

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

921 WRIT PETITION NO.11821 OF 2019

**AKSHAYKUMAR BALAJI KESGIRE
VERSUS
THE STATE OF MAHRASHTRA AND OTHERS**

...

Advocate for Petitioner : Mr. Kadam Prasad B.
AGP for Respondent No. 1 : Mrs. M. A. Deshpande
Advocate for Respondent No. 2 : Mr. V.N. Bhavthankar

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

DATE : 28.07.2022.

ORAL ORDER : (PER : SANDEEP V. MARNE, J.)

We have heard both the sides.

2. By way of this petition, the petitioner is challenging the communication dated 16.05.2019 and seeks appointment on compassionate ground.

3. The father of the petitioner was working as an Assistant Teacher in Zillha Parishad Primary School, Nandgaon Tq. Jintur Dist. Parbhani. He expired on 28.11.2007 while in service. The mother of the petitioner made an application for grant of compassionate appointment to the respondent Nos. 2 and 3. By communications dated 17.10.2012 and 14.12.2012 the respondent No. 2 called upon the petitioner's mother to submit necessary documents for further processing compassionate appointment. However, the petitioner's mother failed to comply with the said requisition. On account of failure of mother of the petitioner to comply with the requisition, it appears that though the respondent No. 2 was willing to consider the case of the mother of the petitioner for compassionate appointment, the same could not be processed further.

4. On 20.12.2010 the petitioner's mother submitted an application stating that she was incapable of serving and therefore in her place the name of the petitioner, who was minor at that time, be considered for compassionate appointment after he attaining the age of majority.

5. After attaining the age of majority, the petitioner made an application dated 18.01.2016 for compassionate appointment. The said application was rejected by the respondent No. 2 vide communication dated 16.05.2019 relying upon the government resolution dated 20.05.2015, which prohibited change of name of applicant for compassionate appointment. The petitioner approached this court by filing Writ Petition No. 8285/2018 and when it came up for hearing on 23.07.2018, the petitioner made a statement that he would prosecute the application with the authority and the writ petition was accordingly disposed of. As a matter of fact, the case of the petitioner was already rejected by a well reasoned order dated 13.10.2016 and there was no question of the petitioner prosecuting his case further with the authorities. Nonetheless, the petitioner made a statement before this Court on 23.07.2018 and got the petition disposed of. Be that as it may, it appears that a fresh application dated 02.04.2019 was made by the petitioner to the respondent No. 2, which came to be rejected by letter dated 16.05.2019 referring to the earlier rejection letter dated 13.10.2016 and it was once again communicated that the case of the petitioner could not be considered for compassionate ground in view of the government resolution dated 20.05.2015.

6. Learned advocate Mr. Kadam appearing for the petitioner has relied upon the judgment of this Court in **Dnyaneshwar Vs. State of Maharashtra; (2020) 5 Mh.L.J. 381** to contend that the judgment holds that the restriction imposed by the government resolution dated 20.05.2015 for replacement of name of petitioner for compassionate appointment is unjustified and that the same was directed to be deleted. Relying on the

said decision, the petitioner is assailing the impugned communications.

7. We have carefully gone through the said judgment in the case of **Dnyaneshwar (supra)**. In our opinion, the facts of the present case are entirely different than the one involved in the case of **Dnyaneshwar**. In the present case, the petitioner's mother was being offered compassionate appointment by respondent No. 2 and she voluntarily decided not to take up the same and instead filed an application dated 20.12.2012 stating that she was not in a position to take up the appointment. No specific reason was assigned in the said letter dated 20.12.2012.

8. The objective of grant of compassionate appointment is to enable the family to tide over the situation on account of sudden loss of income. In the present case the petitioner's father had expired on 28.11.2007 and by the time the case of the mother was being considered for grant of compassionate appointment, a period of five years had already passed. If indeed, the family was in need of immediate financial assistance in the form of compassionate appointment, the mother would have acted upon the communications issued by the respondent No. 2 and cooperated for consideration of her case for grant of compassionate appointment. Instead of doing so, the mother expressed inability to take up the job without assigning any particular reason. In these circumstances, we are of the opinion that the judgment in the case of **Dnyaneshwar (supra)** is clearly distinguishable.

9. In the above backdrop no case is made out by the petitioner for interference by this Court in exercise of its powers under Article 226 of the Constitution of India. The Writ Petition is, therefore, rejected, without any order as to costs.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-