

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

905 WRIT PETITION NO.7933 OF 2022

Vishal s/o Vijaysingh Thakur,  
Age 28 years, Occ. Nil  
R/o. Tembhurni Road,  
Chandrabhaga Nagar  
Ahmedpur, Tq. Ahmedpur  
District Latur

...Petitioner

Versus

1. The State of Maharashtra  
Through its Secretary,  
Ground Water Survey and  
Development Department,  
Government of Maharashtra  
Mantralaya, Mumbai 32
2. The Collector, Latur  
District Latur
3. The Deputy Director  
Ground Water Survey and  
Development Mechanism,  
Government of Maharashtra  
IVth Floor, Vikas Bhavan  
Aurangabad Division, Aurangabad
4. The Deputy Engineer,  
Mechanical Sub Division  
Zilla Parishad, Latur  
District Latur
5. The Residential Deputy Collector,  
Latur, District Latur

...Respondents

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Advocate for Petitioner : Mr. Gunale V.D.  
AGP for Respondents 1 to 3 & 5: Mr. P.S. Patil  
Advocate for Respondent No.4 : Mr. P.R. Tandale  
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**CORAM : RAVINDRA V. GHUGE AND  
SANJAY A. DESHMUKH, JJ.  
DATED : 24<sup>th</sup> NOVEMBER, 2022.**

**JUDGMENT (PER RAVINDRA V. GHUGE, J.):-**

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

2. This is a case wherein the petitioner, who is said to be the younger brother of original applicant Vikesh, desires compassionate appointment after 15 years and 9 months, on the following grounds:-

(a) His father passed away on 18.2.2007.

(b) His elder brother, Vikesh applied for compassionate appointment and being an eligible candidate, he was enlisted in the list of candidates for granting compassionate appointment.

(c) However, Vikesh moved an application dated 04.07.2014, alongwith an affidavit, stating therein that he does not desire to take up any employment and, therefore, his younger brother, Vishal (the petitioner herein), be included in the list of eligible candidates in his place.

(d) The application filed by Vikesh was not entertained by the respondent employer of the deceased father on the ground that Government Resolution dated 20.05.2015, prohibits the substitution of one candidate by another candidate.

(e) The said Government Resolution was taken up in challenge before this court, by ***Dnyaneshwar Ramkishan Musane vs. State of Maharashtra and others, 2020 (5) Mh.L.J. 381***. This Court concluded, in the light of the fact that

the mother of Dnyaneshwar had completed 45 years of age and was rendered age barred and, therefore, Dnyaneshwar had sought that his name be included in place of his aged mother, that the clause of the Government Resolution, prohibiting substitution violates Article 14 of the Constitution of India.

3. The case in hand is that Vikesh is neither age barred nor has been debarred by any law. Vikesh is an eligible candidate and his name is enlisted so as to grant him compassionate appointment as and when vacancy arises. Vikesh has categorically stated in the affidavit tendered to the employer, dated 4.7.2012, that he does not desire to perform any duty and does not desire to take up any employment. He, therefore, prays that his name be cancelled from the list. It is in these circumstances, that the petitioner desires his name be enlisted. Vikesh has nowhere stated any reason as to why he does not desire to work. However, the learned advocate for the petitioner had orally informed this Court on 19.9.2022 that Vikesh is paralytic. Not a single medical report or treatment papers advising medical treatment, are placed before the Court. What is placed before the court is a certificate issued by a doctor dated 3.7.2014 stating that Vikesh is taking treatment for Paraparesis and investigation is advised. The said doctor has declared that he is unfit to join Government duty.

4. In the above backdrop, we directed the medical examination of

Vikesh so as to consider the case of the present petitioner and give him a chance for compassionate appointment. By order dated 10.10.2022, we recorded the consent of Vikesh to appear before the Medical Board, Swami Ramanand Teerth Rural Government Medical College and Hospital, Ambajogai, alongwith his identity card, issued by the Election Commission of India and the Aadhaar card, for identification. The Medical Board was directed to examine Vikesh and submit a report in a sealed envelope.

5. The learned A.G.P. placed before us a communication from the Board dated 21.10.2022 that Vikesh did not appear for the medical examination on 20.10.2022 and did not present himself to be medically examined. The said communication by the Dean of the Medical College addressed to the learned A.G.P. is taken on record and marked X-1 for identification. This report leads to an adverse inference as regards the claim of Vikesh that he is a paralytic. This adverse inference supported by the fact that Vikesh did not even whisper in his affidavit to the prospective employer that he is suffering from any illness. What he has stated is that he does not desire to take up any employment in Government service.

6. Be that as it may, the issue is as to whether the claim of the petitioner, who is born on 12.6.1990 and is 32 years and five months old today, could be considered for enlisting his name in place of his brother.

7. The learned advocate for the petitioner submits that the petitioner is married and he has one son of 7 years age. His father has passed away 15 years ago. The elder brother does not desire to work for the family. The petitioner is 32 years of age and seeks compassionate appointment.

8. It is trite that compassionate appointment is not a right. It provides for immediate financial assistance to the family, which has suddenly lost the bread earner. The intention for compassionate appointment is to support the family from being thrown on the street. When the family can survive for 15 years, when the elder brother can decline the employment and when the petitioner is 32 years of age, is married and has a son, granting compassionate appointment at this stage would render the very purpose of compassionate appointment futile.

9. Taking into account all these facts, this petition is dismissed. Rule discharged.

**(SANJAY A. DESHMUKH, J.)**

**(RAVINDRA V. GHUGE , J.)**

rlj/