, the applicant has prayed for quashing and setting aside impugned letter dated 23.04.2018 issued by respondent No. 2 thereby rejecting his

claim for appointment on compassionate ground. He has also prayed for direction to respondent No. 2 to re-include / re-incorporate applicant's name in the wait list of compassionate appointment seekers on the basis of his application therefore by considering which his name was already included by respondent No. 2 in the wait list for the year 2017.

2. One Gopichand Ramchandra Salunkhe was the father of applicant serving under respondent No. 2 in Jalgaon District Police Force. He died in harness on 21.07.2001. Applicant's mother viz. Kalabai submitted an application to respondent No. 2 on 10.07.2002 seeking appointment on compassionate ground. Her name was included in the list of the persons seeking such appointment. The applicant's mother was not offered compassionate appointment for a long period. Then, the applicant's mother was informed on 15.11.2010 about deletion of her name from the wait list, as she attains the age of 40 years on 25.07.2010. The said order was passed in contraventions of the contents in G.R. dated 23.04.2008. Subsequently, the said G.R. was withdrawn by the Government and the decision was taken that the name is deleted after completion of 45 years. It was incumbent on the part of respondent No. 2 to restore the name of applicant's mother in the waiting list, but it was not done.

Meanwhile, the applicant attained the age of majority. His mother submitted an application on 31.07.2013 to respondent No. 2 for appointment to the present applicant in her place. The present applicant has also submitted applications dated 22.10.2013, 31.10.2013, 13.11.2013, 11.11.2014, 10.03.2015 and 02.07.2015 to various authorities. Initially respondent No. 2 has included the name of present applicant in the wait list for compassionate appointment. He was not offered compassionate appointment. In the year 2018, respondent No. 2 again prepared the list of persons seeking compassionate appointment, wherein the name of applicant was deleted. Immediately, the present applicant has submitted application on 19.03.2018 urging that his name be incorporated in the waiting list of the year 2018 at Sr. No. 20 after the name of one Syed Rameez Shakeel Ahmed, whose name was appearing at Sr. No. 33 above his name in the waiting list of the year 2017.

The present applicant has also filed O.A. No. 198/2018 challenging the action of respondent No. 2 of deleting his name from the waiting list of the year 2018. The said O.A. came to be rejected on 07.06.2018 on the ground that the applicant has already availed the alternate remedy of filing representation, which is to be decided. The applicant has waited

for the decision on his representation. The applicant did not get the information from respondent No. 2 about decision on that representation.

It appears that on 23.04.2018 (Annexure A-9), the respondent No. 2 had taken decision and rejected the application of the applicant for appointment on compassionate ground. The applicant was not aware about the said order. He could not produce the said order before the Tribunal when the earlier O.A. No. 198/2018 was disposed of on 07.06.2018. Learned Presenting Officer did not bring the said fact to the notice of this Tribunal. The decision dated 23.04.2018 was not served upon the applicant. After waiting for a long time, the applicant submitted an application under Right to Information Act (RTI) on 17.09.2019 and sought information regarding action of deletion of his name from the waiting list of the year 2018. The respondent No. 2 was pleased to issue letter of October 2019 to the applicant along with a copy of letter dated 23.04.2018. So the applicant got knowledge about rejection of his claim on 23.04.2018.

The applicant has challenged the impugned order on the ground that it is illegal and arbitrary. There was non-

application of mind on the part of respondent No. 2, as the applicant's claim was initially accepted and his name was included in the wait list of the year 2017. It was not legal on the part of respondent No. 2 to reject the applicant's claim subsequently in the year 2018. Another ground is that the name of applicant's mother was already deleted and the name of applicant was included in the waiting list. Thus the applicant has prayed to allow the present Original Application.

3. Respondent Nos. 1 and 2 have filed their affidavit in reply (page No. 44 of paper book). According to respondents as per the norms laid down by the State Government in G.R. dated 20.05.2015, there is restriction to substitute the name of person in the waiting list. Name of applicant's mother was in the waiting list from 2002 to 2010 and after crossing age of 40 years, her name was deleted, as she became disqualified. Subsequently, the applicant has applied for adding his name, which cannot be considered. The applicant has come before the Tribunal at belated stage without having explanation for delay. Thus the present Original Application deserves to be dismissed.

4. The applicant has filed rejoinder affidavit (page no. 50 of paper book). According to the applicant, the respondents have

denied the claim of applicant contending that his claim for compassionate appointment was a fresh claim and it was not the claim for change the name in waiting list. This contention is denied by the present applicant. It cannot be said that his claim can be said to be fresh claim, since in view of G.R. dated 06.12.2010 name of the applicant's mother should have been restored in the wait list. So the applicant has specifically contended that his claim was not fresh claim, but it was a claim for change in the name in the waiting list of compassionate appointment seekers.

5. I have heard Shri Avinash Deshmukh, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities. Both the parties have advanced their arguments as per their respective contentions.

6. Now it is be seen as to whether the impugned order, thereby rejecting the claim of the applicant for compassionate appointment being substitution is impermissible can be said to be just, proper and legal.

7. It is undisputed fact that the applicant is son of deceased Gopichand and Kalabai is the mother of applicant. It is

undisputed fact that the deceased was serving in Police Department. It is admitted fact that name of applicant's mother Kalabai was in the wait list of the year 2002. It is admitted fact that the applicant has filed application for the first time in the year 2013 and subsequently in the years 2014, 2015 and 2017. It is also admitted by respondents that name of the present applicant is at Sr. No. 34 in the list prepared for the year 2017.

8. Letter dated 29.05.2004 was addressed to the applicant's mother by the office of Superintendent of Police, Jalgaon (page No. 21 of paper book), which shows that name of applicant's mother is included in the waiting list. It is the main contentions of the respondents that after crossing the age of 40 years by the applicant's mother, her name was deleted from the list of compassionate appointment seekers and it was communicated by the department. The said letter dated 15.11.2010 (Annexure A-2, page No. 22 of paper book) shows that the date of birth of applicant's mother viz. Kalabai is 25.07.1970. It was informed that name of Kalabai was deleted in view of G.R. dated 23.04.2008. The applicant was informed as per the said letter dated 15.11.2010. The respondents have placed on record a copy of G.R. dated 06.12.2010. It is pertaining to the revised conditions. The State Government has taken

decision as per the said G.R. that the age limit of 40 years is now increased to 45 years. It is also made clear by this G.R. that it will be applicable w.e.f. 06.10.2010. Learned counsel for the applicant has submitted that considering this condition of G.R. dated 06.12.2010, name of mother of the applicant should have been restored. It cannot be said that there is no substance in such submissions of learned counsel for the applicant. It is apparent that the date of birth of applicant's mother is 25.07.1970. So she could have been on wait list up to July, 2015 as per the revised G.R. dated 06.12.2010. The applicant's mother was communicated about deletion of her name vide letter dated 15.11.2010. Prior to this date, the G.R. dated 06.12.2010 is made applicable.

9. The mother of applicant has already moved an application on 31.07.2013 that since she is illiterate, she didn't get job and her son may be considered for compassionate appointment. She has also contended about her ailment due to which her son may be considered for such appointment. The applicant has also placed on record applications at page Nos. 24 to 35, which were sent by the present application with a request to include his name in the waiting list. The present applicant has also referred to application of his mother dated 31.07.2013



in his applications dated 22.10.2013 (page No. 24 of paper book), 31.10.2013 (page No. 26 of paper book), 13.11.2013 (page No. 28 of paper book), 11.11.2014 (page No. 30 of paper book), 10.03.2015 (page No. 32 of paper book) and 02.07.2015 (page No. 34 of paper book). The applicant has also placed on record waiting list of candidates, who have applied for getting appointment, for the year 2017, wherein the name of present application is appearing at Sr. No. 34. But name of the present applicant is not appearing in such wait list of the year 2018. It is pertinent to note here that the respondents have admitted in para No. 6 of their affidavit in reply that the name of present applicant was actually added in that list prepared for the year 2017.

10. The applicant has filed application dated 19.03.2018 (Annexure A-7, page no. 40 of paper book) to the Superintendent of Police, Jalgaon that his name was there at Sr. No. 34 in the waiting list of the year 2017 and it is not appearing in the list of the year 2017. It appears that the applicant initially filed O.A. No. 198/2018 before this Tribunal. It seems that since the applicant has filed representation dated 19.03.2018 and it was still pending, the said O.A. was rejected on 07.06.2018. Learned counsel for the applicant has submitted that the Presenting

Officer has also not brought to the notice of the Tribunal that the said representation was already disposed of by the authority. Learned counsel for the applicant has invited my attention to the letter sent by the office of Superintendent of Police, Jalgaon to the applicant in the month of October 2019 along with a copy of impugned order dated 23.04.2018. The said letter was in response to the information sought by the applicant under RTI. The applicant had sought information regarding the reason for deleting his name from the waiting list of the year 2018, though it was in existence in the waiting list of the year 2017. The office of S.P. Jalgaon has forwarded copy of letter dated 23.04.2018, which is impugned in the present Original Application. So, according to the applicant, he got knowledge of the impugned order only on getting this letter of October 2019. It appears from the impugned order that the claim of the applicant was rejected on the ground that the substitution is impermissible in view of G.R. dated 20.05.2015. Learned counsel for the applicant has submitted that the substitution is now permissible.

11. Reliance can be placed 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, though the name of applicant's mother was on wait list for a long time. The said judgment in case of

**Dnyaneshwar s/o Ramkishan Musane** (cited supra) is also referred by the Full Bench of Hon'ble High Court of Bombay, Nagpur Bench in a case of **Kalpana Wd/o Vilas Taram & Anr. Vs. The State of Maharashtra and Ors.**

12. 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) and (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 is clear that the substitution of name in the wait list is permissible. So the impugned communication also can be said to be improper and illegal.

13. 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 23.04.2018 issued by respondent No. 2 thereby rejecting the claim for appointment on compassionate ground 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**