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

WRIT PETITION NO.6255 OF 2019

1. Smt. Swati Ankush Borde,
age 50 yrs. Occ. Household
2. Swaraj Ankush Borde
Age 20 yrs. Occ. Educated unemployed

Both r/o Laxmikant Nagar,
Post Kajala, Tq. and Dist. Jalna

..PETITIONERS

VERSUS

1. The State of Maharashtra
For Secretary General Administration
Department, Mantralaya, Mumbai-32
2. The Secretary
General Administration Department
Mantralaya Mumbai – 32
3. The Chief Executive Officer,
Zilla Parishad, Jalna

..RESPONDENTS

Mr. D.R. Irale Patil, Advocate for petitioners;
Mr. S.R. Yadav-Lonikar, A.G.P. for respondent nos.1 & 2;
Mr. P.P. Dama, Advocate for respondent no.3

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 4th March, 2022

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ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners have brought peculiar facts before this Court vide this petition. Having considered the extensive submissions of the learned Counsel for the petitioners and on behalf of the respondents on 2nd March, 2022, 3rd March, 2022 and today, the submissions of the respective parties can be summarized as under-

(A) SUBMISSIONS OF THE PETITIONERS

- a) Ankush Borde died on 14.1.2011 while in employment of the Zilla Parishad, Jalna. He was working as a Gram Sevak.
- b) Petitioner no.1 Smt. Swati, is his widow.
- c) Petitioner no.2 Swaraj, is the son of the deceased and Smt. Swati.
- d) On 24th January, 2021, i.e. within 10 days of his passing away, petitioner no.1 widow Smt. Swati Ankush Borde applied for compassionate appointment. Her name was entered in the list of eligible candidates for appointment on compassionate ground.

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- e) On 17th January, 2014, petitioner no.2 Swaraj was nominated by the widow Smt. Swati, by substitution in her place.
- f) Though the son Swaraj was 14 years of age, the request for substitution was entered in the records showing Swaraj as being the nominee.
- g) Swaraj was thus entered in the list of eligible candidates for appointment at the age of 14 years (a minor).
- h) On 20th May, 2015, a G.R. was introduced by the Government of Maharashtra. Clause 1 (c) prescribed prohibition on substitution.
- i) On 3rd April, 2019, the petitioner approached this Court putting forth prayer clause (B) that the communication of the Zilla Parishad dated 26.3.2019 cancelling substitution of the name of Swaraj in place of the widow Swati, be quashed and set aside and the position of Swaraj in the wait list may be maintained.
- j) On 8.7.2019, petitioner no.1 widow accepted an appointment order from the Zilla Parishad on the post of Peon. No protest

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was registered though this petition was pending and without a demur, she accepted her appointment order and commenced her service, on 6.8.2019.

- k) Even today, the widow is in employment.
- l) She then sought leave to amend the prayers in this petition and has put-forth prayer (B-2) and (B-3) as under-

“B-2) The Hon’ble Court may be pleased to pass necessary order and quash and set aside the impugned order dt. 8.7.2019 issued by respondent no.3 and further direct respondent no.3 to issue fresh order in the name of petitioner no.2 in view of placement given in the waiting list in place of petitioner no.1 prior to Govt. resolution dt. 20.5.2015.

B-3) Pending hearing and final disposal of this writ petition the Hon’ble Court may be pleased to pass necessary order and prohibit the respondent no.3 not to implement the impugned order dt. 8.7.2019 pending decision and give any adverse effect providing disadvantage to the petitioners.”

- m) The widow now submits that she is willing to resign and her son be appointed in her place.

(B) SUBMISSIONS ON BEHALF OF THE ZILLA PARISHAD

- a) It is conceded that the request of the widow to substitute her son as a nominee for compassionate appointment, was recorded in the list of eligible candidates for appointment on compassionate basis, on 2nd March, 2014. The son Swaraj was then 14 years of age.
- b) At the time of granting appointment to the widow, the Zilla Parishad was guided by the Government Resolution dated 20th May, 2015 which prohibited substitution.
- c) Keeping in view the said provision under the Government Resolution, the Zilla Parishad had no option but to cancel the substitution since such substitution was impermissible in view of the Government Resolution dated 20th May, 2015 and continuing with such substitution, would have been an illegality on the part of the Zilla Parishad.
- d) In this backdrop, as the widow was eligible for appointment, she was called upon to accept the appointment order dated 8.7.2019.

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- e) She has voluntarily accepted the appointment order without lodging any protest and she has also submitted her joining report on 6.8.2019, almost a month later.
- f) She is now in employment for more than 2 years and 9 months.

3. We find from the judgment delivered by the learned Division Bench of this Court at Aurangabad in Writ Petition No.6267 of 2018 filed by Dnyaneshwar Ramkisan Musane vs. The State of Maharashtra and others, that this Court dealt with clause 1(c) under the Government Resolution dated 20th May, 2015 and concluded that the same was arbitrary, irrational and unsustainable since it violated the fundamental rights guaranteed by Article 14 of the Constitution of India.

4. We find from the order of this Court in Dnyaneshwar Musane (supra) that clause 1 (c) of the Government Resolution dated 20th May, 2015 contains two contingencies. Firstly that, once the name of an eligible family member is entered in the wait list, there shall not be substitution of the name. The second contingency is that, a substitution of a candidate entered in the wait list would be

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permissible if the earlier wait listed candidate has died prior to issuance of an appointment order. Such candidate, who would replace the deceased candidate, shall be 18 years of age. If the candidate whose name is to be entered as a replacement is less than 18 years of age, his name would be entered in the list only after he completes 18 years. In the instant case before us, the widow Swati was alive and on her request, she was replaced by her son Swaraj when he was only 14 years of age. We have a serious doubt as to whether a 14 year old boy could be enlisted in the wait list of eligible candidates for appointment on compassionate basis.

5. With the quashing of the said provision under the Government Resolution, substitution became permissible. This Court, however, noted in paragraph no.5 in Dnyaneshwar Musane (supra) that neither the widow nor the petitioner son were appointed on compassionate ground. It is specifically observed in paragraph no.5 that *“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.” It was in this backdrop that this Court concluded in paragraph no.5 that the restriction imposed by the Government Resolution would not come in way of the appointment of the petitioner's son since nobody was appointed on compassionate basis.

6. In the instant case, petitioner no.1 Swati accepted the appointment order dated 8.7.2019, submitted her joining report and joined duties as a Peon on 6.8.2019 without any protest or murmur. This has happened even when the petition was pending before us. The learned Advocate for the petitioners contends that she was compelled to take up the employment under a threat. We are not convinced. If she was held under a threat, she could have approached this Court to point out the nefarious act of the Zilla Parishad. The learned Advocate for the Zilla Parishad submits that as the Zilla Parishad followed the then existing Government Resolution dated 20th May, 2015 and realized that the substitution was incorrect, the appointment was offered to the widow and she accepted the appointment order. It is after 9 months of her joining duties that the said clause of the Government Resolution was struck down by this Court in Dnyaneshwar Musane (supra).

7. In view of the above, as petitioner no.1 Swati has accepted the appointment and has joined duties without registering any protest and is in employment for 2 years and 9 months, her willingness to resign today to accommodate her son, would not fit into the scheme of compassionate appointment. Moreover, it is 11 years past the date of the death of Ankush Borde.

8. In these circumstances, we find that the request of the widow to resign and create a job for her son to be appointed on compassionate basis, cannot be accepted. Considering the applicability of the Government Resolution when the substitution was re-called by the Zilla Parishad and as the said clause of the Government Resolution was struck down subsequently by this Court, it cannot be inferred that the Zilla Parishad has acted arbitrarily or mala fide.

9. As such, this petition being devoid of merit is, therefore, dismissed.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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