

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9372 OF 2019
WITH
CIVIL APPLICATION NO. 1026 OF 2023
IN
WRIT PETITION NO. 9372 OF 2019

1. Sadhana Subhash Nagare
Age 43 years, Occ. Household
R/o. Bhagwanbaba Nagar,
Ward No.2, Deolgaon Raja
Tq. Deolgaon Raja,
District Buldhana
 2. Somesh Subhash Nagare
Age 23 years, Occ. Educated unemployed
R/o. Bhagwanbaba Nagar,
Ward No.2, Deolgaon Raja
Tq. Deolgaon Raja,
District Buldhana
- ...Petitioners

Versus

1. The State of Maharashtra
(Copy to be served upon the G.P.
High Court Bombay, Bench at
Aurangabad)
For Secretary, General Administration
Department, Mantralaya,
Mumbai 32
 2. The Secretary,
General Administration Department
Mantralaya, Mumbai – 32.
 3. The Chief Executive Officer,
Zilla Parishad, Jalna
- ...Respondents

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Mr. D. R. Irale Patil, advocate for the Petitioners
Mr. S. G. Karlekar, A.G.P. for Respondent Nos.1 and 2

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**

**Date of Reserving
the Judgment : 27.01.2023**

**Date of pronouncing
the Judgment : 06.04.2023**

JUDGMENT (PER SANJAY A. DESHMUKH, J.):

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Petitioner No.1 is the mother of Petitioner No.2. The father of Petitioner No.2 was serving as an Assistant Teacher in a Zilla Parishad Primary School at Kendhali, Tq. Mantha, District Jalna. He met with an accident and died on 21.4.2001. Petitioner No.2 and his sister were minor at the time of death of their father. Petitioner No.1, filed an application for her appointment on compassionate ground to the Zilla Parishad, Jalna on 30.8.2002. Accordingly, her name was recorded in the seniority list maintained for giving appointment on compassionate ground, at Sr. No.14. Meanwhile, Petitioner No.1 suffered from T.B. Therefore, she filed an application dated 6.2.2006 to Respondent No.3 Zilla Parishad, proposing the name of her son i.e Petitioner No.2 be substituted in her name. Thereafter, the relevant documents were called by Respondent No.3. Accordingly, Petitioner No.2 submitted all the documents. His name was recorded in the waiting list at Sr No. 14.

3. By Communication dated 12.02.2019, Respondent No.3 called Petitioner No.2 in the Zilla Parishad Office for hearing. The Petitioners attended the hearing on 16.02.2019. Respondent No.3 took a stand that Petitioner No.2 was below the age of 18 years when his consent was recorded on 6.9.2014, therefore, he cannot be appointed on compassionate ground. Respondent No.3 did not consider the date of birth of Petitioner No.2 i.e. 18.3.1996. Thus, on the date of decision i.e. 6.9.2014, petitioner No.2 was 18 years and 6 months old. Therefore, the objection raised by Respondent No.3, by letter dated 26.3.2019, was not correct and sustainable. Though the document showing the date of birth of Petitioner No.2 was on record, Respondent No.3 illegally removed his name from waiting list at Sr. No.14 and surprisingly gave placement to Petitioner No.1, which was not intended and expected.

4. By order dated 26.3.2019, Respondent No.3 illegally added the name of Petitioner No.1 and removed the name of Petitioner No.2. Accordingly, an appointment letter dated 08.7.2019 was issued to Petitioner No.1. Petitioner No.1 went to Respondent No.3 and requested that she is T.B. patient and, therefore, she is not able to join the services. The Petitioners, therefore, are constrained to file Writ Petitions praying for quashing and setting aside the impugned order dated 8.7.2019 and seeking direction to Respondent No.3 to restore original position of Petitioner No.2 in the wait list at

Sr. No.14 for giving him an appointment on compassionate ground. It is also prayed to declare that the Government Resolution dated 20.5.2015 is not applicable to the Petitioners and to revise the impugned order dated 08.07.2019 and also sought direction for an appointment of Petitioner No.2.

5. The learned advocate for the Petitioners submitted that on the date of recording of the name of Petitioner No.2 in the waiting list, he was more than 18 years old. However, Respondent No.2, illegally raised the issue of Government Resolution dated 20.5.2015 which was struck down by this Court, by judgment and order dated 11.3.2020 in the ***Writ Petition No. 6267 of 2018 (Dnyaneshwar Ramkishan Musane vs. The State of Maharashtra and others)***. He pointed out that once the name of Petitioner No.2 was recorded in the waiting list, Respondent No.2 acted illegally and perversely without any justification. He, therefore, prayed to set aside the impugned order passed by Respondent No.3 and allow the Writ Petition by directing to list the name of Petitioner No.2 in the waiting list, prepared for giving an appointment on compassionate ground.

6. The learned A.G.P. for Respondent Nos. 1 and 2 submitted that the compassionate appointment is not an absolute and legal right but it is the conditional right and once the appointment was given to Petitioner No.1 and she had waived that right. This shows that there is no such financial emergency to the family of the

Petitioners. Therefore, the decision taken by Respondent No.3 is legal and correct and no interference is warranted in it. He submitted that the decision in the case of ***Dnyaneshwar Ramkishan Musane (supra)*** is not applicable to this case, as the facts in the case in hand are different and, therefore, rule of parity is also not applicable. He submitted that the Writ Petition be dismissed.

7. The admitted facts are that father of Petitioner No.2 died in harness, the name of Petitioner No.2 was listed in the waiting list for compassionate appointment at Sr. No.14, the appointment letter was sent to Petitioner No.1, she submitted an application to Respondent No.3, that because of her ailment of T.B., she is not able to join the service, her application for substituting the name of her son i.e. Petitioner No.2, in the place of her name was allowed and his name was inserted in the waiting list. Thereafter his name was removed and an appointment letter was again issued in the name of the Petitioner No.1.

8. Respondent No.3 relied upon the Government Resolution dated 20.5.2015 which lays down that the name of any legal representative of deceased employee would not be substituted in place of any other legal representative, in the list of the persons seeking appointment on compassionate ground.

9. This Court in the case of ***Dnyaneshwar Ramkishan Musane (supra)*** held that the Resolution dated 20.5.2015 cannot be

applied retrospectively. Petitioner No.2's name was recorded in the waiting list and later on it is cancelled without justifiable reasons, arbitrarily, irrationally and unreasonably, by violating fundamental rights guaranteed under Article 14 of the Constitution of India.

10. As per the policy of the State Government, one legal representative of deceased employee is entitled to be appointed on compassionate ground. But the act of not inserting the name of another legal representative, would frustrate the object of policy of the State Government for appointment on compassionate ground. When the mother of Petitioner No.2 gave her consent and proposed the name of Petitioner No.2, it ought to have considered by Respondent No.3 and would not have cancelled the name and would not have given appointment to his mother i.e. Petitioner No.1, again on compassionate ground, who was not able to do the work because of her illness of T.B. Thus, applying the Resolution dated 20.5.2015 by Respondent No.3 to the case of the Petitioners, in the light of the view taken by this Court in ***Dnyaneshwar Musane (supra)***, is not legal and correct. Removing the name of Petitioner No.2 from the waiting list is also not justifiable and legal. The impugned order passed by Respondent No.3 is illegal, incorrect and requires interference. Therefore, the arguments of learned A.G.P. Shri Karlekar are not acceptable in this regard.

11. In view of the above, this petition is partly allowed. Since the Zilla Parishad has wrongly issued the appointment order in favour of the widow, under the wrong presumption that Petitioner no.2 was a minor, we hold that Petitioner No.2 is entitled for appointment on compassionate ground with the Zilla Parishad, Jalna.

12. The Chief Executive Officer, Respondent No.3, is directed to include the name of Petitioner No.2 in the waiting list of the persons, seeking appointment on compassionate ground by substituting his name in his mother's name. Respondent No.3 is also directed to replace the name of Petitioner no.2 in place of Petitioner no.1, in the appointment order dated 08.07.2019 and consider the claim of Petitioner No.2 for appointment on compassionate ground on the post commensurate to his educational qualification and treating his seniority as per the seniority of his mother's (Petitioner No.1) application.

13. Rule is made partly absolute in the above terms. In the circumstances, the parties shall bear their own costs.

14. In view of disposal of the Writ Petition, nothing further survives for consideration in the Civil Application and the same is accordingly disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)