

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

WRIT PETITION NO. 4451 OF 2021

Mangalabai Janardhan Shinde
and another .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Shri Sambhaji S. Tope, Advocates, for the Petitioners.
Shri A. S. Shinde, A.G.P. for the Respondent No. 1.
Shri Vivekanand V. Gujar, Advocate for the Respondent No. 2.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR ORDER ON : 11.08.2022
ORDER PRONOUNCED ON : 20.08.2022

FINAL ORDER (*Per Sandeep V. Marne, J.*) :-

. By the present petition, the petitioners challenge the conditions in the Government Resolution dated 20.05.2015 and 21.09.2017 prohibiting substitution of the name in the waiting list for compassionate appointment as well as imposing restriction on maximum age of 45 years for being considered for compassionate appointment.

2. Facts of the case fall in narrow compass.

The husband of the petitioner No. 1 and father of the petitioner No. 2 was employed as Gram Sevak in the respondent No. 2 Zilla Parishad, who died in harness on 13.06.2013. The petitioner No. 1, being widow submitted application for grant of compassionate appointment on 10.12.2013 and by November 2014 all the deficiencies in the application were cleared by submitting requisite documents. It is the case of the petitioners that name of the petitioner No. 1 was included in the waiting list for compassionate appointment at Sr. No. 47. The petitioners have placed on record the waiting list of the Zilla Parishad Parbhani as on 31.08.2020, in which the name of the petitioner No. 1 figures at Sr. No. 47.

3. On 19.09.2017, the petitioner No. 1 applied to the respondent Zilla Parishad for substitution of her name with the name of the petitioner No. 2 (son) in the waiting list for compassionate appointment. The same was followed with the reminder dated 03.05.2019. However, it appears that no response was received by the petitioners and as stated hereinabove, the name of the petitioner No. 1 continued to figure in the waiting list for the month of August 2020.

4. It appears that the petitioner No. 1 has crossed the age of 45 years. Non substitution of name of the petitioner No. 1 with that of No. 2 and crossing of age of 45 years are apparently the reasons why the petitioners have knocked the doors of this Court by filing present petition. Even though there is no specific communication or order rejecting the case of the petitioners,

they apprehend that twin conditions in the Government Resolutions dated 20.05.2015 and 21.09.2017 would extinguish the rights of the petitioners for being considered for compassionate appointment. Therefore, the petitioners have challenged both the Government Resolutions dated 20.05.2015 and 21.09.2017. The petitioners are challenging condition No. C of G. R. dated 20.05.2015, under which it is directed that there is no provision for substitution of name in the waiting list. The petitioners have also challenged the condition No. 21 in the G. R. dated 21.09.2017, under which again the prohibition is imposed on substitution of the name in the waiting list.

5. The respondent No. 2/Zilla Parishad has filed affidavit in reply resisting the petition *inter alia* on the ground that the petitioner No. 1 has already crossed age of 45 years. They contend that there is no provision for substitution of the name in the waiting list. Already period of more than seven years has lapsed from the death of the employee and, therefore, the objective for grant of compassionate appointment is frustrated.

6. We have heard learned counsels appearing for the parties.

7. Mr. Sambhaji Tope, learned counsel appearing for the petitioners has relied upon the decision of this Court in the case of **Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and others** reported in **2020 (5) Mh. L. J. 381**, by which this Court has struck down the restriction imposed in the G. R. dated 20.05.2015 for substitution of name of ward of deceased employee

in the waiting list. He also relied on the order of this Court in the case of **Prashant Bhimrao Desai and another Vs. The State of Maharashtra and another** dated 24.09.2021 in Writ Petition No. 11697 of 2019, under which the State Government was supposed to formulate a policy for substitution of name of representative of the deceased employee in the wait list for compassionate appointment. Mr. Tope has also relied upon the decision of this Court in the case of **Nagmi Firdos Mohammad Salim and another Vs. State of Maharashtra and others** in Writ Petition No. 4559 of 2018 decided on 15.12.2021.

8. Per contra, Mr. Vivekanand Gujar, learned counsel appearing for the respondent No. 2/Zilla Parishad has contended that on account of lapse of long period of time from the date of death of the employee, the entire objective of the compassionate appointment has completely frustrated. He submitted that no fruitful purpose would be served by endlessly keeping names of one ward or the other on the waiting list. He further submits that, on account of the petitioner No. 1 crossing the age of 45 years, there is no question of substitution of her name.

9. Appearing for the respondent No. 1/State, Mr. A. S. Shinde, learned Assistant Government Pleader has relied upon the judgment of the Supreme Court in the case of **Sanjay Kumar Vs. State of Bihar** reported in **(2000) 7 SCC 192** to buttress his contention that right of compassionate appointment cannot be postponed till the ward, who was minor at the time of death of the deceased, attains majority.

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 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** (*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 impossibility 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 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."

16. It may well be argued that request for substitution of name was submitted on 12.09.2017 i. e. before the petitioner No. 1 attained age of 45 years. However, we would not permit such technical argument to prevail over the larger objective behind grant of compassionate appointment. In our opinion, if the respondents are directed to substitute the name of the petitioner No. 1 with that of petitioner No. 2 on account of the request being made prior to the petitioner No. 1 attaining age of 45 years, the same would result in a situation where the name of the representative of the deceased being continued in the wait list for indefinite period of time, which is obviously cannot be objective behind grant of compassionate appointment. The objective is to provide immediate financial assistance to the family of the deceased. Keeping the name of the substituted representative in the waiting list endlessly would completely frustrate such objective. In the wait list as on 31.08.2020, the name of the petitioner No. 1 figured at Sr. No. 47. Now, if we permit her name to be substituted by the name of the petitioner No. 2, the same would mean that the petitioner No. 2 would be waiting for compassionate appointment for substantially longer period of time henceforth. By now period of nine years has lapsed from the death of the employee. This would completely frustrate not only the objective behind compassionate appointment, but also specific stipulation in the G. R. dated

21.09.2017 for removal of name from the waiting list on attaining age of 45 years. What cannot be done directly is sought to be done in an indirect manner here. By substituting name of son in place of mother, who has already crossed age 45 years, we cannot permit the provision of age bar of 45 years being frustrated.

17. We are therefore of the considered view that the name of the petitioner No. 2 cannot be substituted in place of the petitioner No. 1 in the waiting list of compassionate appointment. The petition therefore must fail and is accordingly dismissed without any order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Aug. 22