

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 805 of 2022 (S.B.)

- 1) Smt. Aruna W/o Madhukar Ghadge,
Aged about 52 years, Occ: Nil, R/o Plot No. 144,
Freedom Fighter Colony, Mhalgi Nagar, Nagpur.
- 2) Rajesh S/o Madhukar Ghade,
Aged about 32 years, Occ: Nil,
R/o Plot No. 144, Freedom Fighter Colony, Mhalgi Nagar, Nagpur.

Applicants.

Versus

- 1) The State of Maharashtra
through its Secretary Public Works Department,
Mantralaya, Mumbai-32.
- 2) The District Collector, Nagpur, District Nagpur.
- 3) The Superintending Engineer,
Sarvajanik Bandhkam Mandal,
(PWD) Department, Nagpur, District Nagpur.

Respondents.

Shri S.U. Ghude, Advocate for the applicants.
Shri M.I. Khan, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Dated :- 19/11/2024.

J U D G M E N T

Heard Smt. Smita Dashputre, learned counsel holding for
Shri S.U. Ghude, learned counsel for the applicants and Shri M.I.
Khan, learned P.O. for the respondents.

2. The learned counsel for the applicants has filed pursis
along with G.R. dated 21/09/2022 and letter dated 14/09/2022. Same
are taken on record.

3. The case of the applicants in short is as under –

The husband of applicant no.1 was in service with respondent no.3. He died on 14/08/2008. The applicant no.1 had applied for appointment on compassionate ground on 16/03/2009. The respondents have not taken the name of applicant no.1 in the waiting seniority list for appointment on compassionate ground on the ground that she has crossed 40 years of age on 05/07/2009. Therefore, applicant no.2, i.e., son of deceased applied for appointment on compassionate ground, but decision on application of applicant no.2 is not taken by the respondents. Therefore, the applicants have approached to this Tribunal to direct the respondents to appoint applicant no.2 on compassionate ground.

4. Respondent nos.1 and 3 have filed reply. They have denied the claim of applicants. It is submitted that applicant no.1 has crossed the age of 40 years. Therefore, in view of the guidelines given in the G.R., her name was not taken in waiting seniority list. It is submitted by the respondents that there is no provision of substitution and therefore name of applicant no.2 is not taken in the waiting seniority list. Hence, the O.A. is liable to be dismissed.

5. During the course of submission the learned counsel for applicants has pointed the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6267/2018 in the case

of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others**. The said Judgment was confirmed by the Full Bench of Hon'ble Bombay High Court, Bench at Nagpur in W.P.No.3701/2022 with connected W.Ps., decided on 28/05/2024. Now the issue in respect of substitution is very clear.

6. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others** has held that unreasonable restriction issued by the Government of Maharashtra as per G.R. dated 20/05/2015 was directed to be removed, but the Government of Maharashtra has not removed the unreasonable restriction in respect of substitution. As per the G.R. dated 20/05/2015, the substitution was not provided. The material part of Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others** (cited supra) is reproduced below –

"I) We hold 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 that it be deleted.

II) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.

III) The respondent no.2 - Chief Executive Officer is directed to include the name of the petitioner in the waiting list of persons seeking appointment on compassionate ground, substituting his name in place of his mother's name.

IV) The respondent no.2 - Chief Executive Officer is directed to consider the claim of the petitioner for appointment on compassionate ground on the post commensurate with his qualifications and treating his seniority as per the seniority of his mother.

V) Rule is made absolute in the above terms.

VI) In the circumstances, the parties to bear their own costs."

7. The said Judgment was considered by the Full Bench of Hon'ble Bombay High Court, Bench at Nagpur in the case of ***Kalpana Wd/o V. Taram & Ano. Vs. State of Maharashtra & Ors.*** in W.P.No.3701/2022 with connected W.Ps., decided on 28/05/2024. As per the Judgment of Full Bench of Hon'ble Bombay High Court, Bench at Nagpur, the direction given by the Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Dnyaneshwar S/o Ramkishna Musane Vs. State of Maharashtra & Others*** (cited supra) is perfectly correct.

8. Now the respondents cannot say that substitution is not provided as per the G.R. dated 20/05/2015. Applicant no.1 had already applied for appointment on compassionate ground on 16/03/2009. Her name was not taken on waiting seniority list on the ground that she has completed 40 years of age on 05/07/2009. It is pertinent to note that the object of G.R. of 2017 and earlier G.Rs. is

that to provide immediate appointment on compassionate ground. After 4-5 months, the applicant no.1 had crossed the age of 40 years, therefore, respondents cannot say that she was age barred and therefore her name was not taken on waiting seniority list. Applicant no.2 applied for appointment on compassionate ground in the year 2022, but his name also not considered by the respondents on the ground that the substitution is not provided as per the G.R. dated 20/05/2015.

9. Now the issue in respect of substitution is already decided by the Full Bench of Hon'ble Bombay High Court, Bench at Nagpur in the above referred decision in the case of ***Kalpana Wd/o V. Taram & Ano. Vs. State of Maharashtra & Ors.*** Therefore, applicant no.2 is entitled for appointment on compassionate ground by substituting his name. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to enter the name of applicant no.2 in the waiting seniority list for appointment on compassionate ground and provide the employment, as per rules.

(iii) No order as to costs.

Dated :- 19/11/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 19/11/2024.