

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

WRIT PETITION NO.03 OF 2022

1. Pankaj S/o Late. Tulshidas Jale
Aged 26 years, Occu-Education,
2. Smt. Indira Wd/o Late. Tulshidas
Jale, Age 48 Years,
Occu-Household,

Both are residing at, po-Armurkasa,
Tah-Korchi, Dist-Gadchiroli, 441209
Mo. No. 9529152769.

PETITIONERS

...V E R S U S...

1. The State of Maharashtra, Through its
Secretary, School Education and Sports
Department, Mantralaya, Mumbai-32.
2. The Chief Executive Officer,
Zilla Parishad, Gadchiroli,
Dist. Gadchiroli.
3. The Education Officer (Primary),
Zilla Parishad, Gadchiroli,
Dist-Gadchiroli.

RESPONDENTS

Mr. Shravan S. Taram, Advocate for Petitioner.
Mr. N. R. Rode, Assistant Government Pleader for
Respondent No.1/State.
Mr. A. R. Fule, Advocate for Respondent Nos.2 and 3.

CORAM: **A.S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.**
DATE: **30th JUNE, 2022.**

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

Rule. Rule made returnable forthwith and heard the

learned counsel for the parties.

2. The petitioner no.1 is the son of the petitioner no.2. The husband of petitioner no.2 was in employment with the Zilla Parishad, Gadchiroli but he expired on 11.02.2003 in harness. The petitioner no.2 made an application dated 01.06.2004 seeking appointment on compassionate basis. Her name was included in the waiting list. The petitioner no.1 – son was minor at that time. After he attained the age of majority his name was permitted to be substituted in place of his mother in 2017. The name of the petitioner no.1 was shown in the waiting list from the year 2017 to 2020 until the same was deleted by the impugned order. In the order dated 09.09.2020 it has been stated that since the application seeking compassionate appointment was made beyond the period of one year it was necessary to move an application for condonation of delay with reference to Clause 10 (d) of Government Resolution dated 21.09.2017. Being aggrieved, the petitioners have challenged the deletion of name of the petitioner no.1 by the respondents.

3. The learned counsel for the petitioner no.1 submitted that when his father expired in the year 2003 and application

for compassionate appointment was made in the year 2004 there was no requirement of any such application for condonation of delay being moved. Such requirement has been prescribed for the first time by the Government Resolution dated 21.09.2017. If the name of the petitioner no.2 had been included in the waiting list since 2004 to 2016 and the name of petitioner no.1 has been permitted to be substituted in the year 2017, there was no reason to delete the name of the petitioner no.1 from the waiting list. The reference to the Government Resolution dated 20.05.2015 was also made in that regard. He therefore, submitted that the name of petitioner no.1 was liable to be included in the waiting list.

4. The learned counsel for the respondent nos.2 and 3 supported the communication deleting the name of petitioner no.1. He referred to Government Resolution dated 21.09.2017 and Clause 10 thereof. According to the respondent no.2 it was justified in directing the petitioners to move an application for condonation of delay.

5. We heard the learned counsel for the petitioners and we have perused the documents on record. It is an undisputed fact

that the father of petitioner no.1 expired on 11.02.2003. The petitioner no.2 made an application for appointment on compassionate basis on 01.06.2004. Her name was included in the waiting list and it continued till 2016 after which the name of petitioner no.1 was substituted in her place in 2017. The position on 01.06.2004 when the death of father of the petitioner no.1 occurred on 11.02.2003 was required to be considered. By applying a subsequent Government Resolution dated 21.09.2017 the petitioner no.1 cannot be required to make an application for condonation of delay. Similarly, substitution of name of the petitioner no.1 is legal and valid considering the decision of this Court in *Writ Petition No.6267/2018 (Dnyaneshwar s/o Ramkishan Musane v. The State of Maharashtra thr. its Secretary, School Education and Sports Department, Mumbai and others)* decided on 11.03.2020. The other reason mentioned that the petitioner no.1 has crossed the upper age limit is also incorrect since the petitioner no.1 is aged about 25 years.

6. For all these reasons, the order deleting the name of the petitioner no.1 from the waiting list for compassionate appointment passed on 03.04.2020 is liable to be set aside. Accordingly, the communication dated 09.09.2020 deleting of

name of the petitioner no.1 from the waiting list is held to be illegal. The respondent no.2 is directed to restore the name of petitioner no.1 in the waiting list as before.

7. Rule is made absolute in the aforesaid terms. No costs.

JUDGE

JUDGE

NSN