

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13097 OF 2022
IN RAST/22946/2022

The State Of Maharashtra Through Its Additional
Chief Secretariat (services) And Another

VERSUS

Dnyaneshwar Ramkishan Musane And Others

...

Mr. P. K. Lakhotiya, AGP for Applicants

Mr. P. V. Gole h/f Mr. V. D. Gunale, Advocate for
Respondents

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MARCH 08, 2024

PER COURT :

ORDER BELOW CIVIL APPLICATION

Heard the learned Advocates for the respective
sides. Since the delay of 156 days is very short and
explained, the same is condoned and the Civil
Application is allowed.

ORDER BELOW REVIEW APPLICATION

1. Issue notice to the Respondents. The learned
Advocate Mr. P. V. Gole h/f Mr. V. D. Gunale waives
service of notice on behalf of Respondent No. 1. Heard
forthwith by the consent of the parties.

2. The learned AGP has cited the judgment delivered by this Court at the Principal Seat [Coram: S. V. Gangapurwala, Acting C.J. (as His Lordship then was) and Sandeep V. Marne, J], in *State of Maharashtra and Another Vs. Rehana Akbar Shaikh and Another, 2023 (3) Mh.L.J., 577* wherein it has been recorded in paragraphs 6 to 12 as under:

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 vs. the State of Maharashtra and ors., 2020(5) Mh.L.J. 381 = W.P. No. 6267 of 2018* judgment of this Court (Bench at Aurangabad) decided on 11 March, 2020 has directed deletion of condition banning substitution of name of legal 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.*, 2022 MhLJ Online 73 = Writ Petition No. 11821 of 2019 decided by Bench at Aurangabad on 28th July, 2022. 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 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, 2021 MhLJ Online (S.C.) 82 = Civil Appeal No. 897 of 2021 decided on 9th April, 2021, in which the Apex Court has made the following observations :

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 family. 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 unique 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 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 dependent 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.

3. The learned AGP cites the judgment delivered

by this Court dated 21.12.2023 in Writ Petition No. 12897/2023 (Latikabai Uttam Mahajan vs. The State of Maharashtra and Others), wherein this Court has recorded that "Scheme for Compassionate Appointment under Central Government" dated 02.08.2022, prescribes that once the name of an eligible candidate for compassionate appointment, is included in the wait list, the name need not be deleted in view of clause 7(B)(a) Note (I) and (II), even if the person crosses the age barrier of 45 years. We have also recorded in Latikabai (supra) that the State Government has specifically adopted the said scheme of the Union of India, and therefore, if an eligible candidate is enlisted before turning 45 years of age and subsequently crosses that age barrier (of 45 years), the name of such eligible candidate need not be deleted and compassionate appointment can be granted to the said eligible candidate.

4. The learned AGP has canvassed that the Government Resolution dated 20.05.2015, which was considered by this Court in Dnyaneshwar Musane (the original Petitioner before us), was passed by the

General Administration Department (GAD) of the State Government. There was neither any challenge to the Government Resolution, nor were there any pleadings on record, inasmuch as, the GAD was not a Respondent and no opportunity of hearing was granted. The learned AGP, therefore, contends that the Doctrine of *audi alteram partem* would be applicable in this case as the Government Resolution issued by the GAD has been interfered with by this Court without any pleadings and without granting any opportunity of hearing to the concerned Department.

5. In view of the above, we are listing this Review Petition for an **"urgent hearing"** on **21st March, 2024 at 02.30 pm**. The learned Advocate for the Original Petitioner submits that he would be ready with this matter on the said date.

6. Until then, the State Authorities shall follow the view taken by this Court in *Latikabai (supra)*, unless there is any legal impediment, since the concerned scheme of the Government of India, was adopted by the State Government. However, it must be noted that this was never brought to the notice of this

Court in Dnyaneshwar Musane or any earlier reported judgment.

7. We also observe that the direction set out in Clause 6-I of the judgment under review dated 11.03.2020, declaring Clause 1-C of the said Government Resolution as being arbitrary, would not be acted upon. We also record that, if Dnyaneshwar has already been given appointment by virtue of the judgment of this Court dated 11.03.2020, the same would not be interfered with.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

Malani