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

919 WRIT PETITION NO.2451 OF 2022

**CHANDAN NAVIN NISCHAL ALIAS AMOL VAIDYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

....

Mr H. P. Jadhav, Advocate for petitioner;
Mrs R. P. Gaur, A.G.P. for respondent Nos.1 & 2
Mr V. V. Gujar, Advocate for respondent No.3

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 21st December, 2022

PER COURT:

1. The petitioner has put forth prayer clauses (B) and (C),
which read as under :-

“B. By issuing writ of certiorari or any other writ or directions in like nature, the impugned communication dated 12.09.2016 may kindly be quashed and set aside and direct the respondent no.3 to substitute name of petitioner in place of his mother in the list maintained for compassionate appointment and grant compassionate appointment considering the scheme.

C. By issuing writ of mandamus or any other writ or directions in like nature, the respondents specifically respondent no.2 may kindly be directed to decide the pending representations and give compassionate appointment to petitioner without any delay as per Judgments of this Hon’ble Court and as per policy of compassionate appointment.”

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2. The dates and sequence of events are material, which read thus :-

- (a) The father of the petitioner, who was working as a 'Peon', passed away on 27/02/2011.
- (b) On an application by the widow, her name was entered in the wait list.
- (c) On 10/02/2016, as the widow completed 45 years of age, her name has been deleted.
- (d) The petitioner was born on 13/07/2000. He attained the age of 18 years on 13/07/2018.
- (e) The widow moved an application on 06/04/2016, seeking substitution of her name with the name of the petitioner, who was 15 years and 9 months on the said date, thus being ineligible.
- (f) It is a passage of almost 11 years and 10 months since the death of the bread earner.
- (g) The elder sister of the petitioner is now married and the marriage was performed after the demise of the father of the petitioner.

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3. We do not have to enlarge the size of this judgment in the light of the law laid down by this Court in **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and others, reported in 2020 (5) Mh.L.J. 381**, vide which the clause set out in the Government Resolution dated 20/05/2015, imposing a ban on substitution, has been declared ultra vires and is directed to be deleted. As such, substitution is permissible.

4. The legal obstacle in the path of the petitioner is two fold. Firstly, that the Hon'ble Supreme Court has held in **Fertilizers and Chemicals Travancore Ltd. and others Vs. Anusree K.B., AIR 2022 Supreme Court 4766; Director of Treasuries in Karnataka Vs. Somyashree, (2021) SCC OnLine SC 704; State of Uttar Pradesh and others Vs. Premlata (2022) 1 SCC 30; Mumtaz Yunis Mulani Vs. State of Maharashtra (2008) 11 SCC 384, and State of Himachal Pradesh and another Vs. Shashi Kumar (2019) 3 SCC 653**, that stale claims for compassionate appointments are not to be entertained as they defeat the very purpose of providing compassionate appointment to an eligible family member, who has lost a bread earner. Secondly, the name of the mother of the petitioner was deleted on

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10/02/2016 and after a period of 2 years and 5 months, the petitioner became 18 years of age, on 13/07/2018.

5. The contention of the petitioner is, that as he became an adult, he has a right to claim compassionate appointment after attaining the age of 18 years. He also contends that, though the name of his mother has been deleted, his name can be entered even after the deletion. This aspect has been answered directly by the Co-ordinate Bench of this Court (Coram : Mangesh S. Patil and Sandeep V. Marne, JJ.) by an order dated 20/08/2022, delivered in Writ Petition No.4451/2021, filed by Mangalabai Janardhan Shinde and another Vs. State of Maharashtra and another. The observations on this aspect are found in paragraph Nos.10 to 15, which read thus :-

*“10. After having heard learned counsels for the parties, the short issue that arises for consideration before us is whether name of first applicant can be substituted after crossing age of 45 years by another name in view of the judgment in the case of Dnyaneshwar Ramkishan Musane (supra) and in the case of **Prashant Bhimrao Desai and another** (supra). The restriction on substitution of name of ward in the waiting list in the G. R. dated 20.05.2015 has already been set aside by this Court in the case of Dnyaneshwar Ramkishan Musane (supra) and in the case*

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of **Prashant Bhimrao Desai and another** (supra). This Court expected the State Government to revise its policy of compassionate appointment with regard to restriction on substitution of name and to issue revised guidelines.

11. On account of the judgments in the case of **Dnyaneshwar Ramkishan Musane** (supra) and in the case of **Prashant Bhimrao Desai and another** (supra) the position that stands today is that there is no restriction on substitution of name of ward in the wait list for compassionate appointment.

12. However, we have a different conundrum before us. Apart from the issue of substitution of name of mother with that of son, there is another difficulty of mother crossing the age of 45 years. The said restriction is imposed in para No. 11 of the G. R. dated 21.09.2017. The petitioners have not challenged the provision. The challenge to the G. R. dated 21.09.2017 is restricted to condition No. 21, which imposes restriction on substitution of name in the wait list. Thus the condition of removal of name of the representative from the waiting list on crossing age of 45 years is not challenged in the present petition.

13. Situation, therefore, that emerges is that even though the name of the petitioner No. 2 could have been substituted in place of the petitioner No. 1 in accordance with the judgment in the case of **Dnyaneshwar Ramkishan Musane**

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(supra) and in the case of **Prashant Bhimrao Desai and another** (supra), on account of mother crossing age of 45 years, her name is required to be struck off removed from the waiting list. Since the mother's name would not remain in the wait list, there would be no occasion for substitution of her name with that of petitioner No. 2.

14. Relying on the decision in the case of **Nagmi Firdos Mohammad Salim and another** (supra), Mr. Tope has submitted before us that the factual situation in that case is similar to that of present one. He submits that this Court has taken into consideration both aspects of impressibility of substitution of name as well as crossing the age of 45 years and, therefore, present petition deserves to be allowed in the light of the order in the case of **Nagmi Firdos Mohammad Salim and another** (supra). On going through the said decision, we find that this Court has essentially dealt with aspect of substitution of name of representative in the waiting list. Even though in that case also the mother had crossed age of 45 years, this Court has not gone into the legality of para 11 of the G. R. dated 21.09.2017, which prescribes the age bar of 45 years. Therefore, it cannot be said that the decision in **Nagmi Firdos Mohammad Salim and another** (supra) is an authoritative pronouncement on the issue of permissibility of substitution of name even after crossing the age bar of 45 years. On the other hand, we have considered the combined effect of the two conditions of substitution of name and crossing the age of 45 years in the

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present judgment. We are therefore of the considered opinion that decision in the case of **Nagmi Firdos Mohammad Salim and another** (supra) cannot be said to lay down a law to the effect that substitution of name of a representative is permissible even after crossing the age of 45 years. The decision is therefore clearly distinguishable.

15. As has been rightly pointed out by Mr. Shinde, learned A. G. P. right of compassionate appointment cannot be postponed indefinitely. The observations of the Supreme Court in the case of **Sanjay Kumar** (supra) relied upon by Mr. Shinde, in para No. 3 of the judgment are as under :

“We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education & Anr. v. Pushpendra Kumar & Ors.* supra. It is also Significant to notice that on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

6. In **Sanjay Kumar Vs. State of Bihar, (2000) 7 SCC 192**, the Hon'ble Supreme Court ruled that compassionate appointment is not a right and the claim for being granted compassionate appointment, cannot be postponed till the ward becomes a major after a passage of a long time. In the instant case, the petitioner's father unfortunately passed away on 27/02/2011. The widow receives pension. The elder sister of the petitioner got married. It is now 11 years and 10 months since the demise of the father of the petitioner. Taking into account the law crystallized by the Hon'ble Supreme Court in the reported judgments, though substitution may be possible, we do not find that the substitution in this case could serve any purpose in the light of the judgment delivered in *Mangalabai Janardhan Shinde (supra)*, as the petitioner became adult after 2 years and 5 months, post the deletion of the name of his mother.

7. Taking into account all these aspects, we do not find that this petition can be entertained. The same is, therefore, dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)