



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12116 OF 2024

THE STATE OF MAHARASHTRA THR ITS
SECRETARY HOME DEPT MANTRALAYA
VERSUS
MAHESH SURESH KHEDKAR

...
AGP for the Petitioner : Mr. R.S. Wani
Advocate for Respondent No.1 : Mr. Chetan Trimbakrao Jadhav
...

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.

DATE : 12.12.2024

PER COURT:

The State is objecting to and challenging the order of the Maharashtra Administrative Tribunal on the respondents Application, whereby, the decision of the petitioners turning down their request for substituting name of the respondent No.1 in place of that of the respondent No.2 in the wait list for compassionate appointment was challenged and quashed and set aside by the tribunal directing substitution.

2. We have heard both the sides.

3. The issue is no longer *res integra* in the light of the full bench decision in the matter of **Kalpana wd/o Vilas Taram and Anr. Vs. The State of Maharashtra and Ors.**; Writ Petition No.3701/2022 and

other connected writ petitions, whereby, such substitution has been held to be legal. There remains nothing to be decided.

4. The learned AGP would submit that as on the date the impugned order was passed the name of the respondent No.2 was already removed from the wait list.

5. However, as has been correctly observed by the Tribunal, her name was still figuring at the same Serial No.6 when respondent No.1 had made the application. In our considered view, maintaining a list would merely be a procedural aspect to maintain a discipline by a public office and would not go to the root of the right being claimed by the persons like respondent No.1. Such a right cannot be defeated by efflux of time, more so when in the light of full bench judgment, respondent No.1 as of right was entitled to get his name substituted in place of respondent No.2 – Mother.

6. The writ petition is dismissed, however, with a clarification that irrespective of the operative part of the order under challenge in Clause No.2 uses the word 'appoint' it shall be in accordance with paragraph No.44 of the full bench order and in the light of the **State of West Bengale VS. Debabrata Tiwari ; AIR 2023 (SC) 1467**. With this clarification the writ petition is dismissed.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)