

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.267/2019(S.B.)**

1. Smt. Sunita wd/o Sunil Karhade,
Age: 46 years, Occu. Nil.
2. Ku. Sukesha d/o Sunil Karhade,
Age: 10 years (minor through her mother Applicant No.1),
Occu.: Student, Both the Applicants,
R/o. Anandnagar, near Vishnu Flour mill,
Sitabuldi, Nagpur-440012.

Applicants.

Versus

- 1) State of Maharashtra,
Through the Secretary,
Ministry of Water Resource Department,
Mantralaya, Mumbai-32.
- 2) Chief Engineer,
Water Resource Department,
2nd Floor, Administrative Building No.1,
Civil Lines, Nagpur.
- 3) Assistant Superintending Engineer,
Chandrapur Irrigation Project Division,
Jalnagar, Dist: Chandrapur-442401.

4) Executive Engineer,
Gadchiroli Irrigation Department,
Dist: Gadchiroli.

Respondents

Shri R.S.Khobragade, Ld. Counsel for the applicants.
Shri M.I.Khan, Ld. P.O. for the respondent no.1.
Shri T.M.Zaheer. Ld. Counsel for the respondents 2 to 4.

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

Dated: - 19thJuly, 2024.

JUDGMENT

Judgment is reserved on 18th July, 2024.

Judgment is pronounced on 19thJuly, 2024.

Heard Shri R.S.Khobragade, learned counsel for the applicants, Shri M.I.Khan, learned P.O. for the respondent no.1 and Shri T.M.Zaheer, learned counsel for the respondents 2 to 4.

2. Sunil Karade, husband of applicant no.1 was working as Assistant Storekeeper. Applicant no.2 is their daughter. Sunil Karade died in harness on 27.03.2013. On 06/07.05.2013 applicant no.1 submitted application (Annexure A-2) for appointment on compassionate ground. On 23.03.2018 applicant no.1 submitted application (Annexure A-4) that in her place her daughter, applicant

no.2, be considered for appointment on compassionate ground on her attaining majority. Application dated 23.03.2018 was rejected by the impugned order dated 10.04.2018 (Annexure A-1) on the ground that there was no enabling provision for substitution as sought. Hence, this O.A..

3. In their reply respondents 2 to 4 have referred to G.R. dated 20.05.2015 issued by G.A.D., Government of Maharashtra, and the fact that name of applicant no.1 was removed from the waiting list on 02.01.2018 on her crossing the age of 45 years.

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. In view of aforesaid factual and legal position, the O.A. is allowed. Respondent no.2 is directed to enter name of applicant no.2

in the waiting list for appointment on compassionate ground, on her attaining majority. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 19/07/2024
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 : 19 /07/2024.
and pronounced on
Uploaded on : 19/07/2024.