

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 WRIT PETITION NO.3374 OF 2023

SWATI GANESH SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Mr.S.S. Thombre, Advocate for the Petitioner.
Mr. P.S. Patil, AGP for Respondent/State.
Mr. S.B. Pulkundwar, Advocate for Respondent No.2.
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 10th APRIL, 2023.**

PER COURT :-

1. On 27th March, 2023, we had passed the following order :-

“1. The Petitioner is the biological sister of Suraj, son of Prakash Ramtirth. The Petitioner is a married person. Her husband is a police constable. She is graduate in Arts, possess English and Marathi typing qualifications, as well as has completed MS-CIT course.

2. Her brother, who is appointed on compassionate basis, is said to be diagnosed to be mentally challenged and is said to be suffering from Schizophrenia, by the medical Authority, Nanded Maharashtra, Government of India, established under the Department of Employment of Persons with Disabilities, Ministry of Social Justice and Employment, Government of India. Though he is appointed on compassionate basis by order dated 11th October, 2022 in place of his father, who died on 29th June, 2015, he has not reported for duties and is unable to perform duties since he is not conscious about himself.

3. Issue notice to the Respondents. The learned AGP waives service of notice on behalf of Respondent No.1.

Mr.Pulkundwar, learned Advocate waives service of notice on behalf of Respondent No.2.

4. We are listing this Petition in the “passing orders” category on 10th April, 2023, so as to enable the learned Advocate for Respondent No.2 to take instructions and address this Court.”

(It is wrongly recorded in our order dated 27th March, 2023 that the petitioner is the biological sister of Suraj. She is his step sister).

2. It is thus, apparent from the record and especially the medical reports of Suraj Prakash Ramtirth, who was appointed on compassionate basis in place of his father Prakash Ramtirth, who passed away while in employment, that he is unable to perform work.

3. The learned Advocate representing the Zilla Parishad submits on the basis of the rules applicable that once the compassionate appointment order is issued to an employee and he is granted such appointment, there is no provision for modifying the appointment order in so far as deleting the name of the compassionate appointee, in order to be replaced by another name and issue a fresh appointment order. He is justified in saying so in the light of the judgment of this Court in the case of **Swati Ankush Borde and another Vs. State of Maharashtra and others, 2022(4) Mh.L.J. 379.**

4. In **Swati Ankush Borde**(supra), the case before us was

that the mother of the Petitioner had accepted compassionate appointment in place of her husband and had joined duties. Later on, she volunteered to resign so as to accommodate the Petitioner. This was held to be impermissible since the appointment order was already granted in favour of the compassionate appointee.

5. In the case of ***Dnyaneshwar Musane Vs. State of Maharashtra*** reported in **2020(5) Mh.L.J. 381**, this Court concluded that clause 1(c) of the Government Resolution dated 20.05.2015, which prohibited replacement of name of a person who was enlisted in the eligible candidates list for compassionate appointment, was bad in law. In Dnyaneshwar Musane, the Petitioner's mother was in the waiting list and before she could be appointed, she gave up her claim and proposed the name of her son. This was accepted by the Court vide the judgment reported in **2020(5) Mh.L.J. 381**.

6. This is a peculiar case before us wherein the compassionate appointee Suraj is the only son of the deceased Prakash Ramtirth, born from his first marriage. The Petitioner is the daughter of Prakash Ramtirth, born out of his relations with another woman. It is informed that mother of Suraj as well as the mother of the present Petitioner, have passed away. The present Petitioner is married to a police constable. She claims that Suraj is residing with her and since 2015, she has been taking care of Suraj and ensuring

timely medical treatment. She claims that she has been paying the medical bills for the treatment of Suraj.

7. The Petitioner states on oath that she would take care of Suraj until his life time or until he is cured. She would spend on his medication and would ensure that he would get timely and best possible medical treatment. She submits that she would show utmost compassion and affection towards Suraj. Since her husband is employed in the police force, she actually does not need employment. She is willing to work so that Suraj can be taken care of from the salary that the Petitioner would earn on being appointed on compassionate basis. It is undisputed that there would be no bar on the appointment of the Petitioner since Suraj does not have any sibling born from the same mother. She further submits that Suraj will constantly live with her in her own house, notwithstanding that she is married and also has children.

8. The learned Advocate for the Zilla Parishad submits that the Zilla Parishad would not concede to the appointment of the Petitioner in place of Suraj.

9. In view of the above, this Petition is partly allowed. We hold and direct the Zilla Parishad that the Petitioner be granted

compassionate employment in place of Suraj, subject to the following conditions :-

A] The appointment order dated 11.10.2022, issued to Suraj Prakash Ramtirth, which was inconsequential as Suraj never reported for duties, shall be replaced by issuing appointment order in favour of the present Petitioner.

B] The Petitioner should deposit the original medical papers and medical bills pertaining to the treatment and medication of Suraj, with the Deputy Chief Executive Officer, Zilla Parishad and would also tender the bills of medical treatment and proof of payment made through the salary account of the Petitioner, on monthly basis.

C] So also, the Zilla Parishad would refer the case of Suraj, annually, in the first week of April of each year commencing from 2024, for detailed medical examination to the Psychiatric ward of Guru Gobind Singh Medical College and Hospital.

D] The medical Board, as is mandated in law, comprising of minimum three doctors with one subject expert, would examine Suraj and submit a confidential report directly to the Chief Executive Officer.

E] If the health status of Suraj improves and he becomes normal to shoulder responsibility of employment, the Petitioner would volunteer to give up her employment in favour of Suraj so that Suraj could start his earning and would support and nurture himself.

F] The solemn statements made by the Petitioner, as noted in the foregoing paragraphs, shall be treated as a statement made to the Court.

G] The Petitioner shall tender an affidavit undertaking containing the statements that have been recorded in the foregoing paragraphs of this order, to the CEO ZP. After tendering of such affidavit undertaking, the appointment order in favour of the Petitioner shall be issued.

10. Needless to state, in the event the Chief Executive Officer or Deputy Chief Executive Officer receives any complaint from anybody or a relative of Suraj, with proper substantiation that the Petitioner is not taking care of Suraj and ignoring his health and making him suffer without medical treatment, the Chief Executive Officer would be at liberty to cause a discrete inquiry in the matter and after giving an opportunity of hearing to the Petitioner and the complainant, pass appropriate orders whether to continue the appointment of the Petitioner.

11. It is apparent from the facts recorded hereinabove, that this order has been passed in peculiar circumstances. Hence, this order would neither be cited, nor be referred to, in any other case.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)