

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4559 OF 2018

[Nagmi Firdos Mohammad Salim and Anr. **..Vrs..** State of Maharashtra
and Ors.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. V. B. Bhise, Advocate for the Petitioners
Shri. S. M. Ukey, Addl. GP for the Respondent Nos.1 and 2
Shri. G. S. Sengar, Advocate for Respondent No.3.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : 15th DECEMBER, 2021.

Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

2. The facts in brief are that the husband of the Petitioner No.1 and the father of the Petitioner No.2 was serving as an Assistant Teacher at Urdu Primary School, Ghatkheda being run by the Respondent No.3. On 03.05.2013 the husband of the Petitioner No.1 expired. The Petitioner No.1 therefore on 17.05.2013 moved an application seeking grant of appointment on compassionate basis. When that application was pending, the Petitioner No.2 attained the age of majority and hence on 10.07.2017 a fresh representation was made by the Petitioner No.1. Another representation was made on 17.03.2018 and 06.04.2018. Since the substitution of the name of Petitioner No.2 in the place of Petitioner No.1 was not permitted in view of the Government Resolution dated 21.09.2017, the Petitioners have approached this Court.

3. The learned Counsel for the Petitioners submits that prior to the Government Resolution dated 21.09.2017 coming into force, the Government Resolution dated 20.05.2015 was in operation. In that Government Resolution, a Clause similar to Clause 21 in the Government Resolution dated 21.09.2017 was operating. It is submitted that the said Clause in the Government Resolution dated 20.05.2015 was considered by the Division Bench of this Court at Aurangabad Bench and in the decision reported in 2020(5) Mh.L.J. 381 (*Dnyaneshwar s/o Ramkishan Musane .vs. State of Maharashtra and others*) it was held that a substitution of the name of the person on the waiting list was permissible. It is therefore submitted that since the Petitioner No.1 has crossed the age of 45 and the Petitioner No.2 has attained the age of majority, such substitution be permitted.

4. The prayer as made is opposed by the learned Counsel for the Respondents. The learned Additional Government Pleader for the Respondent Nos.1 and 2 submits that under Clause 21 of the Government Resolution dated 21.09.2017, it is not permissible to substitute the name of the person who is shown in the waiting list. It is only in the event of death of the person who is on the waiting list that such substitution is permissible.

5. We have considered the rival contentions and we have perused Clause 21 of the Government Resolution dated 21.09.2017. In that Clause, it has been stated that there is no policy of permitting change of name that is existing on the waiting list maintained by the concerned Employer. However, in the event of death of such person who is on the waiting list, such change is permissible. It is however seen that a similar Clause as Clause 21 was present in Government Resolution dated 20.05.2015 and it has been held in *Dnyaneshwar Ramkishan Musane* (supra) that such restriction for substitution of name of a family member was

unreasonable and it was permissible for the name of one legal representative to be substituted by the name of another legal representative of the deceased employee. We find that the aforesaid position has been reiterated in Writ Petition No.3251 of 2020 decided on 24.08.2021 at this Bench (*Smt. Vandana Wd/o. Shankar Nikure and another .vs. The State of Maharashtra and others*).

6. The facts of the present case indicate that when the name of Petitioner No.1 was in the waiting list, she attained the age of 45 years while her son became major and hence the Petitioner No.1 sought substitution of her name with that of the Petitioner No.2. Following the aforesaid decisions, we find that the Petitioners are entitled for the relief sought in the Writ Petition.

7. Accordingly, the Respondent Nos.2 and 3 are directed to consider the case of the Petitioner No.2 for grant of compassionate appointment by substituting his name in the waiting list in place of Petitioner No.1. The Writ Petition is allowed in the aforesaid terms.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)

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