

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1680 OF 2021

Sachin Dhanraj Gayki,
 Aged 21 years,
 Occupation-Student,
 R/o. Pushpak Colony, Behind
 Dream Park, Ravi Nagar,
 Amravati, Tq. & Dist. Amravati. .. Petitioner

.. Versus ..

Zilla Parishad, Amravati,
 Through its Chief Executive Officer,
 Camp, Amravati,
 Tq. & Dist. Amravati. .. Respondent

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Shri P.S. Patil, Advocate for the petitioner,
 Shri S.S. Shinde with Shri S.M. Bhangde, Advocates for the respondent.

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CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.
DATED : 21.03.2022.

ORAL JUDGMENT (Per : Smt. M.S. Jawalkar, J.)

Rule. Rule made returnable forthwith. Heard finally at the request of learned counsel for the parties.

2. By this petition, the petitioner has challenged the impugned-order cum-communication dated 12.08.2020 issued by the respondent—Chief Executive Officer, Zilla Parishad, Amravati with the direction to the respondent to include the name of the petitioner in the list of eligible

candidates entitled for appointment on compassionate ground in place of his step brother namely Dinesh Gayki at Sr. No.53 of the list prepared by the respondent. He further requested to direct the respondent to issue the appointment to the petitioner on compassionate ground as per his turn in the list of eligible candidates entitled for compassionate appointment as per his qualification.

3. It is the case of the petitioner that he is presently prosecuting his studies of B.Sc. (Nursing) from Panjabrao Deshmukh Nursing Institute, Amravati. The mother of the petitioner namely Sau. Pushpa Gayki was the second wife of Shri Dhanraj Gayki. At the time of marriage of his mother, said Dhanraj Gayki was having a child from his first wife namely Dinesh. It is stated that the petitioner is the real son of Sau. Pushpa Dhanraj Gayki. The date of birth of the petitioner is 29.04.2000. It is further submitted that the mother of the petitioner was working as a Attendant in Sub-Division Work Department of Zilla Parishad, Amravati, who expired during the course of service. The copy of death certificate of Sau. Pushpa Dhanraj Gayki issued by the Nagpur Municipal Corporation dated 26.04.2011 is filed on record. At the time of her death, she has left behind husband, step son Dinesh and the petitioner. It is stated that at the time of death of mother, the petitioner was only 11 years old. The father of the petitioner is doing the labour work at Arvi is not in a position to maintain both the children. It is submitted that after the

death of mother of petitioner, the whole family was disturbed due to financial crisis. At that time the step brother of the petitioner namely 'Dinesh' was 19 years old. Hence, the father of the petitioner who was facing serious financial crisis to maintain the family, the elder son namely 'Dinesh' applied for compassionate appointment in the place of his step mother at Zilla Parishad, Amravati. His application was duly accepted by the Zilla Parishad and his name was taken on the list of candidates entitled for compassionate appointment in Zilla Parishad. It is submitted that after applying for compassionate appointment by step brother of petitioner namely 'Dinesh', after period of nine years, he received one communication from the office of the respondent dated 15.04.2020 and informed him to produce certain documents to decide the issue of his appointment on compassionate ground. It is further the case of the petitioner that after the death of his mother, he has completed 12th standard and obtained the admission for B.Sc. (Nursing) course as stated earlier. It is submitted that the petitioner who is prosecuting his studies of B.Sc (Nursing) made application to the office of the respondent on 02.04.2018 and requested to include his name in the list of candidates entitled for appointment on compassionate ground in Zilla Parishad, Amravati. It is further stated that the step brother of the petitioner has given no objection for including the name of the petitioner in the waiting list maintained by the respondent by deleting the name of 'Dinesh', dated

02.07.2020. By the impugned communication, the respondent informed the step brother of the petitioner that as per the Government Resolution dated 21.09.1917 it is not permissible to change the name of candidate in the list maintained for appointment on compassionate ground, the request of the step brother cannot be accepted. When the petitioner got knowledge of rejection of request, the petitioner himself made application to the office of the respondent and again made same request to include his name in the list of candidates maintained by Zilla Parishad by substituting his name in place of his step brother. The petitioner was called in the office of the respondent and informed that in view of provisions of the Govt. Resolution dated 21.09.2017 they cannot change the name of candidate who are shown in the list of candidates entitled for the appointment on compassionate ground nor substitute the name of petitioner in place of his step brother. It is submitted that the family of the petitioner is facing financial crisis. Finally, it is submitted by the petitioner that as per the list prepared by the respondent, his name be included in the list of candidates eligible for compassionate appointment. To that effect, he placed reliance on the judgment in the case of **Dnyaneshwar s/o Ramkishan Musane .vs. The State of Maharashtra and others, 2020 (3) ALL MR 550.**

4. The learned AGP submitted that as per the Govt. Resolution dated 21.09.2017, specifically Point No.3 (21) of the said G.R., it is not

permissible under the statute to substitute name and therefore due to aforesaid provision, the claim of the petitioner was rejected by the respondent. It is further submitted that the present petition is required to be dismissed on the ground of non-joinder of necessary parties. It is further submitted that the petitioner failed to challenge the provisions of the Govt. Resolution dated 21.09.2017.

5. Heard the learned counsel for the parties and perused the record. Admittedly, petitioner was minor when his mother expired while in service. Though step brother of petitioner applied for appointment on compassionate ground for about nine years, nothing heard from the respondent. By that time, petitioner became major. In view thereof, he applied for substituting his name in place of his brother. His request turned down on the ground that in view of Govt. Resolution dated 21/09/2017 cannot be substituted.

6. This Court in **Dnyaneshwar Musane** (Supra) case held that the Clause in Government Resolution dated 20/05/2015 restricting the substitute name of legal heir of deceased employee in place of any other legal heir in the list of person seeking appointment on compassionate ground is arbitrary, irrational and violative of the Article 14 of the Constitution of India. By this judgment, the said restriction was directed to be deleted. It is brought to our notice that the Government Resolution dated 21/09/2017 was issued by the State Government by consolidating

all the earlier Government Resolutions and Circulations issued time to time for appointment of candidates on the compassionate ground. It includes dated 20/05/2015 when there was specific directions by this Court to delete the said restrictions. The subsequent G.R. on that basis continuing the said restrictions is arbitrary, unjustified and it is liable to be set aside. It needs to be noted here that the legal heirs who are the step son of deceased employee as well as husband of deceased employee have extended the no objection in favour of the petitioner. In view thereof, the petitioner is entitled to get his name substituted in place of his step brother. Accordingly, we proceed to pass the following order.

ORDER

1. The writ petition is allowed.
2. The communication dated 12.08.2020 issued by the respondent is set aside. It is directed that the respondent shall permit the inclusion/substitution of the name of petitioner in the name of his step-brother at Serial Number 53 of the list of candidates maintained by the respondent. This direction is issued pursuant to the consent given by the petitioner's step-brother dated 02.07.2020 which is Record Page 19 of the writ petition.
3. Rule is made absolute in aforesaid terms. No costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]