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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7829 OF 2019

Mayuri D/o. Dilip Chinchansure,  
Age 19, Occ. Nil.,  
R/o. Kapil Nagar, Khadgaon Road,  
Latur, Tq. and Dist. Latur.

..Petitioner.

Versus

1. The State of Maharashtra  
through it's Principal Secretary,  
Education Department,  
Mantralaya, Mumbai – 32.
2. Deputy Director of Education,  
Deputy Director Office,  
Osmanabad, Dist. Osmanabad.
3. The Education Officer (Primary)  
Zilla Parishad, Osmanabad,  
Dist. Osmanabad.

.. Respondents.

Mr. A.S. Shejwal, Advocate h/f. Mr. R.D. Biradar, Advocate for petitioner  
Mr. S.A. Gaikwad, AGP for respondent Nos. 1 and 2  
Mr. S.V. Deshmukh, Advocate for respondent No.3.

CORAM : SMT. VIBHA KANKANWADI  
& S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 9TH OCTOBER, 2024.  
PRONOUNCED ON : 24th OCTOBER, 2024.

JUDGMENT : [ PER S.G. CHAPALGAONKAR, J] :-

1. The petitioner has approached this Court under Article 226

of the Constitution of India thereby challenging order dated 8.2.2019 passed by respondent No.3 thereby declining to substitute petitioner's name in place of her mother in waiting list for compassionate appointment. Petitioner further seeks issuance of writ of Mandamus against respondents for that purpose.

2. Mr. Shejwal, learned advocate for petitioner submits that petitioners father was employed with the respondents on the post of Assistant Teacher since 26.4.1993 till 26.3.2010. During service period, he expired on 27.3.2010. Petitioner's mother made application dated 9.1.2007 to respondents seeking compassionate appointment since there was no earning hand in the family and because of loss of bread-winner, she was in dire need of service for maintenance of the family.

3. Although, name of petitioner's mother was included in the wait list, she was not given appointment. On 14.1.2019, petitioner's mother made application to substitute her name in the waiting list by name of the petitioner, who was aged about 19 years and holding qualification of H.S.C. alongwith MS-CIT certification. On 14.2.2019, again, reminder was issued to the Chief Officer of Zilla Parishad but cognizance of such application was not taken.

4. Respondent No.3 filed affidavit in reply alongwith copy of communication dated 8.2.2019, by which the it was communicated that there is no provision for substitution of the name of wait list candidate seeking compassionate appointment. The reference was given to Government Resolution dated 20.5.2015 issued by the General Administration Department of Maharashtra State. Consequently,

application of the petitioners mother was disposed of.

5. Mr. A.S. Shejwal, learned advocate for the petitioner, relying upon the judgment of this Court in W.P. No. 6267 of 2018 dated 11.3.2020 (*Dnyaneshwar S/o. Ramkishan Musane vs. State of Maharashtra*) submits that this court has already declared clause under Govt. Resolution dated 20.5.2015, imposing prohibition to substitute name of legal representative of deceased employee in the wait list for compassionate appointment is arbitrary, irrational and unjustified and in violation of the fundamental right guaranteed under Article 14 of the Constitution of India. He would, therefore, submit that the impugned communication rejecting prayer of the petitioner's mother to substitute the name of the petitioner in wait list for compassionate appointment would not be sustainable in law.

6. Mr. Shejwal would further rely upon the Full Bench judgment of this Court dated 28.3.2024 in W.P. No.3701 of 2022 with connected petitions (Nagpur Bench), wherein, clause No. 3.11 and 3.21 of Govt. Resolution dated 21.9.2017 issued by the State of Maharashtra regarding policy of compassionate appointment was considered. While answering the reference, the law laid down by the Division Bench in the case of *Dnyaneshwar Musane* has been upheld and substitution of name of another family member in place of member who has applied for appointment on compassionate ground was held to be in accordance with the object of the policy of compassionate appointment.

7. Per contra, Mr. S.V. Deshmukh, learned advocate for respondent No.3 and Mr. S.A. Gaikwad learned AGP appearing for State,

submit that impugn the communication is based on Government policy as it was applicable. Consequently, no fault can be found in the impugned communication issued by respondent No.3. They would further submit that the petitioner's father expired in the year 2010, the family of petitioner has survived till this date. There is no propriety in entertaining the application for compassionate appointment after 18 years. Hence, they urged to reject the prayer.

8. We have considered the submissions advanced. It is not disputed that father of the petitioner was serving under the establishment of Zilla Parishad and while he was in service, died on 27.3.2010 leaving behind 3 dependents i.e. mother of the petitioner, petitioner, and her younger sister Madhuri. The heirship certificate to that effect is issued by Civil Judge (J.D.), Umerga in Misc. Civil Application No. 46 of 2010. The petitioner's mother moved application dated 17.8.2010 seeking appointment on compassionate ground stipulating that her husband who was working at Zilla Parishad High School at Umerga, expired on 27.3.2010 leaving behind 3 dependents as mentioned above. The said application was accompanied with Death Certificate and Heirship Certificate. The communication dated 5.8.2014 depict that the petitioner's mother cured the defects and provided requisite documents in pursuance of her claim. However, till 2019, there was no further progress in the matter. The record indicates that in the year 2010, when application was submitted by petitioner's mother, she was aged about 35 years and petitioner was aged about 12 years. Therefore, on 14.1.2019 when the petitioner attained majority and the petitioner's mother was at the verge of crossing the maximum permissible age for appointment, hence she moved an application to substitute the petitioner's name in her

place in the waiting list. At the relevant time petitioner was pursuing her education in B.Com. 2<sup>nd</sup> year and she had MS-CIT Certification.

9. The affidavit in reply filed by Mr. Pravin Kharsade, Junior Administrative Officer, Zilla Parishad, Osmanabad states that the application for substitution of petitioner's name in place of her mother has been rejected on 8.2.2019 in pursuance to the guidelines under Government Resolution dated 25.5.2015, which stipulates that there is no provision for substitution of eligible candidates in the wait list maintained for compassionate appointment.

10. Pertinently, Division Bench of this Court in the case of ***Dnyaneshwar Musane (supra)*** took a view that the restriction imposed by Government Resolution dated 20.5.2015 for substitution of the name in the wait list of persons seeking compassionate appointment is unjust and directions were given to delete the same. Consequently, petitioner in that writ petition was held to be entitled for compassionate appointment with Zilla Parishad, Parbhani. However, another Division Bench of this Court doubted correctness of law laid down in case of ***Dnyaneshwar Musane (supra)*** . Therefore, the matter was referred to Full Bench. The Full Bench, framed two questions to be answered, which reads thus :-

(I) Considering the object of compassionate appointment, to provide immediate succor to the family of the deceased employee who dies in harness, as is spelt out in *Umesh Kumar Nagpal (supra)*, *Nilima Raju Khapekar (supra)* and *Debabrata Tiwari (supra)*, whether the view taken in *Dnyaneshwar Musane (supra)* and in other similar matters as indicated above would be correct ?

(II) Whether the policies of the State, which provide for creating a wait list of the candidates for compassionate appointment and in cases permits substitution, even on account of crossing a particular age limit of 45 years is contrary to the object and purpose for which a compassionate appointment has to be granted?

11. The Full Bench of this Court answered above referred questions in para. No.51 as under :-

| Sr. No. | Question                                                                                                                                                                                                                                                                                                                                                                                                     | Answer                                                                                                                                                                                                                                                                                                                                 |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (I)     | Considering the object of compassionate appointment, to provide immediate succor to the family of the deceased employee who dies in harness, as is spelt out in <i>Umesh Kumar Nagpal (supra)</i> , <i>Nilima Raju Khapekar (supra)</i> and <i>Debabrata Tiwari (supra)</i> , whether the view taken in <i>Dnyaneshwar Musane (supra)</i> and in other similar matters as indicated above would be correct ? | The view taken in the case of <i>Dnyaneshwar Musane (supra)</i> by the Division Bench of this Court and other similar matters, is correct and is in consonance with the object of compassionate appointment spelt out in <i>Umesh Kumar Nagpal (supra)</i> , <i>Nilima Raju Khapekar (supra)</i> and <i>Debabrata Tiwari (supra)</i> , |
| (II)    | <i>Whether the policies of the State, which provide for creating a wait list of the candidates for compassionate appointment and in cases permits substitution, even on account of crossing a particular age limit of 45 years is contrary to the object and purpose for which a compassionate appointment has to be granted?</i>                                                                            | a) Maintaining a wait list of the candidates for compassionate appointment is not contrary to the object and purpose for which a compassionate appointment has to be granted.                                                                                                                                                          |

|  |  |                                                                                                                                                                                                                                             |
|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | b) Seeking substitution of the name of another member in place of a member who has applied, on account of crossing the age limit of 45 years is not contrary to the object and purpose for which compassionate appointment must be granted. |
|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

12. In the light of the aforesaid decision of the Full Bench, we find that reasons given in the impugned communication dated 8.2.2019 relying upon the conditions stipulated in Govt. Resolution dated 20.5.2015 cannot be sustained in law.

13. We, therefore, hold that the rejection of application for substitution of petitioner's name in place of her mother in the waiting list for compassionate appointment is illegal and she should be considered for compassionate appointment, taking into account seniority of her mother in the waiting list. Hence, we proceed to pass the following order :-

### O R D E R

- [a] Writ petition is allowed;
- [b] The impugned communication dated 8.2.2019 issued by respondent No.3 thereby rejecting the application moved by petitioner's mother for substitution of name of the petitioner in her place is hereby quashed and set aside;
- [c] The respondent No.3 shall substitute petitioner's name in place of her mother in the waiting list, consider her

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claim for appointment as per the original seniority of her mother in the waiting list.

[S.G. CHAPALGAONKAR, J]

[ SMT. VIBHA KANKANWADI, J]

grt/-