

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

ORIGINAL APPLICATION NO. 1089 OF 2022

DISTRICT : LATUR

1. **Madhavi Manikrao Kulkarni,**)
Age : 58 Years, Occ. : Nil,)
2. **Mayuri Manikrao Kulkarni,**)
Age : 28 years, Occ.: Nil,)
Both R/o. Punarvasan Savargaon,)
Infront of Maruti Mandir, Shreyas)
Banglow, Kallamb, Tq. Kallmb,)
Dist. Osmanabad.)

.... **APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Water Resources Department,)
Mantralaya, Mumbai- 32.)
2. **The District Collector,**)
Latur, District Latur.)
3. **Superintending Engineer,**)
(U.S.) Mechanical Circle,)
Yantriki Bhava, Nanded-431605.)
4. **The Executive Engineer,**)
(U.S.) Mechanical Division,)
New Administrative Building, Osmanabad-413501.)

... **RESPONDENTS**

APPEARANCE : Shri H.P. Jadhav, learned counsel for
Applicants.

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

CORAM : **Shri A.N. Karmarkar, Member (J)**
RESERVED ON : **20.03.2025**
PRONOUNCED ON : **23.04.2025**

ORDER

1. By filing present Original Application, the applicants have prayed for direction to respondent Nos. 2 and 4 to consider the prayer for substitution of name of applicant No. 2-Mayuri in place of her mother i.e. applicant No. 1-Madhavi on compassionate ground. The applicants have also prayed for quashing and setting aside impugned orders dated 15.02.2010 and 03.03.2010.

2. One Manikrao Ramrao Kulkarni is working as 'Mechanic', Class-III with Executive Engineer, Old AUSA Road, Latur. He died on harness on 27.10.1998. The applicant No. 1-Madhavi and applicant No. 2-Mayuri are the widow and wife of deceased respectively. The applicant No. 1-Madhavi was educated up to SCC and applicant No. 2-Mayuri is educated up to BCA. The applicant No. 1 has given first application dated 10.03.1999 along with documents. The respondents have enlisted the name of mother of applicant No. 1 in the list maintained for compassionate appointment seekers. The respondent No. 2 has referred the case of applicant No. 1 to the Deputy Director of Health Services, Latur. On that basis the Deputy Director of Health Services, Latur issued communication dated 09.02.2005 directing the applicant No. 1 to submit

necessary documents. The applicant No. 1 has complied with. The Deputy Director of Health Services failed to provide compassionate appointment to applicant No. 1. The respondents have enlisted the name of applicant No. 1 at Sr. No. 16 in the wait list. They failed to give appointment to applicant No. 1 till 2010. So she has filed application dated 25.01.2010 for substitution of name of her daughter-Mayuri i.e. applicant No. 2 in her place. The respondent No. 3 has communicated vide orders dated 15.02.2010 and 03.03.2010 that several posts were surplus and in view of G.Rs. dated 23.04.2008 and 22.08.2005, the applicant No. 1 has crossed the age of 40 years, due to which her name was deleted. It was also informed that there is no provision to substitute one of the legal heirs of deceased to other legal heir and rejected the prayer of applicant No. 2.

The applicant No. 2 has given representation dated 26.10.2010 for getting compassionate appointment, as she has attained the age of majority. The said application was referred to respondent No. 3 by respondent No. 2 for taking necessary decision on that application. The applicant No. 2 has again filed application dated 17.02.2011 for getting compassionate appointment. No steps were taken by the respondents for giving appointment to applicant No. 2. Both the applicants have

repeatedly made applications till 2011. Meanwhile, the applicant No. 2 got married, due to which responsibilities were on her shoulders. The applicant No. 1 met with a serious accident in September, 2011. Thus the applicants have prayed to allow the present Original Application.

3. Respondent Nos. 1, 3 & 4 have filed their affidavit in reply. According to these respondents, they are unable to travel beyond the parameters prescribed under the policy decision and there is no any statutory provisions permitting them to consider the relief of substitution. So there is no merit in the present Original Application. According to them, the applicant No. 1 has completed age of 40 years on 10.07.2001 on the basis of document produced by her particularly at page No. 50 of the paper book and communication dated 15.02.2010. According to these respondents, the applicant No. 2 has filed application dated 25.01.2010 and at that time she was minor. The applicant No. 1 was praying for substitution of name of her daughter in place of her name. According to these respondents, there was no provision for substitution. So by virtue of communications dated 15.02.2010 and 03.03.2010, the decision was communicated to applicant No. 1. It was informed that name of applicant No. 1

was deleted and since there is no any policy for substitution, that prayer is rejected.

4. I have heard Shri H.P. Jadhav, learned counsel for the applicants and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities. Both the parties have submitted as per their respective contentions.

5. Learned counsel for the applicant has invited my attention to different applications / representations of the applicants during the course of arguments. Learned counsel for the applicant has relied on the judgment of the Principal Seat of this Tribunal at Mumbai in a case of **Smt. Geeta Dinkar Johar & Anr. Vs. The State of Maharashtra and Ors. in O.A. No. 307/2023**, dated 24.01.2025 and the decision of Hon'ble High Court of Bombay, Bench at Nagpur in **W.P. No. 6830/2024 (Mohammad Juber Khan s/o Late Akbar Khan Pathan & Ors. Vs. Deputy Conservator of Forest, Wadsa and Anr.)**. Learned counsel for the applicant has also mainly 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. Learned counsel for the applicant has placed on

record copies of several judgments at page Nos. 102 to 187, which are as under :-

- (i) O.A. No. 645/2017 (Shri Manoj Ashok Damale Vs. Superintending Engineer & Administrator, Nahsik and Anr.) (Mumbai)
- (ii) O.A. No. 239/2016 (Swati P. Khatavkar & Anr. Vs. The State of Maharashtra and Anr.) (Mumbai).
- (iii) O.A. No. 503/2015 (Shri Piyush Mohan Shinde Vs. The State of Maharashtra and Ors.) (Mumbai).
- (iv) W.P. No. 7832/2011, dated 28.02.2012 (Aurangabad Bench)
- (v) W.P. No. 7793/2009 (Vinodkumar Khiru Chavan Vs. The State of Maharashtra and Ors.)
- (vi) Sushma Gosain V. Union of India, 1989 DGLS (SC) 411.
- (vii) W.P. No. 6267/2018 (Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors.), dated 11.03.2020.
- (viii) O.A. No. 12/2020 (Vaibhav Venkat Chandle & Anr. Vs. The State of Maharashtra and Ors.) (Aurangabad Bench).
- (ix) O.A. No. 205/2019 (Vaijinath Mallikarjun Karadkhele Vs. The State of Maharashtra and Ors.) (Aurangabad Bench).
- (x) O.A. No. 870/2018 with C.A. No. 13/2021 (Saurabh Mohan Hamane & Anr. Vs. The State of Maharashtra and Ors.) (Nagpur Bench).

On the other hand, learned Presenting Officer has submitted that the applicant No. 1 has filed application for compassionate appointment on 10.03.1999. Her name was deleted as per orders dated 15.02.2010 and 03.03.2010, at that

time the applicant No. 2 was minor. She should have filed the application on attaining her age of majority. Now 24 years have been lapsed after the death of Government employee. So it is difficult to accept that the family of the applicants is facing financial crises. Learned Presenting Officer has also relied on the 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.**

6. It is undisputed fact that the applicant No. 1 is the widow and applicant No. 2 is the daughter of deceased Government employee. It is also undisputed that the applicant No. 1 has filed application for compassionate appointment on 10.03.1999. It is the contention of the respondents in the orders dated 15.02.2010 and 03.03.2010 that on completion of age of 40 years, name applicant No. 1- Madhavi was deleted from the waiting list of compassionate appointment seekers. This specific contention itself shows that the name of applicant No. 1 – Madhavi was in the wait list. It is clear that the respondents have not taken steps for giving compassionate appointment to applicant No. 1-Madhavi since 1999 to 2010. The application of applicant No. 1 dated 25.01.2010 shows contention that it is the appropriate time to apply for substation of name of her daughter

in her place, as her daughter was on the verge of attaining the age of majority. So it is clear that only after getting this application, the respondents have decided to delete the name of applicant No. 1 by communication dated 15.02.2010.

7. It appears from the educational documents (page No. 28 and 39 of paper book) that the date of birth of applicant No. 2-Mayuri is 18.09.1993. So it can be said that she attained the age of majority on 18.09.2011. It appears from the record that the applicant No. 2-Mayuri has also filed application on 08.12.2011 (page No. 71 of paper book) for substitution of her name in place of her mother i.e. applicant no. 1. The respondents have contended in their orders dated 15.02.2010 and 03.03.2010 (page Nos. 59 and 60 of paper book) about absence of provisions of substitution, due to which prayer of the applicants cannot be accepted. It cannot be ignored that after attaining the age of majority, the mother i.e. applicant No. 1 and applicant No. 2 have filed applications for getting compassionate appointment. Even before the order of respondent dated 15.02.2010, the applicant No. 1 has prayed for substitution.

8. It was duty of the respondent authorities to give information to the family of deceased Government employee

immediately after 15 days of the death about the details of provisions regarding compassionate appointment. The affidavit in reply of respondents does not reveal that the said compliance was made by them. 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.

9. Reliance can be placed 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 mother of the applicant crossed her age of 45 years, the application for substation was

filed, which was rejected. The Hon'ble High Court of Bombay Bench at Aurangabad has referred the judgment in a case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors. in W.P. No. 6267/2018** and judgment of Larger Bench in a case of **Kalpana Wd/o Vilas Taram & Anr. Vs. The State of Maharashtra and Ors., AIR Online 2024 Bom 682**. The Hon'ble High Court has held that the issue in that matter is squarely covered by these two judgments and substitution is permissible.

10. 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.*

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.

11. 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) & (v).

12. So the discussion in forgoing paragraphs leads me to say that the orders under challenge dated 15.02.2010 and 03.03.2010 are not legal, proper and correct and the same are required to be quashed and set aside. Thus the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby partly allowed.
- (ii) Impugned orders dated 15.02.2010 and 03.03.2010 are hereby quashed and set aside.
- (iii) The respondents are directed to substitute the name of applicant No. 2 in place of her mother i.e. applicant No. 1 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 : 23.04.2025