

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

WRIT PETITION NO.12650 OF 2018

Prasad S/o Laxmikant More,
Aged 20 years, Occu. Student,
R/o Sector B, Aditya Angan,
Desai Nagar, Ring Road, Latur,
Tal. and Dist. Latur.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
2. The Chief Executive Officer,
Zilla Parishad, Osmanabad,
District. Osmanabad.

... **Respondents**

...
Advocate for Petitioner : Mr. K. P. Rodge h/f Mr. P. G. Rodge.
AGP for Respondent No.1-State : Mr. S. B. Yawalkar.
Advocate for Respondent No.2 : Mr. R. V. Naiknavare.
...

**CORAM : R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

**RESERVED ON : 13.04.2022
PRONOUNCED ON : 22.04.2022**

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Learned A.G.P. for respondent No.1 and learned counsel Mr. R. V. Naiknavare for respondent No.2 waives

service of notice. Rule is made returnable forthwith. By consent heard finally.

2. Following are the prayers of the petitioner ;

"C) By the writ of Certiorari or any other writ or directions the impugned communication dated 06.04.2018 issued by respondent No.2, Exh-G, be quashed or set aside and for that purpose, necessary orders be passed."

"D) By writ of mandamus or any other appropriate writ order or directions the respondent No.2 be directed to accept the application of the petitioner for appointment on compassionate ground on any suitable post after attaining the age of majority by him and provide him the employment on compassionate ground and for that purpose necessary orders be passed."

"E) Pending hearing and final disposal of this writ petition, the respondent No. 2 be directed to accept the application of the petitioner for appointment on compassionate ground on any suitable post after attaining the age of majority by him and provide him the employment on compassionate ground and for that purpose, necessary orders be passed."

3. The petitioner's deceased father was a Tracer in P.W.D. Sub-Division at Tuljapur under respondent no.2. His father died in harness on 11.08.2011. Petitioner and his mother are the only legal heirs. They obtained a legal heir certificate from the Civil Court. Due to the sudden death of his father, the family lost its source of income. When his father died, the

petitioner was ten years old. Hence his mother had applied for the compassionate appointment on 28.11.2011 to respondent No.2. In her application for a compassionate appointment, petitioner's mother had explicitly mentioned that she is S.S.C. unsuccessful; the petitioner is minor and taking education, therefore, an appointment may be given to her or the petitioner on compassionate ground. In response to the application of the petitioner's mother, respondent No.2 sought some compliances from her. Accordingly, she made the compliances.

4. The name of the Petitioner's mother was enlisted on the wait-list for a compassionate appointment. However, till she attained the age of 45, the Department could not appoint her. Since she was age barred for the compassionate appointment, she, on 08.03.2018 applied for replacement of the petitioner's name for compassionate appointment in her place after attaining his age of majority. Respondent No.2, by impugned communication quoting two Government Resolutions dated 22.08.2005 and 20.05.2015, informed her that, in the above G.R. there is no provision to replace the name of a minor child on the wait-list of compassionate appointment and accordingly

deleted the name of his mother from the wait-list. Hence, he approached this Court for the above reliefs.

5. Respondent No.2, in his affidavit-in-reply dated 15.02.2021, has contended that the petitioner should have made his claim within one year from the death of his father as per G.R. dated 22.08.2005 and 20.05.2015. The petitioner's mother had applied for the compassionate appointment and her name was enlisted on the wait-list. However, no appointment could be made till she attained the age of 45, hence, her name has been removed by respondent No.2. According to the Government Resolution, once a person from a family is included on the wait-list and his/her name is removed due to overage, no other person from the same family is entitled to be replaced. The impugned order is correctly passed observing the rules issued in the above Government Resolution dated 20.05.2015.

6. Learned counsel Mr. Pratap Rodge for the petitioner has argued that the impugned communication is *ex-facie* illegal and against the settled law on compassionate appointment. The issue involved in the case at hand is no more res-integra.

Various judicial pronouncements of this Court, have settled the law. Respondent No.2 did not pay heed to the judicial pronouncement and passed an erroneous order. He also argued that unless the subsequent law has been specifically applied retrospectively, the law on the date of cause of action shall prevail. To bolster his submissions, he placed reliance on the judicial pronouncements of this Court and the Hon'ble Supreme Court.

7. Per contra, the learned counsels for the respondents have argued that no provision is laid in the Government Resolutions to enter the name of a minor in place of the other eligible person from the family. Compassionate appointment is not a right and it is a help to the family who has lost their source of livelihood due to the untimely death of the earning member of the family. The reliance placed on by the petitioner is distinguishable on facts and hence, not applicable to the present case. The impugned communication is within the four corners of law and needs no interference.

8. Learned counsel Mr. Rodge for the petitioner has pointed out that the Hon'ble Apex Court in the case of *State of Madhya*

Pradesh and others Vs. Ashish Awasthi, with one another case (2022)2 S.C.C. 157, has held that in compassionate appointment, the policy prevalent at the time of the death of the deceased is only required to be applied and not the subsequent policy. Respondents have not shown any other view contrary to the view taken by the Hon'ble Apex Court in the case cited supra regarding the retrospective applicability of the subsequent policy on the subject. The deceased father of the petitioner died on 11.08.2011, therefore, the rules/policies prevalent at the time of his death would be applied.

9. The State Government has issued 41 resolutions from 26.10.1994 to the latest Resolution dated 21.09.2017 regarding the compassionate appointment. Lastly consolidating all earlier resolutions, a comprehensive resolution dated 21.09.2017 was issued. By the last resolution the Government has not superseded, any earlier resolution. As per the list of earlier Government Resolutions listed in the latest Government Resolution, at the time of the death of the petitioner's father, the Government Resolution dated 05.03.2011 was the latest.

10. The Government Resolution dated 22.08.2005 was issued to amend the prevalent procedure and scheme of compassionate appointments for the employees in the Government Departments. By this resolution, the guidelines were issued to maintain a dual waitlist. The appointing authorities were also directed to maintain the waitlist of their department in addition to the common list maintained by the District Collector. The age limit for the appointment was determined 40 years, and the person on the waitlist could not be appointed by the age of 40, his/her name shall be deleted from the waitlist. The period of five years to apply for the compassionate appointment was reduced to one year from the date of the death of the deceased. Again by the resolution dated 06.12.2010, the age limit from 40 was enhanced to 45 years.

11. Government Resolution dated 20.05.2015 was about the extension of time to produce typewriting examination certificates by the candidates appointed as typists and replacement of the other family member if the family member on the waitlist dies. It has been specifically made clear in the said resolution that where a family member on the waitlist

dies, another family member who has completed his 18 years of age can be substituted in the waitlist in case, the family member to be substituted is below 18, he should be substituted on attaining 18 years of age. The powers to condone the delay of up to two years caused in applying for compassionate appointments were also conferred on the concerned Administrative Head of the Department.

12. None of the above Government Resolutions deals with a situation of substitution of another family member where the family member on the waitlist could not be appointed as age barred. The Government Resolution dated 20.05.2015 came up before the Division Bench of this Court as pointed out by learned counsel for the petitioner in the case of *Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra, (2020) 5 Mh.L.J. 381*. The facts of the said case were that when the employee died, the petitioner was minor, therefore, his mother had applied for a compassionate appointment. His grandparents objected to the appointment of his mother. His mother waived her right to appoint him in place of his father. He was a minor when application for substituting his name was moved. However, on attaining the age of majority, he

again applied for enlisting on the waitlist. His claim was discarded by the employer, taking the shelter of Government Resolution dated 20.05.2015. In the fact situation the Division Bench held in paragraph No.5 which reads thus;

“5. After hearing leaned advocates for the parties and going through the Government resolution dated 20.05.2015, we are of the opinion 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 under Article 14 of the Constitution of India. As per the policy of the 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 ground 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 proposes that petitioner should be given appointment. The name of petitioner’s mother was in the waiting list when she gave up her

claim and proposed that the petitioner should be considered for appointment on compassionate ground.”

13. In the case of ***Shri. Dhulaji Shrimant Kharat Vs. State of Maharashtra and others in Writ Petition No. 8771 of 2015*** decided on 12.12.2018 by the Division Bench at Principal seat at Bombay, the facts were that the mother of the petitioner during his age of minority had applied for the petitioner's appointments on attaining his majority. On attaining his age of majority, he again requested the employer for a compassionate appointment. However, the employer had declined his request for the reason that the petitioner had not filed an application within one year from the date on which he attained the age of majority. The Division Bench has considered the Government Resolutions dated 11th September 1996 and 22nd August 2005. The relevant part of paragraph No.7 of the said judgment reads thus ;

“7. In our considered opinion, respondents could not have rejected the request of the petitioner, since his mother had applied and requested the respondent in June, 2008 (i.e. within five months) from death of her husband for the grant of employment to her son on compassionate ground, although he was minor at the given point of time. We have perused the Affidavit-cum-application dated 30th June 2008. It contains all

particulars which were otherwise required for processing application. In fact, again in June, 2012, the petitioner renewed his request to consider the application made by her mother in 2008. It is in these circumstances in our view, petitioner has substantially complied with the terms and conditions of the policy of the State formulated for appointment on compassionate ground. In the given set of facts, we hold the respondents were not justified in rejecting the application, merely because the petitioner did not apply within a year from the date of his attaining majority.”

14. The case in hand, the facts are peculiar. The mother had applied in time for a compassionate appointment and was enlisted on the waitlist. However, she could not be appointed till she attained the upper age limit. Hence, a request was made to enter the name of the petitioner on the waitlist. At the time of the request, the petitioner was a minor. Even at the time of presenting this Writ petition, the petitioner was 17 years old. It is not the case of respondents that the mother was offered a job, but she declined. She never claimed a specific post. She was not at fault. It was the situation that, no post on which she could be appointed as per her eligibility was vacant. A person not at fault cannot be blamed. One more circumstance favouring the petitioner is that he was a minor till his mother became age-barred. His mother had applied in

time but before attaining his age of majority. The Government Resolution dated 20.05.2015 resorted to by the respondent while declining the claim of the petitioner, has been declared arbitrary and violative of Article 14 of the Constitution of India by the Division Bench of this Court in the case of *Dhnyaneshwar cited supra*.

15. In view of the matter, we are of the opinion that the impugned communication dated 06.03.2018 is contrary to the law.

16. For the aforesaid reasons, the impugned communication dated 06.03.2018, issued by respondent No.2, is quashed and set aside.

17. Respondent No.2 is directed to accept the application of the petitioner and enter his name in the waitlist at the serial number from the date of his attaining age of majority for the compassionate appointment as per the law.

18. Rule is made absolute in terms of prayer clauses "C", "D" and "E".

19. No orders as to costs. Parties to act on the authenticated copy of this order.

20. The record submitted by the learned AGP be returned to him.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

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vmk/-