

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 281/2023 (S.B.)**

Nikita D/o Sheshrao Nandapure,
Aged about 25 years,
Occ. Nil, R/o Plot No. 25/B, Chakrapani Nagar,
Hudkeshwar Police Station Road,
Near Vithoba Lawn, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Medical Department,
Mumbai- 32.
- 2) The Director Medical Education & Research,
Mumbai.
- 3) The Director of Government Medical College
& Super Speciality Hospital,
Nagpur.

Respondents

Shri G.Gadge, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 04th July, 2024.

Judgment is pronounced on 10th July, 2024.

Heard Shri G.Gadge, Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the Respondents.

2. Sheshrao Nandapure, father of the applicant died in harness on 13.01.2019 whereupon brother of the applicant by name Swapnil applied for appointment on compassionate ground on 26.03.2019 (A-2). Name of Swapnil was entered in the waiting list. However, on 22.10.2021 Anita Nandapure, wife of the deceased submitted application (A-5) before respondent no. 3 that in place of her son Swapnil her daughter, present applicant be considered for appointment on compassionate ground. On the same day the applicant applied for appointment on compassionate ground (A-4). To support the application of the applicant Swapnil made an affidavit dated 18.10.2021. Anita, mother of Swapnil and Swapnil himself also submitted affidavit dated 20.10.2021 (A-7) giving "No Objection" to consider the applicant for appointment on compassionate ground. However, by the impugned communication dated 17.03.2022 (A-9) it was informed that name of Swapnil was already entered in the waiting list and for want of enabling provision his name could not be substituted by that of the applicant. Hence, this Original Application.

3. Respondent no. 3 supported the impugned order on the ground that substitution as sought could not be allowed because there was no provision to do so.

4. The issue involved in the O.A. is settled by the Full Bench of the Hon'ble Bombay High Court by judgment dated 28.05.2024 in a batch of Writ Petitions by approving the view in **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra & Ors. 2020 (5) Mh.L.J. 381**. In Dnyaneshwar (supra) para 1 (c) of G.R. dated 20.05.2015 (A-10) issued by G.A.D., Government of Maharashtra was considered. This para states:-

क) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे:-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही.

In Dnyaneshwar (supra) it was held:-

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.

Since the view divergent from the one taken in Dnyaneshwar (supra) was taken by some Benches of the Bombay High Court, the matter was referred to Full Bench and the Full Bench (supra) has approved the view in Dnyaneshwar (supra).

5. In view of aforesaid legal position the impugned order dated 17.03.2022 (A-9) is quashed and set aside and respondent no. 2 is directed to reconsider within two months from today application of the applicant afresh in the light of what is held hereinabove. **The O.A. is allowed in these terms with no order as to costs.**

Member (J)

Dated :- 10/07/2024

aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 10/07/2024
and pronounced on

Uploaded on : 11/07/2024