

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12833 OF 2018

Shafi Pasha Aziz Pasha

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Taher Ali Quadri, Advocate for the Petitioner.

Mrs. M. A. Deshpande, Addl.G.P. for Respondent Nos. 1 to 4.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 27TH NOVEMBER, 2018.

FINAL ORDER :

. The petitioner had filed original application before the Maharashtra Administrative Tribunal as his application for substituting his name in the place of his brother in the wait list of the persons to be appointed on compassionate ground is rejected. The Tribunal dismissed the original application. Aggrieved thereby present writ petition.

2. Mr. Quadri, the learned advocate for the petitioner strenuously contends that, the Tribunal has not considered the judgment of this Court in Writ Petition No. 1384 of 2016 dated 27th February, 2017. The Tribunal has negated the contention

of the petitioner only on the ground that there are no administrative instructions permitting the substitution of the name in the list seeking appointment on compassionate ground.

3. The learned counsel further submits that, the father of the petitioner was serving with the respondents as a Class III employee. During his service he died on 20th July, 2007. Immediately within the prescribed period of limitation the elder brother of the petitioner on or about 10.12.2007 filed an application seeking appointment on compassionate ground. The name of the elder brother of the petitioner was taken in the wait list of the persons/candidates to be appointed on compassionate ground. Till 2015 no communication was received. Because of the change in situation and circumstances, the mother on or about 30th September, 2015 moved an application for substituting the name of the present petitioner in the place of his elder brother. The learned counsel submits that, this Court in its order dated 27th February, 2017 in Writ Petition No. 1384 of 2016 has categorically observed that there cannot be any restriction in the implementation of the policy. The purpose and object of the Government policy of appointing the person on compassionate ground is to provide succor to the family of the deceased. Considering the same there would be no bar for substitution of the name of the petitioner in the place of his elder brother. This aspect has been lost sight by the Tribunal while rejecting the

original application. The policy cannot be construed in a rigid manner so as to frustrate the object of the policy.

4. The learned Additional Government Pleader for respondents supports the order and submits that substitution is permissible only in case of a person whose name was kept in the wait list is dead. Reliance is placed on the Government Resolution dated 20th May, 2015.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The object of compassionate appointment is to provide immediate succor to the family of the deceased dying in harness. The father of the petitioner died in the year 2007. The application for substitution was made after eight years. It cannot be said that, if the substitution is not permissible after eight years the policy would frustrate. The elder brother of the petitioner had applied within the period of limitation. His name was considered and is taken on wait list. It is not the case that the application of the elder brother of the petitioner is rejected. After eight years filing of an application for substitution may not serve the purpose and the object of appointment on compassionate ground. Moreover, the application has been made

for substitution after introduction of the G. R. dated 20th May, 2015, which permits substitution on limited ground. Said ground does not subsist in the present matter. Eleven years have lapsed since the death of the father of the petitioner. The claim for compassionate appointment cannot be considered in perpetuity.

7. Considering the above, we are not inclined to exercise our writ jurisdiction in the present matter. The writ petition is dismissed. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 18