

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11591 OF 2023

**MANISHA JANARDHAN NAGARE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND ANOTHER**

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Advocate for the Petitioners : Shri D.R. Irale Patil
AGP for Respondent 1/State : Shri S.G. Karlekar
Advocate for Respondent 2 : Shri P.D. Suryawanshi

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 21st September, 2023

Per Court :-

1. Petitioner No.1 is the widow and Petitioner No.2 her daughter aged 22 years. The first Petitioner's husband, who was a primary school teacher in the permanent employment of the Zilla Parishad, having joined services on 15.03.1996, passed away on 10.02.2015 in an accident. He died on the spot. The widow has two daughters born out of her marriage with the deceased. Petitioner No.2 is born on 13.06.2001 and the second girl child is born on 08.05.2012, who is a special child on account of an intellectual disability.

2. The only issue put forth by the Petitioners is that though the widow is able bodied and has already received the compassionate appointment order and there is no legal impediment, she does not desire to take the employment and prays that her daughter be appointed in her place. She concedes that the said daughter's marriage is arranged and she will be getting married very soon.

3. There is no dispute that if an applicant for compassionate appointment suffers any disability or is barred by age limitation, her name can be substituted by another person nominated by the widow, in view of the judgment delivered by this Court in *Dnyaneshwar Ramkishan Musane vs. State of Maharashtra and others*, 2020(5) Mh.L.J. 381.

4. The issue before us is that the widow is an able bodied person and is within the age limitation. The Zilla Parishad has already issued her an appointment order on 08.08.2023 thereby, appointing her as a Junior Assistant (clerk) at the Panchayat Samiti, Mantha, District Jalna. She, however, submits that Petitioner No.2 should be granted the appointment order, notwithstanding that she is getting married.

5. The learned Advocate for Respondent No.2/Zilla Parishad submits that based on an application filed within limitation by the widow, she has been issued with the appointment order as per the name recorded in the list of candidates eligible for compassionate appointment. It is almost after eight years of the demise of the husband (the bread earner) that the widow is granted employment. He further submits that there is no law which provides that a selected candidate can recuse to take the compassionate appointment and instead replace her name with a person who is getting married and would leave for her marital home. He further submits that if Petitioner No.2 gets married, she naturally will proceed to her marital home and if there is any dispute as regards the widow not being nurtured by the married daughter, a dispute would be raised for seeking cancellation of the nomination/appointment.

6. It is informed by the widow that her parents-in-law are at home, though it is contended that they are senior citizens. If the second daughter of the widow is special child, there are ways and means of dealing with such case in order to take care of the said child. It would be travesty of justice if the daughter is given the appointment and later on, the daughter proceeds to her

marital home, which may be away from the home of the widow, giving rise to further complications as regards caring and financially supporting the widow and the special child. We also cannot lose sight of the fact that the widow is presently earning pension and has also received the gratuity amount. She has also received about Rs. Nineteen lakhs towards accidental death compensation.

7. The Petitioner has relied upon the judgment delivered by the Honourable Supreme Court in ***Malaya Nanda Sethy vs. State of Orissa, AIR 2022 SC 2836***. In the said case, the eligible widow could not take up the job due to a serious illness. Her son was, therefore, nominated for appointment. The employer was directed to consider his case on compassionate basis since the widow was physically disabled from taking up employment.

8. In the judgment delivered by this Court on 06.04.2023 in Writ Petition No.9372/2019 filed at the Aurangabad Bench by ***Sadhana Subhash Nagare and another vs. State of Maharashtra and others***, this Court concluded that the eligible widow was suffering from Tuberculosis and she was not able to take up physical work. She had, therefore, prayed for

substituting herself, with her son. It is in the said circumstances, that this Court permitted such substitution as the eligible widow was physically unable to take up employment.

9. Since the facts in both the cited judgments are distinguishable, we do not find that the said ratio would advance the cause of the Petitioners.

10. In view of the above, **this Writ Petition is dismissed.**

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(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)