



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO. 4458 OF 2024

REKHA RAMESH BANSWAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

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Advocate for the Petitioner : Ms. Akshara Sharad Madake
AGP for Respondents/State : Mr. V.M. Kagne
Advocate for R/4 to 6 : Mr. S.P. Urgunde

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

DATE : 15th July, 2024

PC. :-

1. On 29.04.2024, we had passed the following order:

“1. Leave to correct the description of Respondent No.6.

2. In this case seeking compassionate appointment, the widow has already been listed as an eligible candidate on 14th February, 2013 after the demise her husband on 25th January, 2013. The Corporation has forwarded a communication to the Principal Secretary, Urban Development Department, dated 27th December, 2021. We are surprised by the remark put-forth by the Committee which says that if the widow becomes age barred (45 years), she will be declared as ineligible as per the Government Resolution dated 21 September, 2017. As regards her son, Petitioner No.2 herein, the remark is that his application is not within time.

3. *The law laid down by this Court in Writ Petition No. 12897 of 2023 (Latikabal Uttam Mahajan Vs. The State Of Maharashtra Through Its Secretary And Others), would apply to this case. Therefore, the application of Petitioner No.2 cannot be said to be beyond time in the light of clause 10(3) of the Annexure 'A' below the GR dated 21st September, 2017.*

4. *Issue notice to the Respondents, returnable on 18th June, 2024. The learned AGP waives service of notice on behalf of Respondent Nos. 1, 2 and 3/State. Mr. Urgunde, the learned Advocate waives service of notice on behalf of Respondent Nos. 4, 5 and 6.*

5. *The Corporation shall enter an affidavit-in-reply to explain why Petitioner No.1 has still not been appointed on compassionate basis. The entire list of eligible candidates for appointment on compassionate basis, from January, 2013 till today, shall be placed before the Court.*

6. *All office objections to be removed on or before 11th June, 2024, failing which, this Petition shall stand dismissed without further reference to the Court on 12th June, 2024.*

2. We have considered the submissions of the learned advocates for the respective sides. We have perused the affidavit in reply filed on behalf of the Municipal Corporation at Aurangabad, dated 27.06.2024.

3. It is undisputed that Petitioner No.1 is now 50 years of age and if she gets compassionate appointment with the Corporation, she would retire in less than 10 years. Post retirement, her legal heir cannot get compassionate appointment in view of the rules applicable, in as much as, Petitioner No.1 may

not be eligible for pensionary benefits on account of not completing the qualifying service.

4. In similar set of facts, this Court had delivered a judgment dated 28.03.2024, in **Writ Petition No. 1706/2021 (Durgadas s/o. Sunil Saindane V/s. State of Maharashtra & Anr.)**, wherein, in such peculiar facts, we have permitted the substitution of the widow by the son. The learned Full Bench of this Court has held in **Kalpana wd/o. Vilas Taram & Anr. V/s. State of Maharashtra & Ors.; 2024 (4) Mh.L.J. (FB) 312**, that substitution is permissible and the view taken by the learned Division Bench of this Court in **Dnyaneshwar S/o. Ramkishan Musane V/s. State of Maharashtra & Ors.; 2020(5) Mh.L.J. 381**, is a correct view.

5. The learned advocate for the Corporation has vehemently opposed this Petition on the basis of the averments set out in the affidavit in reply. He further points out that Petitioner No.1 is at serial no.57. Compassionate appointments up to serial no.47, have been made. Petitioner No.1 is age barred. We are unable to accept this argument of Petitioner No.1 being age barred in the light of the judgment dated 19.03.2024, delivered by this Court in **Writ Petition No. 12897 of 2023 (Latikabai Uttam Mahajan V/s. The State Of Maharashtra Through Its Secretary & Ors.)**.

6. As such, there are two possibilities in this matter. Firstly, that Petitioner No.1 can be appointed as and when her turn comes as she is at serial no.57 and another 14 persons eligible for compassionate appointment, are above her. Secondly, the name of Petitioner No.1 can be substituted with Petitioner No.2, considering that Petitioner No.1 is 50 years of age and if it takes another two to three years for appointment, she would practically be 52 or 53 years and she may not even get pensionary benefits. Keeping in view the law laid down in **Durgadas s/o. Sunil Saindane** (supra), we deem it appropriate to permit the substitution of Petitioner No.1 with the name of Petitioner No.2, in the light of the view taken by the learned Full Bench of this Court in **Kalpana wd/o. Vilas Taram & Anr.**(supra).

7. As such, **this Writ Petition is partly allowed.** The name of Petitioner No.1 – Widow at serial no. 57, shall be substituted by the name of Petitioner No.2 and his name shall be inserted at serial no.57. As and when the turn of Petitioner No.2 at serial no.57 arrives, the Corporation shall issue an appointment order on compassionate basis.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]