

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

24 WRIT PETITION NO.13687 OF 2019

Nikhil s/o Vishwanath Wagh
Age. 23 years, Occ: Education
Cidco N-7, B-1, 202/203,
Near Datta Temple, Aurangabad
Tq & Dist. Aurangabad

.. Petitioner

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Social Justice & Special Assistant
Department, Mantralaya, Mumbai
2. The Commissioner,
Social Welfare Commissioner Office,
3 Church Path, Pune, 411,001
3. The Divisional Dy. Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar,
Social Justice Bhavan, Khokadpura,
Near Shivaji Vidhyalay, Aurangabad
4. The Assistant Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar,
Social Justice Bhavan, Khokadpura,
Near Shivaji Vidhyalay, Aurangabad
5. The Garahpal
Dr. Babasaheb Ambedkar Govt.
Boys Hostel, (Old),
Hadco Corner, Aurangabad

.. Respondents

...
Advocate for Petitioner: Mr. Estling S. Murge
AGP for Respondents: Mr. S. P. Deshmukh

...

**CORAM: SMT. SADHANA S. JADHAV &
S. G. DIGE, JJ.**

DATE: 14th MARCH, 2022

ORAL JUDGMENT (Per Smt. Sadhana S. Jadhav, J.):

1. Heard.

2. **Rule.** Rule made returnable forthwith. With the consent of parties, Petition is taken up for final hearing.

3. The Petitioner herein is seeking compassionate appointment in place of his father. The Petitioner claims to be a minor at the time of demise of his father. The department had considered the appointment of the mother of the Petitioner on compassionate ground after the demise of her husband. The name of the mother of the Petitioner is in the Waiting List. On 05.08.2014, the mother of the Petitioner had made a representation that her son be considered for compassionate appointment instead of her. She had expressed her inability to take the job and therefore had also filed an affidavit giving no objection for the appointment of her son. The

claim of the Petitioner and his mother were not considered in view of the Government Resolution dated 20.05.2015, which contemplates that substituted compassionate appointment cannot be made for any other person other than the person who was the legal heir on the date of the demise of the employee.

4. This Court while deciding Writ Petition No.6267 of 2018 by an order dated 11.03.2020 has held as follows—

“5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view 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 by Article 14 of the Constitution of India. As per the policy of the State 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 grounds 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 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.

6. In this view of the matter, we find that the restriction imposed by the Government Resolution dated 20.05.2015 that name of legal representative of deceased employee cannot be considered in place of another legal representative of that deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground, is unjustified. Hence, we pass the following order:

ORDER

I) We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.

II) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.

III) The respondent no.2 - Chief Executive Officer is directed to include the name of the petitioner in the waiting list of persons seeking appointment on compassionate ground, substituting his name in place of his mother's name.

IV) The respondent no.2 - Chief Executive Officer is directed to consider the claim of the petitioner for appointment on compassionate ground on

the post commensurate with his qualifications and treating his seniority as per the seniority of his mother.

V) Rule is made absolute in the above terms.

VI) In the circumstances, the parties to bear their own costs"

5. The said order dated 11.03.2020 passed by this Court has attained finality, since, it has not been challenged.

6. In view of this, the Respondents shall consider appointment of the Petitioner on compassionate ground. The Petitioner shall be appointed on compassionate ground in accordance with law by ignoring the Government Resolution dated 20.05.2015. With these directions, the Petition is allowed and stands disposed of. Rule is made absolute in above terms.

[S. G. DIGE, J.]

[SMT. SADHANA S. JADHAV, J.]

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