

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 352/2022

1. Kusum wd/o Bhimrao Gaikwad,
Aged about 45 years, Occupation-Nil,
R/o M.I.D.C. area, Behind Navoday Vidyalaya,
Shegaon, Tq. & Dist. Buldana.
2. Prerna d/o Bhimrao Gaikwad,
age 18 yrs, Occ. Nil,
R/o M.I.D.C. area, Behind Navoday Vidyalaya,
Shegaon, Tq. & Dist. Buldana.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra,
Through Principal Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
2. The Chief Officer,
Nagar Parishad, Shegaon, Dist. Buldana.
3. The Collector,
Collector Office, Buldana.

RESPONDENTS

Ms Sonali Saware-Gadhawe, counsel for the petitioners.
Shri D.P. Thakare, Additional Government Pleader for the respondent nos.1 & 3.
Shri M.S. Sharma, counsel for the R-2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : 22ND JUNE, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The husband of the petitioner no.1 was in employment with Nagar Parishad, Shegaon. During the course of service he expired on 31.07.2011. The petitioner no.1-his widow sought appointment on compassionate basis by making an application on 11.11.2011. The name of the petitioner no.1 was however not included in the list of applicants seeking appointment on compassionate basis. The petitioner no.1 therefore pursued the matter with the Municipal Council as well as with the Office of the Collector. Ultimately on 16.12.2016, the Chief Officer informed the Collector, Buldana that the application seeking appointment on compassionate basis had been made by the petitioner no.1 within the stipulated period of one year and hence her name ought to be included in the waiting list. On 09.01.2017 the Collector informed the petitioner no.1 about the same. It appears that in the subsequent waiting list published in December-2020 the name of the petitioner no.1 was not included. Ultimately, in the waiting list published in August-2021 her name was included at Serial Number 26. Thereafter against her name it was stated that since the petitioner no.1 had completed age of forty five years her name was being deleted from that list. Being aggrieved the petitioner no.1 alongwith her daughter-petitioner no.2 have approached this Court praying that the name of the petitioner no.2 be substituted in place of the name of the petitioner no.1 in the said waiting list.

3. We have heard the learned counsel for the parties and we have perused the documents placed on record. It is an undisputed position on record that the application for grant of compassionate appointment was made on 11.11.2011 which was within a period of one year from the demise of the husband of the petitioner no.1. It is only on account of the absence of steps being taken by the Municipal Council that the name of the petitioner no.1 could not be included in the waiting list. The name of the petitioner no.1 was ultimately included in the waiting list in August-2021 but with a remark that she had crossed the age of forty five years. We find that the petitioner no.1 acted diligently for including her name in the waiting list. She therefore cannot be refused permission to substitute the name of her daughter who now seeks employment and has attained the age of majority. This Court in *Dnyaneshwar Ramkishan Musane Versus State of Maharashtra & Others* [2020 (5) Mh.L.J. 381] has considered the aforesaid position and has observed that substitution of the name of legal representative on the death of the person named in the waiting list is permissible. In the facts of the present case it is seen that the applicants named at Serial Number 1 to 25 are those who had moved an application seeking compassionate appointment prior to the petitioner. In that view of the matter, since the petitioner no.1 is not at fault, it will be necessary to permit her to have the name of the petitioner no.2 replaced in her place.

4. Accordingly, the respondent no.3-Collector is directed to permit the name of the petitioner no.1 to be replaced by the name of the petitioner no.2 at Serial Number 26 in the waiting list of the applicants seeking compassionate appointment.

5. With these directions, the writ petition is allowed. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE