

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9197 OF 2022

1. The State of Maharashtra ... Petitioners
through Addl. Chief Secretary, (Orig. Respondents)
Home Dept., Mantralaya,
Mumbai - 32
2. The Superintendent of Police,
Pune Rural, Chavan Nagar
Pune 411 001

vs.

1. Smt. Rehana Akbar Shaikh ... Respondents
Age - 49 years, Occ.; Nil
R/at Flat No.102, Razia Manzil,
Opp. To New Court Building,
At & Post: Dound, Dist. Pune
2. Shri Anis Akbar Shaikh
Age: 22 Yrs. Occu. Nil
R/o. Flat No.102, Razia Manzil

Mr. M. M. Pabale, AGP for Petitioner.

Mr. Rajesh M. Kolge for Respondent Nos.1 and 2.

**CORAM : S.V. GANGAPURWALA, ACJ. &
SANDEEP V. MARNE, J.**

**RESERVED ON : 31 JANUARY, 2023
PRONOUNCED ON : 03 FEBRUARY, 2023**

JUDGMENT (Per SANDEEP V. MARNE, J.) :

1. Rule. Rule made returnable forthwith. With consent of
both the sides, the petition is taken up for final hearing.

2. The State of Maharashtra has filed the present Petition challenging judgment and order dated 9th May 2019 passed by the Maharashtra Administrative Tribunal, Mumbai (“**Tribunal**”) partly allowing Original Application No.1091 of 2017 filed by Respondents seeking compassionate appointment. The Tribunal has directed consideration of Respondents’ case for compassionate appointment.

3. Brief facts leading to filing of present Petition are that the husband of Respondent No.1 and father of Respondent No.2, Akbar Shaikh was working as Police Constable who died in harness on 5th July 2000. On 24th December 2004, an application was made for grant of compassionate appointment in favour of Smt. Sherifa, the eldest daughter of late Akbar Shaikh. Letter dated 8th November 2010 was issued to Sherifa calling her upon to remain present with original documents as few posts of junior clerks were proposed to be filled. Smt. Sherifa, however, did not act on the requisition and instead the mother made an application dated 6th December 2010 informing Petitioner that Smt. Sherifa was already married and the mother is dependent on her minor son Anis aged 15 years. The mother therefore requested to place the name of Anis on waiting list till he attained the age of 18 years. Anis

made an application for compassionate appointment on 2nd March 2015 and by letter/order dated 10th March 2017, the application came to be rejected on the ground that it was not permissible to substitute the name in the waiting list. The said letter/order dated 10th March 2017 became the subject matter of challenge before the Tribunal. Aggrieved by the rejection, Respondents instituted Original Application No.1091 of 2017 before the Tribunal seeking compassionate appointment in favour of Anis by substituting his name in the place of Smt. Sherifa. By the judgment and order dated 9th May 2019, the Tribunal has proceeded to dismiss the Original Application.

4. Appearing for Petitioners, Mr. Pabale the learned AGP would submit that compassionate appointment offered to Smt. Sherifa by letter dated 8th November 2010, she failed to accept the same. He would submit that Respondents cannot treat compassionate appointment as a matter of right by substituting the name of legal heirs of deceased. Relying on the Government Resolution dated 20th May 2015, Mr. Pabale would contend that substitution of name of legal heirs in the waiting list is prohibited except for the reason of death of legal

heir. Mr. Pabale relies on Apex Court judgment in ***N.C. Santosh Versus State of Karnataka and ors***¹

5. Per contra, Mr. Kolge, the learned counsel for Respondents would oppose the Petition and support the order passed by the Tribunal. He would submit that the case of Respondents cannot be governed by the provisions of Government Resolution dated 20th May 2015. He would rely on provisions of Government Resolution dated 26th October 1994 which did not contain any prohibition on substitution of name of legal heirs. Mr. Kolge would submit that letter dated 8th November 2010 did not amount to an offer for compassionate appointment. He would submit that letter merely called upon Smt. Sharifa to produce documents. He would rely on the following judgments;

- (i) ***Smt. Pushpabai Wd/o Rajesh Bisne Versus State of Maharashtra and ors.***²
- (ii) ***Malaya Nanda Sethy Versus State of Orissa and others***³
- (iii) ***State of Maharashtra and ors Versus Smt. Anusaya V. More and anr.***⁴

1 (2020) 7 SCC 716

2 WP No.5944 of 2018 Judgment of this Court (bench at Nagpur) decided on 22nd July 2019.

3 2022 LiveLaw (SC) 522

4 WP No.13932 of 2017 judgment of this Court decided on 18th July, 2018.

(iv) ***Dhulaji Shrimant Kharat Versus State of Maharashtra and ors.***⁵

Mr. Kolge has also relied on some of the judgments passed by the Tribunal.

6. We have heard the learned counsels for the parties. The short issue involved in the present Petition is whether the substitution of name of ward/legal heir of deceased employee in the waiting list of compassionate appointment in the present case is permissible. We must, at the outset, refer to Government Resolution dated 20th May 2015 by which a specific prohibition is imposed on substitution of name of legal heirs in the waiting list of compassionate appointment except in the event of death of a legal heir. This Court in ***Smt. Pushpabai Wd/o Rajesh Bisne*** (supra) has held that the provisions of Government Resolution dated 20th May 2015 cannot be applied retrospectively to a case where substitution was sought before issuance of Government Resolution. Furthermore, this Court in ***Dnyaneshwar Ramkishan Musane Versus the State of Maharashtra and ors***⁶ has directed deletion of condition banning substitution of name of legal

⁵ WP No.8771 of 2015 Judgment of this Court decided on 12th December 2018.

⁶ WP No.6267 of 2018 Judgment of this Court (Bench at Aurangabad) decided on 11 March 2020.

heirs from Government Resolution dated 20th May 2015 holding the same as unjustified.

7. Thus, the position that stands as of today is that the condition banning substitution of name of ward in waiting list in Government Resolution dated 20th May 2015 stands set aside. Would this mean that in every case such substitution must be allowed as a matter of course? A division Bench of this Court (to which one of us was a member) had an occasion to decide this issue in ***Akshaykumar Balaji Kesgire Versus State of Maharashtra & Ors***⁷. In that case, father of petitioner therein was working as an Assistant Teacher in Zillha Parishad Primary School who expired on 28.11.2007 while in service. Mother made an application for compassionate appointment and by communications dated 17.10.2012 and 14.12.2012, mother was called upon to submit necessary documents for further processing of compassionate appointment. However mother failed to comply with the requisition, on account of which though the employer was willing to appoint mother, she could not be appointed. After attaining age of majority, son made application on 18.01.2016

⁷ Writ Petition No. 11821 of 2019 decided by Bench at Aurangabad on 28th July 2022.

for compassionate appointment, which was rejected relying on GR dated 20.05.2015. In the background of these facts, this Court held as under:

8. The objective of grant of compassionate appointment is to enable the family to tide over the situation on account of sudden loss of income. In the present case the petitioner's father had expired on 28.11.2007 and by the time the case of the mother was being considered for grant of compassionate appointment, a period of five years had already passed. **If indeed, the family was in need of immediate financial assistance in the form of compassionate appointment, the mother would have acted upon the communications issued by the respondent No. 2 and cooperated for consideration of her case for grant of compassionate appointment. Instead of doing so, the mother expressed inability to take up the job without assigning any particular reason. In these circumstances, we are of the opinion that the judgment in the case of Dnyaneshwar (supra) is clearly distinguishable.**

(emphasis & underlying supplied)

This Court has thus distinguished the judgment in ***Dnyaneshwar Ramkishan Musane (supra)*** in a case where offered appointment is refused and then substitution of name of a ward is sought.

8. Facts of the present case are somewhat similar to ***Akshaykumar Balaji Kesgire*** (supra). Smt. Sherifa was offered compassionate appointment by letter dated 8th November 2010. If Smt. Sherifa was to comply with the requisition made in the letter dated 8th November 2010, she could have been possibly appointed on compassionate ground. However, the mother changed her mind and by citing the pretext of Smt.

Sherifa's marriage, she thought of getting her minor son appointed on compassionate ground. She accordingly made application dated 6th December 2010. Anis, at that point of time, was only 15 years old. Rather than accepting the appointment offered to Smt. Sherifa, the mother thought it appropriate to keep the case pending for three more years till Anis attained the age of majority. This is thus not a simple case of substitution of name of legal heirs and therefore the judgment in *Dnyaneshwar Ramkishan Musane (supra)* will have no application to the present case. For the same reasons, the judgment in case of *Smt. Pushpabai Wd/o Rajesh Bisne (supra)* cannot be made applicable to the unique facts of the present case where compassionate appointment offered to Smt. Sherifa was voluntarily given up for creating a claim in favour of Anis who was minor in the year 2010.

9. It is also required to borne in mind that death of employee occurred on 5th July 2000 and a period of more than 22 years has passed by now. It would be profitable to make a reference to the recent judgment of the Apex Court in *Central Coal Field limited vs. Parden Oraon* ⁸, in which the Apex Court has made the following observations ;

⁸ Civil Appeal No. 897 of 2021 decided on 9th April 2021.

8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family¹. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

10. In our view therefore, the Tribunal has committed an error in permitting substitution of name of Smt. Sherifa with that of Anis thereby keeping the case of compassionate appointment alive for 22 long years.

11. What remains now is to deal with various judgments relied upon by Mr. Kolge:

- (i) The judgment of this Court in ***Smt. Pushpabai Wd/o Rajesh Bisne*** (supra) is distinguishable for the reasons recorded above.
- (ii) The judgment of the Apex Court in ***Malaya Nanda Sethy*** (supra) reiterates well settled law that application for compassionate appointment must be decided as per the policy prevailing. This submission is referable to the contention of Mr. Kolge that the provisions of Government Resolution dated 20th May 2015 cannot be made

application to the present case which relates to year 2000. Even if the case of the Respondents is to be dealt with in accordance with provisions of earlier GR of 1994, the same cannot be granted on account of uniq situation of one of the wards not taking up the appointment thereby indicating non-existence of destitute situation for family of the deceased.

- (iii) The judgment of this Court in ***Smt. Anusaya V. More*** (supra) was delivered on account of concession made by the State Government for inclusion of names of Respondent No.2 therein in the waiting list. The judgment therefore cannot be relied upon in support of the proposition that in every case such as substitution must be permitted.
- (iv) In the judgment of this Court in ***Dhulaji Shrimant Kharat*** (supra), the issue was about failure to file application for compassionate appointment within one year. The judgment has therefore no application to the facts of the present case.

12. In our view, therefore, the Tribunal has committed an error in partly allowing the Original Application of Respondents. Respondents apparently labour under a misconception that grant of compassionate appointment is a matter of right, capable of being passed from one dependant to another as per their choice. If the family was indeed destitute and in need of any financial assistance, it could have

immediately accepted the appointment offered to Smt. Sherifa in the year 2010. The mother however was in a position to wait for three more years till Anis attained the age of majority. Anis himself did not make application for compassionate appointment immediately in the year 2013 after he attained the majority and submitted such an application two years later on 2nd March 2015. The family thus voluntarily waited for five long years after Smt. Sherifa was offered compassionate appointment. It is well settled law that compassionate appointment is not a matter of right. The facts of the present case do not indicate that the family is in need of immediate financial assistance in form of compassionate appointment. The Tribunal has erred in directing consideration of case of Anis for compassionate appointment.

13. Resultantly, the Petition succeeds. Judgment and order dated 9th May 2019 passed by the Tribunal in Original Application No.1091 of 2017 filed by Respondents is set aside and the Original Application is dismissed. Writ Petition is allowed. Rule made absolute in above terms.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)