



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.468 OF 2024

Rohit s/o Suryakantrao Mali
Age: 25 years, Occu.: Education,
R/o. Degloor, Tq. Degloor,
Shivba Nagar Bhaktapur Road,
District Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Concerned Department Mantralaya,
Mumbai-21.
2. The Social Welfare Officer,
Latur, District Latur.
3. The District Social Welfare Officer,
Zilla Parishad, Nanded, District Nanded.
4. The Secretary,
Sughd Shikshan Prasarak Mandal,
Udgir Road, Dgloor,
Dist. Nanded.
5. The Headmaster,
Blind School, Behind Manave
Vikas High School, Degloor,
Tq. Degloor, Dist. Nanded.

.. Respondents

...

Mr. G. J. Karne, Advocate for the petitioner.
Mrs. V. S. Chaudhari, AGP for respondent Nos.1 and 2/State.
Mr. Syed Parvez, Advocate h/f Mr. S. B. Pulkundwar, Advocate for respondent No.3.
Mr. R. V. Gunale, Advocate h/f Mr. V. D. Gunale, Advocate for respondent No.5.

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CORAM : SMT. VIBHA KANKANWADI &
SACHIN S. DESHMUKH, JJ.

DATE : 22 JUNE 2026

ORDER :

. Present petition has been filed for issuing writ of mandamus or directions against the respondents to substitute the name of the petitioner in place of his mother Smt. Anita Suryakantrao Mali for giving appointment on compassionate ground.

2. It is not in dispute that the father of the petitioner namely Suryakantrao Ramrao Mali was serving as Superintendent with respondent Nos.4 and 5. He expired on 10.06.2009 leaving behind wife Smt. Anita, daughter Rohini and petitioner Son.

3. The petitioner has come with the case that immediately after Suryakantrao expired, his widow Smt. Anita had made application to the Commissioner, Disability Welfare Commissionerate, Pune on 01.07.2009. Copy of the same was also given to respondent No.3, however, no action was taken. It has come by way of additional affidavit of the petitioner that by application dated 10.12.2009, the mother of the petitioner had taken objection for appointment of another person and again made request for her appointment on compassionate basis. The Commissioner, Disability Welfare Commissionerate, Pune, thereafter addressed a communication dated 05.01.2010 to respondent No.3 forwarding the application submitted by Smt. Anita seeking appointment on

compassionate grounds and calling for a report regarding her appointment. However, it appears that no further steps were taken in that regard. Subsequently, Smt. Anita again pursued her claim for compassionate appointment in the year 2018. The documents on record further indicate that her name was included in the waiting list for the year 2019–2020. However, a remark was recorded stating that the application was not submitted in the prescribed proforma, the requisite affidavit had not been filed and no proposal had been forwarded by the school. It appears that on 22.04.2018, Smt. Anita has then given an application that due to ill health, she is unable to pursue the application for appointment on compassionate basis and then she requested that the name of the present petitioner be replaced in her name. Separate application has also been given by the present petitioner on 26.05.2019. When there is no action taken, again in a proforma the petitioner has filed application on 21.02.2022. Still there is no action. Hence, the petition.

4. Learned Advocate for the petitioner has taken us through all the documents and submitted that the petitioner's mother is suffering from a knee problem and is undergoing treatment under an orthopaedic doctor. A medical certificate to that effect has been produced on record. It is further submitted that, considering her advanced age and medical

condition, she is unable to take up the employment. He relies on the decision of the Full Bench of this in **Kalpana wd/o Vilas Taram and another Vs. State of Maharashtra and others, [Writ Petition No.3701 of 2022 with companion matters decided on 28.05.2024]** wherein it has been held that the substitution of the name in the waiting list for compassionate appointment is permissible. So also, if a person is seeking substitution of the name of another person in place of a member, who had applied on account of crossing the age limit of 45 years, then it is not contrary to the object and the purpose for which the compassionate appointment must be granted. He then also relies on the order passed by the Hon'ble Supreme Court in **Govind Janardan Gaikwad Vs. State of Maharashtra and others, (Civil Appeal No.7489 of 2023 decided on 06.11.2023)** wherein also the substitution was allowed. He also relies on the decision of this Court in **Latika Uttam Mahajan Vs. The State of Maharashtra Through its Secretary and others, [Writ Petition No.12897 of 2023 decided on 21.12.2023]**.

5. There is no affidavit-in-reply by respondent Nos.1 and 2. Affidavit of Mr. Satendra s/o Virendra Aulwar, the District Social Welfare Officer, Zilla Parishad, Nanded has been filed. It has been stated by him that the name of the petitioner's mother was never taken in the waiting list. She was not eligible for getting appointment on compassionate ground. The

father of the petitioner died on 10.06.2009. Therefore, the policy of compassionate appointment existed at the relevant time needs to be considered. The Government Resolution dated 22.08.2005 provides for the time limit for making application to the competent authority for seeking compassionate appointment. Though the upper age limit was extended to 45 years for candidates, whose names were included in the waiting list, such candidates were liable to be removed from the waiting list upon attaining the age of 45 years. According to him, the petitioner has made application to the office of respondent No.3 in the year 2015. He claims ignorance as to whether petitioner has made any application to the management within time or not. Respondent No.3 vide communication dated 08.09.2015 informed respondent Nos.4 and 5 to submit the proposal in prescribed format complying of the requirements in tune of existing policy, however, neither the petitioner's mother, nor the school authorities had submitted the proposal with requisite documents to respondent No.3 and, therefore, her name was not taken in the waiting list. According to him certain applications were never submitted to the office of respondent No.3. Interestingly, in the affidavit, he has referred to the decision of the Hon'ble Supreme Court in **Fertilizers and Chemicals Travancore Limited and Others Vs. Anusree K. B., [2022 DGLS (SC) 1269]**, in respect of explaining the object behind introducing

the policy of compassionate appointment.

6. It has been told that learned Advocate for respondent No.3 has filed leave note. Time and again this Court has explained that the leave notes of Advocates are not binding and furthermore as per the Appellate Side Rules, it is the bounden duty of the Advocate proceeding on leave to make arrangement for the submissions in the matter. Anyway, unnecessary adjournments deserve to be deprecated. Though learned Advocate Mr. Syed Parvez appears on behalf of learned Advocate Mr. S. B. Pulkundwar for respondent No. 3, he submits that he is only appearing to bring to the notice of the Court that Mr. Pulkundwar has filed a leave note. Since a leave note is not binding on the Court, we proceed with the matter by taking into consideration the documents that have been placed on record. We also take note of the affidavit-in-reply dated 29.02.2024 filed on behalf of respondent No.3.

7. Here, it is to be noted that respondent No.3 i.e. the affiant Mr. Satendra s/o Virendra Aulwar, the District Social Welfare Officer, proceeded on the fact that no application was filed prior to 2015. However, after making some submissions on 18.04.2026, it appears that the liberty was granted to the petitioner to file documents on affidavit within a period of two weeks and then liberty was given to the

respondents of file reply within a period of four weeks. Accordingly, the affidavit has been filed on 24.04.2026, which has been then received by the learned Advocate for respondent No.3. Along with the said affidavit the petitioner has given the copy of the application filed by the mother on 01.07.2009, which was addressed to the Commissioner, Disability Welfare Commissionerate, Pune and copy of the same was given to respondent No.3. Now, there is no refutation on the part of respondent No.4 in respect of receipt of the said document. The fact that is required to be then noted is that Commissioner, Disability Welfare Commissionerate, Pune by his communication dated 05.01.2010 had directed respondent No.3 to consider the application filed by Smt. Anita on 01.07.2009. That means, there were two ways in which respondent No.3 had received the application dated 01.07.2009 and respondent No.3 had the knowledge that Smt. Anita was claiming to be appointed on the compassionate basis after the death of her husband. Surprisingly, the affidavit is totally silent and it appears that the affiant has not even considered his own documents. Another fact to be noted is that the copy of waiting list for the year 2019-2020 has been produced along with the petition. Still, he has not disowned the said list by stating that it is not prepared by his office. There cannot be a waiting list of the candidates, whose application has been rejected. Interestingly, this list in the year 2019-2020 is inclusive

of the names of the candidates, whose applications have been rejected or in a sense they have been held ineligible. Along with the affidavit, respondent No.3 has not filed copy of the communication by which the ineligibility of Smt. Anita was communicated to her. At no point of time it appears that it was informed to Smt. Anita that her application has been rejected. Informing the candidate of the rejection of his candidature or taking an appropriate decision regarding inclusion of the name for compassionate appointment is mandatory on the part of the institution and the concerned officers.

8. Respondent No.3 is insisting on the fact that proposal was not received from respondent Nos.4 and 5. Merely stating that that he is not aware as to whether the petitioner had made any application to the management within prescribed time cannot absolve the respondent No.3 from his own duties. Interestingly, it is stated in the affidavit-in-reply that when the petitioner made an application in the year 2015, respondent No.3, by communication dated 08.09.2015, informed respondent Nos.4 and 5 that the proposal should be submitted in the prescribed format. This clearly indicates that cognizance of the petitioner's application had been taken in the year 2015. Though respondent No.3 was aware of the date of death of the petitioner's father as well as the time limit prescribed under the Government Resolutions,

the said application was not directly rejected by respondent No.3.

9. The record, particularly the additional affidavit filed by the petitioner, reflects that Smt. Anita had submitted her claim by an application dated 01.07.2009. However, there is nothing on record to show that respondent No.3 had submitted any report to respondent No.2 or to the competent authority, which had issued the communication dated 05.01.2010, stating that the application was liable to be rejected for not being in the prescribed format. There is also no material to indicate that any steps were taken to have the application submitted in the prescribed format. The note to the letter dated 05.01.2010 shows that a copy was given to Smt. Anita and it was stated that she should contact respondent No.3 for submitting the application. The persuasion by Smt. Anita for getting a job on compassionate basis can be seen from the copies of other communications placed on record.

10. It appears from the record that on 22.04.2018 some application appears to have been given by Smt. Anita for replacing her name from waiting list with the name of her son, since she was unable to take up the job due to health issues. The copy that has been given at page No.19 cannot be considered in view of the fact that it bears the signature of Smt. Anita, but not the acknowledgment. There appears to be another

letter or application given by her on 17.03.2020 along with certain document, but then the fact remains is that the present petitioner has also filed an application on 26.05.2019 for replacement of his name in the name of his mother.

11. The point regarding substitution is not *res integra* in view of the decision by the Full Bench of this Court in **Kalpana Vilas Taram (Supra)**. Same view has been taken in **Govinda Janardan Gaikwad (Supra)** by Hon'ble Supreme Court. Here, important fact even now that is required to be considered is that as per the heirship certificate dated 23.07.2009, the age of the present petitioner was 13 years, when he lost his father. He could have then set up his claim immediately after the attainment of majority, but then at that time it can be seen that name of his mother was appearing in the waiting list of 2019-2020. We do not agree with the affiant's statement that her name was not included at all. Another fact which he states in his affidavit is that in the month of March 2020, the age of the mother of the petitioner was 45 years. He submits that the petitioner initiated the process for substitution of his name in place of his mother only after she had crossed the age of 45 years. Since his affidavit was filed prior to the decision of the Full Bench of this Court in **Kalpana Vilas Taram (supra)**, he has made a statement that the policy does not permit substitution of the name of a person who has crossed the age of

45 years. Now, that statement cannot be considered at all. While considering the matter as on today and since the petitioner's application is still pending, we must also take note of the subsequent Government Resolution. Clause VII (b)(2) of the Government Resolution dated 17.07.2025 provides that an application for substitution may be filed within a period of three years from the date on which the candidate in the waiting list attains the age of 45 years. Therefore, the application pending before respondent No.3 can be said to be within limitation, and the said authority is required to process the same. Therefore, taking into consideration all these aspects, we pass the following order :-

ORDER

- I) The Writ Petition stands allowed.
- II) The respondents are directed to substitute the name of the petitioner in place of his mother Smt. Anita Suryakantrao Mali for giving appointment on compassionate ground.
- III) We also grant liberty to the petitioner that in case respondent No.3 is of the view that an application in the prescribed format is required to be submitted through respondent Nos.4 and 5, then either the petitioner shall submit the requisite application

or respondent No.3 shall obtain the same and process it through respondent Nos.4 and 5. This exercise shall be completed within a period of 15 days, and thereafter the substitution may be carried out.

[SACHIN S. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm