

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

...

WRIT PETITION NO. 143 OF 2022

Gunjan Gajanan Bhongale

..Petitioner

versus

1) The State of Maharashtra & another

..Respondents

Mr. A.R. Fule, Advocate for the Petitioner

Ms.Shamsi Haider, Assistant Government Pleader for the
Respondent No.1

Mr. R.D.Bhuibhar, Advocate for the Respondent No.2

...

CORAM: NITIN JAMDAR &
ANIL L. PANSARE, JJ
DATED : 29 March 2022.

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioner is seeking to quash and set aside the order passed by the Respondent No.2 on 1 October 2019 rejecting the application of the mother of the Petitioner for substitution of the Petitioner instead of her in the wait list for appointments on compassionate ground.

3. The Petitioner's father, who was working with Respondent No.2, expired while in service on 9 December 2007. Upon her application, the name of the Petitioner's mother was taken

on the wait list for compassionate appointment. The Petitioner's mother, as we are informed, is now 43-year-old. We are also informed that the Petitioner's mother would be age-barred when she crosses 45-years.

4. The learned Counsel for the Zilla Parishad states on 31 December 2021, the Petitioner's mother is given an appointment on compassionate basis. The appointment order is placed on record. It is stated by the learned Counsel for the Zilla Parishad that the Petitioner's mother has not joined and out of indulgence, the offer of appointment is still open to the Petitioner's mother, provided the Petitioner's mother joins at the earliest as the post cannot be kept vacant. The learned Counsel for the Respondent-Zilla Parishad has drawn our attention to the Clause 21 of the Government Resolution dated 21 September 2017 wherein there is a specific bar for substitution of the candidate in the waiting list for compassionate appointment.

5. The learned Counsel for the Petitioner states even though the mother of the Petitioner is given appointment, substitution in favour of the Petitioner be permitted. He has relied upon the decision of the Division Bench (Aurangabad Bench) of this Court, in the case of *Dnyaneshwar Musane vs. State of Maharashtra and Others*¹ and decision of the Division Bench (Nagpur Bench) in

1 2020 DGLS(Bom.)125

Writ Petition No.3344 of 2021 dated 14 March 2022, in the case of *Anjali Dashrath Chauhan vs. The State of Maharashtra and others*.

6. The decision in the case of *Dnyaneshwar Musane* (supra) dealt with the Government Resolution dated 20 May 2015 which is no longer in existence. The Petitioner's mother's case is governed by the Government Resolution dated 21 September 2017. The clause regarding substitution is dealt with by the decision, in the case of *Anjali Chauhan* (W.P.No. 3344 of 2021). Relying in the decision of case of *Anjali Chauhan*, the learned Counsel for the Petitioner submitted that substitution of the name be permitted in light of the observations made therein.

7. In the case of *Anjali Chauhan*, the Petitioner's mother who was on wait list had crossed the age of 45, her name was removed and she had requested for substituting of her name with her daughter, which was rejected. It is in that context, the Division Bench permitted substitution. In the present case, the facts are entirely different. Here the Petitioner's mother is given an appointment yet she wants substitution which is in direct contravention of the stipulation. Therefore, the underlying rationale in the case of *Dnyaneshwar Musane* and *Anjali Chauhan* for achieving the objective of compassionate does not apply to the present case as appointment order is being given to the Petitioner's mother.

8. We also note that the decisions in the cases of *Dnyaneshwar Musane* and *Anjali Chauhan* have not referred to any judicial precedents. In a long line of the decisions starting from the case of *Umesh Kumar Nagpal vs State of Haryana*² in the year 1994 to *N.C.Santhosh vs.State of Karnataka*³ in the year 2020, the Hon'ble Supreme Court has emphasized that the compassionate appointment is not a vested right and is governed strictly by the terms of the policy and it is only within the terms of the policy that this limited right accrues and on benevolent interpretation, the ambit of the policy cannot be extended. Be that as it may, in light of the facts of the present case where the Petitioner's mother has been offered appointment, no further indulgence is required.

9. The offer of appointment made to the Petitioner's mother will remain in force for a period of three weeks from today and thereafter it shall lapse as the post cannot be left vacant.

10. With the above observations, the Writ Petition is disposed of.

[ANIL L. PANSARE,J.]

sahare

[NITIN JAMDAR,J.]

² (1994) 4 SCC 138

³ (2020) 7 SCC 617