

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

940 WRIT PETITION NO.4294 OF 2022

**SHUBHAM VILAS SALUNKHE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Mr.Sawant Amol S.
AGP for Respondents-State : Mr.S.P.Tiwari

...

**CORAM : RAVINDRA V. GHUGE, &
ANIL L. PANSARE, JJ.**

DATE : 29th JUNE, 2022

PER COURT :

1. By this petition, petitioner No. 1 (son) and petitioner No. 2 (widow of the deceased employee) have putforth prayer Clauses (A) and (B), which read as under :

“(A) The Hon’ble High Court may be pleased to quash and set aside the communication dated 31.12.2021 issued by the Divisional Joint Registrar, Co-Operative Society, Nashik Division, Nashik and the communication dated 13.01.2022 issued by the District Deputy Registrar, Co-Operative Society, Dhule, wherein the claim of petitioner No. 1 for appointment on compassionate basis came to be rejected and further be pleased to pass necessary orders for the said purpose;

(B) The Hon’ble High Court may be pleased to issue writ or direction in the nature of writ, directing the respondents to include the name of petitioner No. 1 in the waiting list and to issue the appointment order in favour of petitioner No. 1 on compassionate basis on the commensurate post, considering the educational qualification of

petitioner No. 1 and further be pleased to pass necessary orders for the said purpose.”

2. Issue notice to the respondents, made returnable forthwith. The learned AGP waives service of notice on behalf of all respondents.

3. We have considered the strenuous submissions of the learned Advocates for the respective sides.

4. The learned AGP has vehemently opposed this petition.

5. In an identical situation in Dnyaneshwar s/o Ramkishan Musane Vs. State of Maharashtra and Ors, 2020 (5) Mh.L.J. 381, this Court has observed in paragraph Nos. 3 to 5 as under :

“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. The facts in the case before us are practically identical, which are as follows :

(a) The husband of petitioner No. 2 and father of petitioner No. 1, died on 09.10.2002 when he was working in the office of the District Deputy Registrar, Dhule as a Junior Clerk.

(b) The widow applied for compassionate appointment on 31.12.2002, as her son was a minor. Considering her difficulties, the widow wrote to the department on 26.11.2007 that she is withdrawing her request and as and when her son would become an adult, he may be considered.

7. The Additional Joint Registrar, Co-Operative Society, Nashik, addressed the widow vide communication dated 26.03.2008 that she is permitted to withdraw her request and as and when her son becomes 18 years of age, he would apply within one year from

the said date. This was an unequivocal assurance.

8. After the petitioner No. 1 attained 18 years of age, he moved an application, within one year on 31.08.2020. The D.D.R., Dhule forwarded the application on 07.09.2020, to the Additional Joint Registrar, Nashik.

9. On 21.06.2021, the Additional Joint Registrar informed the D.D.R. that certain documents need to be collected from petitioner No. 1 and hence, his application would be considered in the light of the G.R. dated 21.09.2017. On 12.11.2021, petitioner No. 1 again moved an application. On 26.11.2021, the D.D.R., Dhule again submitted the proposal to the Additional Joint Registrar, in view of G.R. dated 25.05.2015, stating that there is no provision for replacing the applicant since the said G.R. prohibits such replacement.

10. In the above backdrop, the Additional Joint Registrar, Nashik, issued a communication dated 31.12.2021, narrating that no appointment will be given to petitioner No.1. This was followed by the communication dated **31.01.2022, issued by the Additional Joint Registrar, Nashik**, rejecting the claim of the petitioner No. 1, which is impugned in this petition.

11. It is thus, obvious that respondent Nos. 2 and 3 did not have knowledge of the order passed by this Court on 11.03.2020, in Dnyaneshwar Ramkisan Musane (Supra). This Court has specifically set aside the clause in the said G.R., which prohibited the replacement (reproduced portion of the judgment here-in-above). Based on the said conclusion, this Court issued the following directions in paragraph No. 6 in Dnyaneshwar s/o Ramkishan Musane (Supra) as under :

“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.”

12. In view of the above, this petition deserve to be allowed and more so, in the light of the fact that the widow was assured that her son would be considered for compassionate appointment after he becomes 18 years of age.

13. In view of the above and since the clause prohibiting the replacement of name vide G.R. dated 20.5.2015 has been set aside, this petition is allowed, with the following directions :

a) The petitioner's name would be included in the list of eligible candidates for compassionate appointment, from the date of his application, which is dated 31.08.2020.

b) Considering the qualifications of the petitioner No. 1 and his seniority, in view of the above, he would be offered appointment on compassionate basis, as and when the position on which he is eligible to be appointed considering his qualifications, falls vacant.

c) Inclusion of the name of the petitioner in the list as directed in Clause- A, hereinabove, shall be effected on or before 30th July, 2022.

(ANIL L. PANSARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE