

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11697 OF 2019**

Prashant Bhimrao Desai and anr.Petitioners

Versus

The State of Maharashtra through
the Secretary of the Rural Development
Dept and anr.Respondent

Mr. Mahindra Balasaheb Deshmukh, advocate for the petitioners.
Ms. R. M. Shinde, AGP for the State.
Dr. Uday P. Warunjikar, advocate for respondent No.2
Mr. Sanjay Gupte, Deputy Secretary, present in person.

**CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.**

DATE : 24th SEPTEMBER, 2021.

P.C. :

1. On 9th September, 2021, we have passed the following order :

"1] Heard learned counsel for the respective parties.

2] The brief facts giving rise to the present petition are as under.

3] The father of the petitioners, who was working as an Assistant Teacher in Zilla Parishad Primary School at Watar, Tal. Karad, District Satara expired on 5.9.2006. At the time of death of the father of petitioners, the petitioner No.1 was minor and the mother of petitioner No.1/ widow of deceased employee was not possessing any requisite qualifications so as to claim compassionate appointment in place of the deceased employee.

4] Since petitioner No.1 attained majority in the year 2014, he submitted his application to respondent No.2 on 4.7.2014 for compassionate appointment. On receipt of such application, by communication dated 3.4.2019 petitioner No.1 was called for verification of his documents. In the meanwhile, misfortune struck and the petitioner No.1 found that he is suffering from chronic kidney disease. In this backdrop of peculiar circumstances, the petitioner No.1 submitted an application dated 29.8.2019 to the respondent No.2 -Chief Executive Officer, Zilla Parishad, Satara requesting therein that because of his ill-health he may not be in a position to perform the duties effectively as such the claim of his sister Ashwini B. Desai, i.e. petitioner No.2 be considered for compassionate appointment. Along with application, necessary documents such as copies of communication exchanged between petitioner No.1 and respondent No.2 as well as the Certificate issued by the Medical Officer was annexed.

5] Respondent No.2 by communication dated 13.9.2019 expressed his inability to consider the request of petitioner No.1 on the ground that such request cannot be considered in view of the Government Resolution (GR) dated 20.5.2015.

6] By placing reliance upon the judgment of Division Bench this court at Aurangabad Bench in the matter of **Dnyaneshwar R. Musane vs. The State of Maharashtra and ors. decided on 11.3.2020 (Writ Petition No.6267 of 2018)** and the judgment of Division Bench of this court (Coram : K.K.Tated and Riyaz I. Chagla, JJ) in the matter of **Priyanka S. Wagh vs. The State of Maharashtra and ors. Decided on 12.3.2021 (Civil Writ Petition No. 11526 of 2019)**, the learned counsel for the petitioner submits that the petitioners therein were similarly circumstanced and this court allowed the similar request.

7] The learned counsel submits that in paragraph 5 of the judgement in the case of Dnyaneshwar Musane (supra), the Division Bench while referring to Clause 'C' of GR dated 20.5.2015 was pleased to observe that the prohibition (imposed)

frustrates the object for which the policy to give appointments on compassionate grounds is formulated. It is further observed in paragraph 5 that 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. Accordingly, he submits that in the present matter, the petitioner No.1 is giving up his claim and requested the authority to consider the claim of petitioner No.2 for the appointment on compassionate ground.

8] It is submitted that the Division Bench in the case of Dnyaneshwar Musane (supra) further observed that rejection of application by taking recourse to the GR dated 20.5.2015 was unjustified and in the ultimate, the Division Bench held that the restriction imposed by the GR dated 20.5.2015 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 the deceased employee, is unjustified and it is directed that it be deleted.

9] It is further submitted that again in some what identical circumstances, by relying the judgment in the case of Dnyaneshwar Musane (supra), the Division Bench of this court in Priyanka Wagh (supra) allowed the petition and respondent No.3 was directed to consider the petitioner's name for appointment in service on compassionate ground in the place of respondent No.7 Vishakha Dilip Patil.

10] Dr. Uday Warunjikar, the learned counsel for respondent No.2, invited our attention to the latest GR dated 21.9.2017 and more particularly, Clauses (4) & (9) of Schedule-A and submits that though in GR dated 21.9.2017 the State Government provides a window whereby the members of family of the deceased employee and/or the eligible members may jointly submit the nomination for compassionate appointment and Clause (9) refers to obtaining No Objection Certificate from other

members, however, it fails to consider the situation like in the present case or the petitions decided by this court.

11] The learned counsel for respondent No.2 further submitted that in view of the judgments of this court in the cases of Dnyaneshwar Musane (supra) and Priyanaka Wagh (supra), it was expected by the State Government to formulate fresh comprehensive policy taking into consideration the observations in the case of Dnyaneshwar Musane (supra). We find considerable merit in the submissions of Dr.Uday Warunjkar, the learned counsel appearing for respondent No.2. In view of the judgments of this court in cases of Dnyaneshwar Musane (supra) and Priyanka Wagh (supra), the State Government ought to have framed proper policy to address the said issue and to avoid further petitions on the said issue. As such we call upon Ms. R.M. Shinde, learned AGP to file a short affidavit-in-reply explaining the stand of the State Government on the above referred aspects.”

12] Post the petition for further consideration on 23.9.2021.”

2. Pursuant to the above said order, the affidavit-in-reply is filed on behalf of the respondent -State through Mr. S. K. Gupte, Deputy Secretary, GAD, Mantralaya, Mumbai. It is stated in paragraph 08 of the said affidavit-in-reply that the legal opinion is being taken from the Law and Judiciary Department regarding further course of action and for this some period is required. Hence, a request is made for a grant of at least six months' time to examine the issue and to formulate the policy in that respect.

3. The statement made in paragraph 08 of the affidavit-in-reply

filed on behalf of the State through Mr. S. K. Gupte, Deputy Secretary, GAD, Mantralaya, Mumbai, referred hereinabove is accepted as an undertaking to this Court. We further hope and trust that that by adhering to their statement, the State Government would formulate the comprehensive policy to avoid further petitions on this issue.

4. In view of our order dated 9th September, 2021, the respondent – Zilla Parishad is directed to consider the claim of petitioner No.2 in place of petitioner No.1 for appointment on compassionate ground in accordance with the policy for compassionate appointment.

5. With these observations, the petition is disposed of.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)