

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 431/2020(S.B.)**

1. Sagar S/o Muneshwar Pandhare,
aged about 19 years, Occupation: Nil,
R/o Jitesh Chowk, Govindpur road,
Gondia, Tah. & Dist. Gondia.
2. Lata wd/o Muneshwar Pandhare,
aged about 46 years, Occupation: Nil,
R/o Jitesh Chowk, Govindpur road,
Gondia, Tah. & Dist. Gondia.

Applicants.**Versus**

1. The State of Maharashtra,
through it's Secretary,
Ministry of Home Department,
Mantralaya, Mumbai-32.
2. The Deputy Inspector General of Police,
Gadchiroli Region, Gadchiroli,
Tah. & Dist. Gadchiroli.
3. The Superintendent of Police,
Gondia, Tah. & Dist. Gondia.

Respondents.

Shri S.N.Gaikwad, Ld. Counsel for the applicants.
Shri S.A.Sainis, Ld. P.O. for the respondents.

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

Dated: - 21st November, 2024.

JUDGMENT

Heard Shri S.N.Gaikwad, learned counsel for the applicants and Shri S.A.Sainis, learned P.O. for the respondents.

2. Case of the applicants in short is as under-

The father of applicant no.1 was working in the Police Department. He was working on the post of Police Naik. The father of applicant no.1 died on 26.12.2010. Thereafter, the mother of applicant no.1 i.e. applicant no.2 applied for appointment on compassionate ground. She had made application on 28.12.2010. Her name was taken on waiting seniority list. Her name was at Sr.No.99, but the respondents have not provided any employment. Her name was removed from waiting seniority list as per order dated 08.08.2019.

3. Thereafter, the applicant no.2 applied to give appointment to applicant no.1 as per application dated 07.04.2018. That application was rejected by the respondents on 28.03.2019 on the ground that substitution is not provided. The name of applicant was removed on 08.08.2019 from waiting seniority list. Therefore, the applicant has filed the present O.A. for the following reliefs-

- i. *allow the instant original application with costs;*
- ii. *be please to quash and set aside the impugned communication dated 28.03.2019 issued by the respondent No.3 i.e. The Superintendent of Police, Gondia; Further be pleased to direct respondent No.3 i.e. Superintendent of Police, Gondia to consider the*

name of the applicant NO.1 for appointment on compassionate ground and include the name of the applicant No.1 in waiting list for compassionate appointment and consider him for appointment;

iv. Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant application.

4. The O.A. is strongly opposed by the respondents. It is submitted that the name of applicant no.2 was taken in the waiting seniority list. Her name was at Sr.No.99. Because of vacancy of post she could not be appointed. In the meantime, the applicant no.2 has completed 45 years of age. Therefore, by order dated 08.08.2019 her name was removed from waiting seniority list.

5. The applicant no.1 cannot be appointed because there is no provision of substitution in place of the name which is already on record in the waiting seniority list as per G.R. of 2005.

6. The learned counsel for the applicants has pointed out Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra & Ors. 2020 (5) Mh.L.J. 381**. The learned counsel for the applicants has pointed out the Judgment of Full Bench of Bombay High Court, Bench at Aurangabad in Writ Petition No.3701/2022 with connected Writ Petitions in the case of **Kalpna Wd/o V. Taram & Ano. Vs. State of Maharashtra & Ors.** As per the submission of learned counsel for the applicants, now the issue in respect of

substitution is settled by the Division Bench. Substitution is permissible as per Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra & Ors. 2020 (5) Mh.L.J. 381**. The learned P.O. has submitted that there was no post. Therefore, mother of applicant no.1 was not appointed.

7. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra & Ors. 2020 (5) Mh.L.J. 381** has passed the following order-

"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."

8. There was some another contradictory order. Both Judgments were placed before the Full Bench in the case of **Kalpana Wd/o V. Taram & Ano. Vs. State of Maharashtra & Ors.**

9. The Hon'ble Full Bench of the Bombay High Court, Bench at Nagpur has held that the view taken in the case of **Dnyaneshwar S/o Ramkishan Musane Vs. State of Maharashtra & Ors. 2020 (5) Mh.L.J. 381** is covered. The Hon'ble High Court had already given direction to the Government to remove the unreasonable restrictions imposed by the G.R. dated 20.05.2015.

10. In the present case, the respondents have not provided any employment to the mother of applicant no.1 i.e. applicant no.2. She had applied within a time i.e. within one year from the death of her husband. Her name was taken on waiting seniority list. Instead of providing any employment to her, her name was removed after completion of 45 years of service. It is pertinent to note that on 07.04.2018, the applicant no.2 applied for appointment of applicant no.1 on compassionate ground. The respondents have issued letter dated 28.03.2019 stating that substitution is not provided and therefore employment to applicant no.1 cannot be given.

11. The respondents have not provided any employment to applicant no.2. The respondent no.2 also has not given any employment to applicant no.1. Both applicant nos.1 and 2 applied

within time as per Government G.R.. As per the Judgment in the case of **Kalpana Wd/o V. Taram & Ano. Vs. State of Maharashtra & Ors.,** the substitution is legal and correct. The unreasonable restrictions imposed by G.R. dated 2005 was already directed to be removed. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. The respondents are directed to substitute the name of applicant no.1 in place of the name of applicant no.2 and provide the employment on compassionate ground as per Rule.
3. The respondents are directed to comply the order within a period of four months from the date of receipt of this order.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 21/11/2024.
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 Vice Chairman.
Judgment signed on : 21/11/2024.
Uploaded on : 21/11/2024.
