

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1154 OF 2022
(Subject:- Compassionate Appointment)**

DISTRICT:- AURANGABAD

- 1. Mangesh Ramesh Kale**)
Age: 20 Years, Occu. Education.)
- 2. Yashdabai Ramesh Kale**)
Age: 46 Years, Occu. Household,)
- Both R/o. At. Post. Pimpaldari, Post. Balapur,))
Tq. Sillod, Dist. Aurangabad.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through it's Secretary,)
Ministry of Revenue & Forest Department)
Mantralaya, Mumbai-400 020.)
- 2. Chief Conservator of Forest (Territorial)**)
Aurangabad, Van Bhavan, Osmanpura,)
Opp. S.S.C. Board, Railway Station Road,)
Aurangabad.)
- 3. The Dy. Conservator of Forest (Territorial)**)
Aurangabad, Van Bhavan, Osmanpura,)
Opp. S.S.C. Board, Railway Station Road,)
Aurangabad.)
- 4. Forest Officer,**)
Sillod (Rural), Chatrapati Sambhaji Chowk)
Jalgaon-Aurangabad Bypass Road, Bypass)
Sillod, Tq. Sillod, Dist. Aurangabad.)...**RESPONDENTS**

APPEARANCE : Shri Mohit R. Deshmukh, learned counsel
for the applicant.

: Smt. V.P. Choudhari, learned Presenting
Officer for the respondent authorities.

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

DATE : **02.05.2025.**

ORDER

By filing this Original Application the applicants have prayed for quashing and setting aside the impugned order dated 02.02.2022 issued by respondent No.3, thereby rejecting the claim of the applicants for substitution of name of applicant No.1 in place of applicant No.2. The applicants have also prayed for directing the respondents to substitute the name of applicant No.1 as prayed and to include the name in the wait list for compassionate appointment.

2. The father of the applicant No.1 and husband of the applicant No.2 namely Shri Ramesh Bhika Kale was initially appointed on temporary basis as Labour under establishment of respondent No.4. His appointment was confirmed on 31.10.2012 in Group-D category as Vanmajur. His services were confirmed under establishment of respondent No.4. The father of the applicant No.1 died on 20.03.2016 in harness. Applicant No.2 applied for compassionate appointment. The name of applicant No.2 was included in the wait list. Meantime, the applicant No.1 attained the age of majority. His date of birth is 20.06.2000. Immediately after attaining the age of majority, the applicant No.2 applied to respondent No.4 for substitution of name of applicant

No.1 in her place. However, no action was taken by the respondents from 2019 to 2021 on the application submitted by the applicant No.2. She has again requested on 17.02.2021 for substitution. The respondent No.3 vide communication dated 02.02.2022 rejected the request of substitution on the ground of absence of provisions in Government Resolution dated 21.09.2017. Subsequently, the respondent No.3 communicated on 05.04.2022 about the deletion of name of applicant No.2 from wait list due to completion of her age of 45 years. According to applicants, the ground for rejecting the prayer of applicants is incorrect as clause in G.R. is interpreted by this Tribunal and by Hon'ble High Court and it is held that the substitution is permissible.

3. The respondent Nos. 1 to 4 have filed affidavit in reply (page No. 1 to 4). Admittedly, the applicant No.2 had applied for compassionate appointment on 04.04.2016 and her name was taken in wait list. According to them, on the verge of completing the age of 45 years, the applicant No.2 has requested for substitution of the name of applicant No.1 in her place. The said request was against the basic object of the policy. Accordingly, the applicants were informed that there is no provision in the G.R. dated 21.09.2017 regarding substitution and name of applicant No.1 cannot be substituted. Subsequently, the name of applicant No.2 was deleted after crossing the age of 45 years as per the

policy made in G.R. The applicant No.2 could not be given appointment in Group -D category as no post was vacant.

4. I have heard Shri Mohit R. Deshmukh, learned counsel for the applicant and Smt. Vanita P. Choudhari, learned Presenting Officer for respondent authorities. Both the parties have submitted as per their respective contentions.

5. It is undisputed fact that the applicant Nos. 1 and 2 are son and widow of deceased Ramesh Bhika Kale respectively. It is also undisputed fact that the employee Ramesh Bhika Kale died on 20.03.2016 in harness. The respondents have not disputed the fact that services of deceased employee Ramesh Bhika Kale was confirmed under establishment of respondent No.4. It is also not disputed by the respondents that the applicant No.2 had applied for appointment on compassionate ground on 04.04.2016. The respondents have also specifically contended that the applicant No.2 has requested for substitution of name of her son i.e. Manegsh Ramesh Kale in her place when she was about to complete her age of 45 years.

6. As per school leaving certificate, the date of birth of applicant No.1 is 20.06.2000. The applicant No.2 seems to have forwarded application dated 09.01.2019 (page No.33) for substituting the name of her son in her place as he attained the

age of majority. Similar type of application was filed by the applicant No.2 on 17.02.2021. Copy of an affidavit of applicant No.1 namely Mangesh Ramesh Kale that he would take care of his family members is also on record (page No.31). It is apparent that the request for substitution was made immediately after attaining the age of majority by applicant No.1. The respondents have not taken steps to appoint the applicant No.2 on compassionate ground from 04.04.2016 to January, 2019. According to respondents, the name of applicant No.2 was deleted as per G.R. dated 21.09.2017 after completion of her age of 45 years.

Record shows that before deleting the name of applicant No.2 from wait list, the applicant No.2 has already applied for substituting the name of her son in place. According to applicants, their request for substitution was rejected and it was communicated vide communication dated 02.02.2022 (page No. 37-A). The claim was rejected on the ground that there was no provision for substitution of name of any candidate in place of candidate already on wait list.

7. 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.

It is already discussed that in the present matter also, the applicant No.2 was not offered job on compassionate ground for almost three years.

8. Learned counsel for the applicants 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 n 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.”

In this matter, the case of applicant can be said to have been covered by the illustration Nos. (i) to (v). In view of judgments of Hon'ble High Court discussed above, it would be difficult to accept that the impugned communication dated 02.02.2020 is legal and proper.

9. 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 02.02.2022 issued by respondent No.3, thereby rejecting the claim of the applicants for substitution of name of applicant No.1 in place of applicant No.2. is hereby quashed and set aside.
- (iii) The respondents are directed to substitute the name of applicant No. 1 in place of her mother i.e. applicant No. 2 in the waiting list prepared for compassionate appointment within a period of one month from the date of receipt of this order and shall take further steps in accordance with law.

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

(Ashutosh N. Karmarkar)
Member (J)

Place:-Aurangabad

Date : 02.05.2025

SAS O.A. 1154/2022 Compassionate Appointment