

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.1126/2023(S.B.)

1. Sandhya Wd/o, Ramchandra Gedam,
Aged about 45 years, Occ.- House wife.
2. Devashish S/o, Ramchandra Gedam,
Aged about 22 years, Occ.- Nil,
Both applicants are R/o, At, Post- Jaravandi,
Tah. Attapalli, Dist- Gadchiroli- 442603.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) Additional Commissioner,
Tribal Development Department,
Giripeth opposite R.T.O Office Nagpur.
- 3) The Project Officer,
Integrated Tribal Development Project,
Gadchiroli Dist-Gadchiroli.

Respondents

Shri S.S.Taram, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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

Dated: - 05rd September, 2024.

JUDGMENT

Judgment is reserved on 20th August, 2024.

Judgment is pronounced on 05th September, 2024.

Heard Shri S.S.Taram, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Ramchandra Gedam was working as Assistant Teacher in the respondent department. He died in harness on 22.03.2011. Applicant no.1 who is wife of the deceased submitted application dated 14.10.2011 (Annexure A-2) for appointment on compassionate ground. At that time her son, applicant no.2 was 11 years old. After applicant no.2 attained majority but before applicant no.1 has attained the age of 45 years, applicant no.1 submitted application dated 07.06.2018 (Annexure A-3) that her name be substituted by the name of her son, applicant no.2. By the impugned communications dated 15.09.2018 and 24.08.2020 (Annexures A-4 and A-5, respectively) request for substitution was rejected. Hence, this O.A..

3. Stand of respondents 2 and 3 is that substitution as sought cannot be allowed under the law for want of enabling provision.

4. The applicant has relied on the Judgment of this Bench dated 19.07.2024 in O.A.No.267/2019 (**Smt.Sunita widow of Sunil Karhade and one another Vs. State of Maharashtra and three others**) wherein it is held-

4. *The issue involved in the O.A. as to whether under the circumstances mentioned above name of applicant no.2 can be directed to be entered in the waiting list is settled by the Full Bench of the Hon'ble Bombay High Court in **Kalpana wd/o Vilas Taram and one another Vs. the State of Maharashtra and two others** (with connected Writ Petitions) by Judgment dated 28.05.2024. In para 20 and 21 it is observed-*

20. In view of the above-referred question, at this juncture, it would be appropriate and relevant to refer to the observations made by the Division Bench of this Court in the case of Dnyaneshwar Musane (supra), which read thus:

"5. After hearing learned advocates for the parties and going through the Government Resolution dated 20-5-2015, we are of the view that the prohibition imposed by the Government Resolution dated 20-5-2015 that name of any legal representative of deceased employee would not be substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the fundamental rights guaranteed by [Article 14](#) of the Constitution of India. As per the policy of the State Government, one legal representative of deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution dated 20-5-2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee

cannot be substituted in the list in place of the other legal representative who had submitted his/her application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated. It is not the case of respondent No.2 that petitioner's mother was given appointment on compassionate ground and then she resigned and proposed that petitioner should be given appointment. The name of petitioner's mother was in waiting list when she gave up her claim and proposed that the petitioner should be considered for appointment on compassionate ground."

21. Thus, the Division Bench of this Court in the case of Dnyaneshwar Musane (Supra), has held that the prohibition imposed to the effect that, if one legal representative of the deceased employee stakes claim for appointment on compassionate ground then the name of another legal representative cannot be substituted in the list does not further the object of the policy of the State Government regarding appointments on compassionate ground. It is further held that, on the contrary, such prohibition frustrates the object for which the policy to give appointment on compassionate ground is formulated.

In para 51, while answering the Reference, it is held that the view taken in the case of Dnyaneshwar Musane (Supra) and other similar matters is correct and is in consonance with the object of compassionate appointment.

In para 36 it is held-

36. In this background now let us get the perspective of this matter looking at the ground realities of today's life. The upper age to seek employment under State of Maharashtra is 40 years for the open category and 45 years for the reserved category. The average age of marriage in the state of Maharashtra is 28 to 30 years. Thus, it is a possibility that, an employee dies in harness

between the age of 45 to 47 years and his widow is aged more than 42 years and less than 45 years on the date of death of the employee. Resultantly, She applies for compassionate appointment since her son/daughter is below 18 years of age and not eligible for seeking employment. In that event if no appointment is made immediately before she attains age of 45 years, her name will be deleted within a period of three years on the ground that she has attained the age of 45 years. The consequences of it would be harsh i.e. in less than the maximum period of three years provided for making application for appointment including the period of condonation of delay, the family would be disentitled to claim appointment if substitution is not permitted. Therefore, denial to substitute the name of another member of the family only because substitution is sought on the ground that the member waitlisted has attained age of 45 years cannot be said to be justifiable in such or similar matters.

5. The respondents, on the other hand, have relied on **Rajeshri widow of Dnyaneshwar Khope and another Vs. State of Maharashtra and Others 2023 (5) Mh.L.J. 622** wherein the Hon'ble Bombay High Court has held-

11. Perusal of cause title of this petition shows that petitioner No. 1 in the year 2021 was aged about 32 years old and thus she became major in the year 2005, but she applied almost 14 years after she became major. Be that as it may, the fact remains that the object of appointment on compassionate ground is to help the family to tide over the sudden crises and to give relief against financial destitution. Here is the case, where the deceased employee died in the year 1998 and almost 24 years have been lapsed. After a period

of 24 years from the death of the deceased employee, the petitioner No. 1 will not be entitled to be appointed on compassionate ground. The reason is that by passage of time, the sudden crises efface. The purpose for which the compassionate appointments are to be made does not remain there by efflux of time. If such appointments are allowed to be made after gap of a long period, it will be against the object and purpose for which the appointment on compassionate ground is provided. Therefore, we are not inclined to grant relief to the petitioner No. 1 to be appointed on compassionate ground.

6. The respondents have also relied on **State of W.B. Vs. Debabrata Tiwari and Another 2023 (5) Mh.L.J. 156** wherein the Hon'ble Supreme Court has held-

The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense

of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the, grant of compassionate appointment has been made out for consideration.

7. In the instant case husband of applicant no.1 / father of applicant no.2 died on 23.03.2011. Applicant no.1 applied for appointment on compassionate ground on 14.10.2011. At that time age of applicant no.1 was 36 years (her date of birth is stated to be 23.07.1975). When his father died applicant no.2 was 11 years old (his date of birth is stated to be 30.05.2000). On 07.06.2018 application (Annexure A-3) for substitution was filed. By this point of time applicant no.2 had attained majority. However, applicant no.1 had not attained the age of 45 years. Considering all these circumstances and ratio laid down by the Full Bench of the Hon'ble Bombay High Court in Kalpna (supra) which is applicable to the facts of the case, the applicants would have succeeded but for the hurdle of limitation in their way. By communication dated 15.09.2018 (Annexure A-4) application dated 07.06.2018 for substitution was rejected for want of enabling provision. By subsequent communication dated 24.08.2020 applicant no.1 was informed that as she had attained the age of 45 years, her name was removed from the waiting list. Instant O.A. was filed on 11.10.2023. It is

clearly barred by limitation. It may be reiterated that cause of action arose on 15.09.2018 when rejection of application dated 07.06.2018 was communicated. Even if it is assumed for the sake of arguments that the subsequent communication dated 24.08.2020 furnished a fresh cause of action, the O.A. would still be barred by limitation. For all these reasons the O.A. is dismissed as being barred by limitation, with no order as to costs. Since I have held that substitution as sought ought to have been allowed in the facts and circumstances of the case, and the O.A. is dismissed only on the ground of limitation, the applicants may, if they so desire, move the authorities afresh to reconsider application dated 07.06.2018 as per Rules.

(M.A.Lovekar)
Member (J)

Dated – 05/09/2024.
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.

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

Judgment signed on : 05/09/2024.

and pronounced on

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