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

911 WRIT PETITION NO.12842 OF 2023

**SHIVTEJ RAMKRASHNA JAGTAP AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND ANOTHER**

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Mr N. T. Tribhuwan, Advocate for Petitioners;
Mrs Priya R. Bharaswadkar, A.G.P. for Respondent No.1
Mr Bhausahab B. Bhise, Advocate for Respondent No.2

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

DATE : 7th December, 2023

PER COURT:

1. We have considered the extensive submissions of the learned Advocates for the respective sides on 06/11/2023 and today as well. On 06/11/2023, we had passed the following order :-

“1. After hearing the matter for quite some time today, we referred to the judgment dated 09.04.2021 delivered by the Honb’le Supreme Court in the matter of Central Coalfields Limited Vs. Parden Oraon, Civil Appeal No.897/2021. We have also perused the judgment delivered by the Hon’ble Supreme Court in State of West Bengal Vs. Debabrata Tiwari and Others in Civil appeal Nos.8842-8855/2022, decided on 03.03.2023. We have then considered the view taken by this Court at the Principal

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Seat in the matter of State of Maharashtra and others Vs. Rehana Akbar Shaikh [2023(3) Mh.L.J. 577].

2. *The husband of the Petitioner No.2 passed away on 26.04.2008. The widow is 41 years of age today. She now prays for replacement of her name with her son, who has become an adult. Prima facie, considering the law laid down by the Hon'ble Supreme Court, we do not deem it appropriate to pass any order after 15 years of the demise of the bread earner.*

3. *The learned Advocate for the Petitioner submits that a short affidavit would be filed indicating the health status of Petitioner No.2/ Widow. We, therefore, direct that the affidavit would be accompanied by certified documents from the Hospital/Doctor, who is purportedly treating Petitioner No.2, so also a statement would be made as to what are the retirement/service benefits received by the widow after the demise of her husband and what is the gross pension amount being paid to her.*

4. *Let such affidavit alongwith documents be filed on or before 01.12.2023.*

5. *List this Petition in the "Urgent Orders Category on 07.12.2023."*

2. The bread earner, who was the father of Petitioner No.1 and husband of Petitioner No.2, passed away on 26/04/2008. He was survived by his wife, one son and one daughter. Both the children were minor. The widow moved an application on 03/12/2008 within limitation, for seeking compassionate

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appointment. There is no dispute that the widow received an amount of Rs.4,25,818/- towards General Provident Fund and Gratuity and is receiving monthly pension of Rs. 15,568/-.

3. The learned Advocate representing Respondent No.2/ Zilla Parishad, Osmanabad submits that the Zilla Parishad is appointing Petitioner No.2/widow on compassionate basis. Instead of accepting the appointment, she moved an application, though she is eligible, to substitute her name with the name of Petitioner No.1.

4. Considering the order of this Court dated 11/03/2020, passed in Writ Petition No.6267/2018 (**Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and others**), the clause introduced by the State Government in its Government Resolution dated 20/05/2015, concluding that substitution is not possible, has already been set aside. This Court, at the Principal Seat, has delivered a judgment in **State of Maharashtra and others Vs. Rehana Akbar Shaikh**, [2023 (3) Mh.L.J. 577]. Appointment was offered to the elder daughter of the deceased. Wife of the deceased sought substitution of name of her son citing that the elder daughter is married. This Court concluded that, no

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purpose can be achieved in such substitution and after 15 years of the demise of the bread earner, compassionate appointment cannot be granted.

5. There is no dispute that, in normal circumstances, substitution is legally permissible. However, such substitution is not based on the whims or wish or desire of a candidate, who is eligible to be appointed and is already enlisted for compassionate appointment, merely because such candidate desires that her son should get employment, and that too, after 15 years of the demise of the employee.

6. In the present case, the learned Advocate for the Petitioners canvassed that, the widow is medically unfit to take up compassionate appointment. The learned Advocate for the Zilla Parishad submits that the widow is only 41 years of age and she is eligible for appointment. She is being offered appointment and no medical ground has been ever canvassed before the Zilla Parishad. It is only to gain the sympathy of this Court and to obtain a favourable order, that an old medical issue is blown out of proportion.

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7. By way of an additional affidavit, Petitioner No.2/widow has stated that, she was suffering from abdominal pain and was taken to the Gynecologist, in 2019. She had mild Hepatomegaly, minimal Echogenic Sludge/Mico Calculi and bulky Uterus. She was operated on 02/04/2019. There are no documents placed before us to indicate that, after such medical intervention, Petitioner No.2 is now suffering from any other ailment, which would render her ineligible for compassionate appointment. The medical intervention by way of a surgery was undergone by her when she was 37 years of age. The birth certificate of Petitioner No.2/widow tendered to the Court indicates her date of birth as 28/06/1982.

8. The view taken in **Dnyaneshwar Ramkishan Musane** (supra) is referred to in **Shubhangi Vithhal Kamodkar Vs. State of Maharashtra and others, [2023 6 Mh.L.J. 188]** and we also hold the same view. The judgment delivered at the Nagpur Bench of this Court in **Pankaj s/o late Tulsaidas Jale and another Vs. State of Maharashtra and others**, dated 30/06/2022 in Writ Petition No.03/2022 is cited, wherein the name of Petitioner No.1, who is the son of the bread earner was in the list and subsequently deleted by the Department.

9. It is in the above peculiar facts and circumstances that, though substitution is legally permissible in specific cases, in the present case, we are of the view that Petitioner No.2 is eligible to be appointed and can work on compassionate basis.

10. With these observations, **this Writ Petition is disposed off**, with a direction to the Zilla Parishad to immediately issue the appointment order to Petitioner No.2 and allow her to report for the duties.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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