

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

WRIT PETITION NO. 6267 OF 2018

Dnyaneshwar s/o Ramkishan Musane,
Age- 21 years, Occu: Nil,
R/o. Gurukrupa Niwas, Hanuman Tekadi,
Vitthalwadi, Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai-32.

2. The Chief Executive Officer,
Zilla Parishad, Parbhani,
Dist. Parbhani.

3. The Education Officer (Primary),
Zilla Parishad, Parbhani,
Dist. Parbhani.

...Respondents

...

Mr. Avinash M. Reddy a/w Mr. Satish Bhosale h/f Mr. V.D.
Gunale, Advocate for the Petitioner.
Mr. S.R. Yadav, AGP for Respondent/State.
Mr. V.V. Bhavthankar, Advocate for Respondent No.2.

...

**CORAM : Z.A. HAQ &
S.M. GAVHANE, JJ.
DATED : 11TH MARCH, 2020.**

ORAL JUDGMENT:- [PER : Z.A. HAQ, J.]

1. Heard.

2. Rule. Rule made returnable forthwith.

3. Undisputedly, the father of the petitioner was
working as primary teacher with the Zilla Parishad, Parbhani

as a confirmed employee and while in employment, he died on 06.09.2005. At that time, the petitioner was minor (aged about 6 years). The mother of the petitioner applied for appointment on compassionate ground and her name was included in the list of persons seeking appointment on compassionate ground. After the name of petitioner's mother was included in the list of persons seeking appointment on compassionate ground, the grand parents of petitioner objected for giving appointment on compassionate ground to mother of the petitioner and proposed that appointment on compassionate ground should be given to the petitioner. At that time, the petitioner was minor (aged about 8 or 9 years).

4. The Chief Executive Officer, Zilla Parishad conducted hearing in 2013. At the time of hearing, mother of the petitioner gave up her claim for appointment on compassionate ground and requested that petitioner be given appointment on compassionate ground. At that time also, the petitioner was minor. On becoming major, the petitioner submitted fresh application on 18.06.2015 seeking appointment on compassionate ground. This application is rejected by respondent no.2 - Chief Executive Officer, on the ground that the name of the petitioner cannot be substituted in place of his mother's name, in the list of persons seeking

appointment on compassionate ground. For this, the respondent no.2 - Chief Executive Officer relied on the Government Resolution dated 20.05.2015, which lays down that name of any legal representative of deceased employee would not be substituted in place of any other legal representative, in the list of persons seeking appointment on compassionate ground.

5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view that the prohibition imposed by the Government Resolution dated 20.05.2015 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 the 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 20.05.2015 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.

6. In this view of the matter, we find that the restriction imposed by the Government Resolution dated 20.05.2015 that name of legal representative of deceased employee cannot be considered in place of another legal representative of that deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground, is unjustified. Hence, we pass the following order:

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.

(S.M. GAVHANE, J.)

(Z.A. HAQ, J.)