

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3517 OF 2022

Petitioners : 1] Geeta wd/o Rajendra Lad,
Aged about 47 years, Occ. Housewife.
2] Rajeshwari d/o Rajendra Lad,
Aged 21 years, Occ. Student.
Both R/o Ward No.6, Opp. Govt. Hospital, Saoner,
Tal. Saoner, Dist. Nagpur.

– Versus –

Respondents : 1] State of Maharashtra,
Through its Secretary,
General Administration Department, Mantralaya,
Mumbai-32.
2] Collector, Nagpur, Dist. Nagpur.
3] Dean, Government Medical College, Nagpur
4] Assistant Professor/Reader,
Health Unit, Saoner, District Nagpur.

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Shri P.S. Girdekar, Advocate for the Petitioners.
Shri M.K. Pathan, A.G.P for the Respondents.

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CORAM : **ROHIT B. DEO AND Y.G. KHOBRAGADE, JJ.**
DATE : **2nd JANUARY, 2023.**

J U D G M E N T : *(Per Y.G. Khobragade, J.)*

Rule. Rule made returnable forthwith. Heard finally with the
consent of the learned Counsel appearing for the respective parties.

02] In present petition, the petitioners seek issuance of appropriate writ order or direction against respondent No.3 to include the name of petitioner No.2 in place of petitioner No.1 in the waiting list of compassionate appointment to the suitable post. The petitioners further pray for quashing and setting aside the impugned communication dated 24/11/2021 (Annexure-6) issued by respondent No.3-Dean, Government Medical College, Nagpur.

03] It is an admitted fact that Late Rajendra Yadavrao Lad, the husband of petitioner No.1 and father of petitioner No.2, was permanent employee being a peon with Rural Health Training Centre, Tahsil Saoner District Nagpur and on 21/07/2013 he died during his service tenure. Thereafter, petitioner No.1, the widow of deceased employee, submitted an application dated 27/08/2013 for grant of compassionate appointment, but her name was kept on waiting list for a long period, and without giving appointment order, her name was removed from the wait list on attaining the age of 45 years. Thereafter, petitioner No.1 submitted another application on 20/08/2020 for replacing the name of petitioner No.2 in her place, however, on 24/11/2021, respondent No.3 issued the impugned communication and informed that as per existing Government Resolution, there is no provision to include name of another legal heir of deceased employee in wait list once name of first legal heir removed from wait list on attaining maximum age.

04] The learned Counsel appearing for the petitioners submits that the name of petitioner No.1 was included in the waiting list prepared by the respondents for grant of compassionate appointment, however, on 08/01/2014, respondent No.4 informed petitioner No.1 that her application for compassionate appointment cannot be considered, because she does not possess requisite educational qualification and her name removed from the waiting list after completion of age of 45 years. So also, at the time of submitting the application for appointment on compassionate basis, petitioner No.2 was minor and soon she attained the age of majority, petitioner No.1 submitted an application for replacing of her name in the waiting list of compassionate appointment, however, respondent No.3 issued the impugned communication and refused to replace the name of petitioner No.2 in place of petitioner No.1. Therefore, action on part of respondent No.3 is contrary to Clause 21 of the Government Resolution dated 21/09/2017, hence, prayed for quash and set aside impugned communication dated 24/11/2021.

05] In support of his submissions, the learned Counsel appearing for the petitioners placed reliance on the judgment dated 11/03/2020 rendered by this Court in Writ Petition No.6267 of 2018 (Dnyaneshwar Ramkishan Musane vs. State of Maharashtra and others), wherein it has been held that

the Government Resolution dated 20/05/2015 imposing prohibition by the Government that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the list in place of the other legal representative, who had submitted his/her application earlier, held to be arbitrary, irrational and unreasonable as well as violative of fundamental rights guaranteed under Article 14 of the Constitution of India. He further relied on the judgment dated 14/03/2022 rendered by this Court in Writ Petition No.3344 of 2021 (Anjali d/o Dashrath Chauhan vs. State of Maharashtra and others), wherein the judgment in the case of Dnyaneshwar Musane (cited supra) has been relied.

06] Respondent No.2 filed affidavit-in-reply and strongly opposed the petition mainly on the ground that Clause 21 of the Government Resolution dated 21/09/2017 put restrictions to change the name of candidate for appointment on compassionate ground after the family member, whose name was recommended for appointment on compassionate basis being removed due to age bar. Since, petitioner No.1, who submitted her candidature for appointment on compassionate basis, but she completed age of 45 years, hence, her name was removed from the waiting list of compassionate

appointment, therefore, the name of petitioner No.2 cannot be replaced in place of petitioner No.1, hence, prayed for dismissal of the petition.

07] It is needless to mention here that, Late Rajendra Yadavrao Lad, the husband of petitioner No.1 and father of petitioner No.2, was the permanent employee being a peon with respondent No.4, which comes under the control and administration of respondent No.3. It is not in dispute that Late Rajendra Lad died on 21/07/2013 during his service tenure. The State Government issued Government Resolution dated 21/09/2017 and framed a scheme for providing appointment on compassionate ground in respect of Class-III and Class-IV employees, if the employee died during his service tenure. The respondents have not denied the fact that Late Reajendra Lad, the husband of petitioner No.1 and father of petitioner No.2, was the permanent employee of respondent Nos.3 and 4 and he died on 21/07/2013 during this service tenure. It is also not in dispute that petitioner No.1, who is the widow of deceased employee, submitted an application for grant of employment on compassionate ground on 27/08/2013 and her name was included in wait list but till she attained the age of 45 years, no appointment order was given and her name was removed on account of completing age of 45 years. Therefore, petitioner No.1 submitted an application dated 20/08/2020 and prayed for

substitution of name of her daughter-petitioner No.2 in her place. However, on 24/11/2021, respondent No.3, Dean, Government Medical College, Nagpur issued impugned communication that, the application for grant of appointment on compassionate grounds to petitioner No.2 cannot be considered, as she does not possess requisite qualification in view of the Government Resolution and there is no policy to change/replace the name of other family member in the waiting list for compassionate appointment after the name of the candidate is removed from the waiting list on attaining maximum age limit.

08] The issue about not substitution of name of another legal heir in wait list is no more *res integra* as in the case of Dnyaneshwar Musane and Anjali Chauhan (*cited supra*), this Court held that the Government Resolution dated 20/05/2015 is arbitrary, irrational, unreasonable and violative of fundamental rights guaranteed under Article 14 of the Constitution of India. As per the policy of the State Government, one legal heir of deceased employee is entitled to be considered for appointment on compassionate ground and the prohibition imposed by the State Government under the said Government Resolution that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the

list in place of the other legal representative, who had submitted his/her application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated.

09] Similarly, in the case in hand, petitioner No.1, who is widow of deceased employee, had submitted an application for appointment on compassionate ground on account of death of her husband while in service and her name was enlisted in the list of appointment on compassionate basis, but no appointment was given in favour of petitioner No.1 and in the meanwhile, she attained the age of 45 years. Therefore, petitioner No.1 submitted another application dated 20/08/2020 and requested for replacing of her name and to enlist the name of petitioner No.2 in the waiting list of appointment on compassionate basis, but said application came to be rejected by respondent No.3 by the impugned communication dated 24/11/2021, which is arbitrary, irrational and unreasonable as well as violative of fundamental rights guaranteed under Article 14 of the Constitution of India and contrary to the Government policy. Therefore, the restrictions put by respondent No.3 for not taking the name of petitioner No.2 in place of petitioner No.1 in the list of appointment on compassionate basis on the count

that petitioner No.1 attained the age of 45 years, is certainly illegal and bad in law and liable to be quashed and set aside.

10] In view of the above discussions, we are inclined to allow present petition and proceed to pass the following order:

ORDER

- I. The writ petition is allowed.
- II. The impugned communication dated 24/11/2021 issued by respondent No.3 is hereby quashed and set aside.
- III. Respondent No.3 is hereby directed to include name of petitioner No.2 by substituting name of petitioner No.1.
- IV. Respondent No.3, Dean, Government Medical College, Nagpur is hereby directed to consider the claim of the petitioner No.2 for appointment on compassionate basis on the post commensurate with her qualification and treat her seniority as per the seniority of her mother-petitioner No.1.
- V. Rule is made absolute in the above terms with no order as to costs.

(Y.G. KHOBRADE, J.)

(ROHIT B. DEO, J.)

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