

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11526/2019

Priyanka Sachin Wagh .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

.....
Mr. Sujeet Bugade for the Petitioner.
Mrs P. J. Gavhane, AGP for the State.
.....

**CORAM: K.K.TATED, &
RIYAZ I. CHAGLA, JJ.**

DATED : MARCH 12, 2021

P.C.

. Heard.

2. Rule. Rule made returnable forthwith.

3. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging the communication dated 09/01/2019 sent by Respondent No.3 rejecting the Petitioner's application for appointment on compassionate ground in place of Respondent No.7 i.e. sister of the Petitioner.

4. The learned counsel for the Petitioner submits that the Petitioner's father died on 01/08/2016, when he was on duty. Hence, Respondent No.7 i.e. sister of the Petitioner filed an application for appointment on compassionate ground on 01/12/2016. Thereafter, the Petitioner's family

members decided to file application for appointment on compassionate ground for the Petitioner instead of Respondent No.7. Hence, the Petitioner had filed an application to the Respondent-Authority to substitute her name in place of Respondent No.7. The same was rejected by Respondent No.3 by their letter dated 09/01/2019, only on the ground that once, the application is filed by any legal heirs then the same cannot be changed and/or substituted by any other legal heirs.

5. The learned counsel for the Petitioner submits that, the reason given for rejecting the Petitioner's application is not correct/legal as per the decision of the Judgment of the this High Court in the matter of ***Dnyaneshwar Ramkrishan Musane Vs. State of Maharashtra reported in AIR Online 2020 Bombay 208***. He relies on paragraph 5 and 6 of the said judgment which reads thus:

"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 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."

6. In the said Judgment, the High Court held that the restrictions imposed by the GR that the name of the legal representative of the deceased employee cannot be considered in place of any legal representative of the deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground is unjustified. On the basis of these submissions, the

learned counsel for the Petitioner submits that this Hon'ble Court be pleased to set aside the communication-order dated 09/01/2019 passed by Respondent No.3 and direct Respondent No.2 to consider the Petitioner's name for appointment on compassionate ground. He submits that if the Petition is not allowed, irreparable loss will cause to the Petitioner being a legal heirs of the deceased who was in service of the Respondent.

7. The learned AGP for Respondent No.3 filed an affidavit in reply dated 04/03/2021 duly affirmed by A.C. Kadam Regional Water Conservation Officer, Soil and Water Conservation Department, Pune. In the said affidavit in reply the Respondent State also admitted that as per the order passed by the Division Bench of this Court reported in *Dnyaneshwar Ramkrishan Musane Vs. State of Maharashtra (supra)* the Petitioner can make application to substitute her name in place of Respondent No.7. Hence, they have no objection if an appropriate order is passed to that effect.

8. Considering the submissions made by the learned counsel for the Petitioner and as an issue involved in the present matter is covered by order of the Division Bench in the matter of *Dnyaneshwar Ramkrishan Musane Vs. State of Maharashtra (supra)* the following order is passed:

a. Prayer clause (b) is allowed which reads thus:

"b. The impugned letter cum communication dated 15/12/2018 sent by respondent no.3 to

respondent no.4 in respect of informing about rejecting the petitioner's claim to the petitioner and accordingly letter cum communication sent by respondent no.4 on 9/1/2019 to the petitioner informing about the rejection of her claim of service on the compassionate appointment may kindly quashed and set aside."

- b. The application filed by the Petitioner dated 02/02/2019 (Exhibit-G Page-26 of the Petition) is allowed.
- c. The Respondent No.3 is directed to consider the Petitioner's name for appointment in service on compassionate ground in the place of Respondent No.7 Vishakha Dilip Patil.
- d. Rule made absolute accordingly with these directions.
- e. No order as to costs.

(RIYAZ I. CHAGLA, J.)

(K.K.TATED, J.)