

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

ORIGINAL APPLICATION NO. 766 OF 2021

DISTRICT : LATUR

Narandra Krishna Rameshdev Joshi,)
Age : 24 Years, Occ. : Nil,)
R/o. Bhat Galli, Ahmedpur, Tq. Ahmedpur,)
Dist. Latur.)

.... APPLICANT

V E R S U S

1. The State of Maharashtra,)
Through its Principal Secretary,)
Public Works Department,)
Madam Cama Road, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai- 400032.)

2. The Superintending Engineer,)
Public Works Department, Rajiv Gandhi)
Chowk, Near Ausa Road, Latur,)
Dist. Latur.)

3. The Executive Engineer,)
Public Works Department, Rajiv Gandhi)
Chowk, Near Ausa Road, Latur,)
Dist. Latur.)

4. The Collector, Latur,)
District Latur.)

... RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned counsel for Applicant.

: Smt. Resha Deshmukh, Presenting Officer for
respondent authorities.

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

RESERVED ON : **10.03.2025**

PRONOUNCED ON : **22.04.2025**

ORDER

1. By filing present Original Application, the applicant has sought declaration that he is entitled for compassionate appointment and seeking direction to the respondent authorities to consider the claim of the applicant for appointment on compassionate ground. He has also amended the prayer clause for quashing and setting aside the communication dated 02.12.2013 issued by respondent No. 4, thereby rejecting the claim of the applicant for appointment on compassionate ground. The applicant has also prayed for direction to respondents to substitute the name of applicant in place of his mother.

2. The applicant's father was working as 'Mistari', Grade-II, who expired on 20.09.2003 while in service. The applicant's father was initially appointed and working in the office of Deputy Engineer, Zilla Parishad, Sub-Division, Udgir, Dist. Latur and when he expired, the applicant's father was working in the office of Sub-Divisional Engineer, Sub-Division, Ahmedpur. The applicant's mother had submitted application for appointment on compassionate ground. The name of applicant's mother was taken in the list at Sr. No. 8 and waiting list No. 165. The date of birth of the applicant's mother is 20.03.1956. The applicant's mother had filed application on 05.05.2004 along

with documents. The name of applicant's mother was deleted on 09.03.2009 on completion of her age of 40 years in view of G.R. dated 22.08.2005. The date of birth of the applicant is 05.09.1995. After attaining the age of majority, the applicant has forwarded application on 22.10.2013 to respondent No. 4. The respondents have not taken the name of applicant in the waiting list. The respondent No. 3 has communicated to the applicant's mother vide letter dated 11.11.2010 that her name is deleted and there is provision for substitution of her name. The respondent No. 3 has communicated this decision on 02.12.2013.

The respondent No. 2 has communicated to respondent No. 3 that respondent No. 1 is the authority, whom the proposal has to be sent for sanction, if the name of applicant is to be substituted in place of his mother. The respondent No. 2 has directed to submit the proposal in proper format to respondent No. 1. Though the applicant's mother has filed application for compassionate appointment within time, the respondent authorities did not take positive steps and after crossing the age of 40 years, her name was deleted on 09.03.2003. Similar application of the present applicant was also within time. He has also submitted the applications to the respondent authorities time to time and complaint was lodged by

the applicant on PG Portal, on which cognizance was taken and the directions were issued to the competent authority to take necessary steps in respect of compassionate appointment. Thus the applicant has prayed to allow the present Original Application.

3. Respondent Nos. 1 to 3 have filed their affidavit in reply (page no. 30 of paper book). According to them, the applicant has not filed any document in relation to his qualification. According to them, their decision to delete the name of applicant's mother is correct in view of G.R. dated 22.08.2005. According to them, there is no provision to substitute the name of candidate in the waiting list and more particularly when the claim of original claimant has been deleted. According to them, as per letter dated 27.06.2007, name of the candidate in the waiting list cannot be substituted, as there is no provision. It is also contended that since the date of death of Government servant, the applicant and other her family members were survived. Thus the present Original Application deserves to be dismissed.

4. I have heard Shri V.B. Wagh, learned counsel for applicant and Smt. Resha Deshmukh, Presenting Officer for

respondent authorities. Both the parties have submitted as per their respective contentions.

5. It is undisputed fact that after death of applicant's father, widow has filed application for compassionate appointment and her name was included at Waiting list Sr. No. 165. The applicant has also placed on record a copy of waiting list signed by the Executive Engineer, PWD, Latur at page Nos. 15 and 16 of paper book, which shows that the name of applicant's mother was at Sr. No. 8 and Waiting List Sr. No. 165. This waiting list shows position as on 22.08.2005. The impugned communication dated 02.12.2013 (Annexure A-4, page No. 23 of paper book) sent by the Executive Engineer, PWD Latur to the Superintending Engineer, PWD Osmanabad, shows that after death of Government employee i.e. Ramesh Nilkanthrao Joshi on 20.09.2003, his widow has filed application for compassionate appointment on 05.05.2004 and her name was in the waiting list. The respondents have also not disputed that the present applicant has forwarded application for compassionate appointment immediately after attaining the age of majority. The applicant has placed on record a copy of application at page No. 19 of paper book along with affidavit of her mother, which shows that date of birth of the present applicant is 05.09.1995. So he

can be said to have attained the age of majority on 05.09.2013. Copy of affidavit of applicant's mother dated 16.05.2013 also shows that she has prayed for appointment to her son on compassionate ground.

6. Learned counsel for the applicant has placed on record a copy of communication dated 27.06.2007 of PWD, Mantralaya, Mumbai, which shows that revised condition in clause No. 2 of G.R. dated 22.08.2005 about availability of appointment on compassionate ground till completion of 40 years will not be applicable to the candidate, who was already on wait list before 22.08.2005. Relevant para in letter dated 27.06.2007 is reproduced as under :-

“१) शा.प्र.वि., दि. २२.०८.२००५ च्या शासन निर्णयातील परि. २ खालील सुधारित तरतुदी शासन निर्णयाच्या दिनांकापासून लागू झाल्या आहेत. त्यामुळे दि. २२.८.२००५ पूर्वी ज्या उमेदवारांची नावे अनुकंपा तत्वावरील नियुक्तीसाठी प्रतीक्षा सूचीवर नोंदविलेली आहेत. त्यांच्या प्रकरणी प्रस्तुत सुधारणा लागू होणार नाहीत.”

7. There is contention in the impugned letter that considering date of birth of the applicant's mother, she could have attained the age of 45 years on 20.03.2001. The applicant was not informed about the policy of compassionate appointment and entitlement for the same, though it is expected from the respondents as per the G.R. dated 20.05.2015.

There is a provision in G.R. dated 23.08.1996 that the concerned official on the establishment has to give information regarding the policy of compassionate appointment to the relative of deceased employee. The same provision is appearing in G.Rs. dated 20.05.2015 and 21.09.2017. It is specifically contended in G.R. dated 20.05.2015 that if deceased employee has no legal heir, who is major, then the concerned department will have to inform the said heir after attaining the age of majority about the policy of compassionate appointment and his entitlement to apply for the same. This Tribunal in O.A. No. 597/2020 (**Amol Sopan Shidore Vs. The State of Maharashtra and Ors.**) has held in para No. 17 that it was responsibility of the respondent authorities to intimate the family, after 15 days of the death, the eligibility of any member of the family for compassionate appointment and details of the rights of the family members. In this judgment one of the citation of the Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Gopal Dayanand Ghate Vs. the State of Maharashtra & Ors., 2021 DGLS (Bom.) 1412** is referred by this Tribunal.

8. 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 has held that *the restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is 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, is unjustified and it is directed to be deleted.*

Reliance can be placed in a case of in a case of **Amol Navnath Lokhande Vs. The State of Maharashtra and Ors.** in **W.P. No. 7685/2022**. In that matter also the name of mother of applicant was deleted. Then, the applicant has filed application for compassionate appointment. The said W.P. was allowed by the Hon'ble High Court of Bombay, Bench at Aurangabad.

In the present matter also no job was offered to the applicant's mother for a long time, though her name 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.

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) Communication dated 02.12.2013 issued by respondent No. 4 thereby rejecting the claim of the applicant 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 : 22.04.2025

KPB S.B. O.A. No. 766 of 2021 ANK Compassionate Appointment Substitution