



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

WRIT PETITION NO. 762 OF 2020

Afaroj Shakeel Ahemad
Aged about 20 years Occ: Nil
R/o Near Post Office Darwaha
Tq Darwaha, Dist. Yavatmal

} .. **Petitioner**

Versus

- 1) The State of Maharashtra
Through Principal Secretary Urban
Development Department,
Mantralaya, Mumbai
- 2) The Commissioner and Director,
Municipal Administration,
Shashkiya Parivahan Seva Imarat,
3rd Floor, Sir Pochkhanwala Road,
Worli, Mumbai – 30
- 3) The Collector, Yavatmal
- 4) The Municipal Council, Darwaha
Through Chief Officer, Darwah,
Tq. Darwaha, Dist. Yavatmal

} .. **Respondents**

Mr. Anand Deshpande, Advocate for Petitioner.
Mr. D.P.Thakare, Addl.G.P. for respondent Nos.1 to 3.
Mr. S.M. Vaishnav, Advocate for Respondent No.4.

CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.

DATED : JUNE 19, 2024

ORAL JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally,
by the consent of the learned counsel, appearing for the parties.

(2) By this petition, the petitioner is seeking direction against respondent No.4, Chief Officer Municipal Council, Darwha, to submit his proposal to grant an appointment on compassionate grounds to respondent No.1 State Government based on the Resolution dated 08/11/2018.

(3) The petitioner's father, Shakil Ahemad Abdul Razzak, served as 'Treasurer' with respondent No.4. During his service period, he expired on 28/01/2010. Therefore, Sayrabano wd/o Shakil Ahemad has moved an application on 22/03/2010 for a grant of appointment on compassionate grounds. The application was kept pending till 2018. During the pendency of the said application, petitioner Afaroj became major on 20/07/2018. So, he filed applications dated 15/01/2019 and 07/02/2019 to respondent No.4 and prayed for a grant of appointment on compassionate grounds for him instead of his mother.

(4) It further appears that in the column of legal heir, the name of Sayrabano wd/o Shakil Ahemad was mentioned in the table prepared by respondent No.4. The application filed by her was shown as pending before respondent No.1 for a grant of compassionate appointment.

(5) Respondent No.3, by communication dated 08/12/2021, informed Respondent No.4 that there is no provision for

substitution of the name of the petitioner in place of his mother, and therefore, his application was rejected.

(6) Based on the said communication, on 02/02/2022, respondent No.4 communicated to the petitioner that his request for appointment on compassionate grounds cannot be considered as there is no provision in the Government Resolution dated 21/09/2017. Being aggrieved by the same, the petitioner has preferred this writ petition.

(7) Learned counsel for the petitioner vehemently contended that till 2018, an application dated 22/03/2010 filed by widow-Sayrabano was pending with the Authority. During the pendency of the said application, petitioner Afaroj made another application to substitute his name in place of his mother.

(8) Learned counsel further submits that as per the law laid down in **W. P. No.3701/2022**, in the case of **Kalpna wd/o Vilas Taram and another vs. The State of Maharashtra** with other connected petitions decided on 27/09/2023, petitioner is entitled to seek substitution of his name in place of his mother. Therefore, the issuance of impugned communications is bad-in-law and liable to be set aside.

(9) *Per contra*, Mr. Vaishnav, learned counsel appearing for respondent No.4, submitted that as per Government Resolution

(G.R.) dated 21/09/2017, there is no provision for substitution of the name, once it was given and therefore, petitioner is not entitled to substitute his name in place of his mother.

(10) *Secondly*, he submitted that the petitioner's mother had completed 45 years of age when filing the application. Therefore, she was not entitled to claim the appointment on compassionate grounds. Thus, the rejection of the petitioner's claim by respondent No.4 is just and proper.

(11) We have considered the rival contentions of the counsel. Perused the record and Judgment relied on.

(12) It is undisputed that the petitioner's father was in service with respondent No.4 as a 'Treasurer'. During the pendency of service, he expired on 28/01/2010. Immediately after that, on 22/03/2010, the petitioner's mother, Sayrabano, applied to respondent No.4 for a grant of appointment on compassionate grounds. The application was pending with the said respondent until 2018. Her name was also shown in the list of pending applications.

(13) It is a further undisputed fact that during the pendency of the said application on 20/07/2018, petitioner – Afaroj became major, and after attaining the age of majority, immediately, he

moved applications dated 15/01/2019 and 07/02/2019 to respondent No.4, i.e. within a period of one year from attaining the age of majority.

(14) It further appears that during the pendency of the application, as per Resolution No.44 dated 08/11/2018, the petitioner's name was forwarded to respondent No.1; however, vide communication dated 08/12/2021, his application was rejected, as there is no provision incorporated in the G.R. dated 21/09/2017. Pursuant to the said communication on 02/02/2022, respondent No.4 informed the same to the petitioner. As such, the petitioner has amended the petition in that regard to set aside the said communications.

(15) On conjoint perusal of the Clauses (4) and (10) of G.R. dated 21/09/2017, it seems that as per the said G.R., the petitioner is entitled to move an application within a period of one year on attaining the age of majority. Thus, the only question arises whether the petitioner's name can be substituted in place of his mother for a grant of appointment on compassionate grounds.

(16) The Full Bench of this Court vide Judgment and order dated 28/05/2024 delivered in **Kalpna wd/o Vilas Taram and another (supra)** has categorically held as follows :-

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

(17) In view of the law laid down by this Court, in our considered view, the petitioner is entitled to substitute his name in place of his mother.

(18) Having considered the same, in our view, the issuance of the communication by respondents Nos.3 and 4 dated 08/12/2021 and 02/02/2022 are contrary to the law laid down by this Court in the case of *Kalpna* (cited supra); hence, the same is liable to be set aside.

(19) In view of the above, we deem it appropriate to allow the present writ petition as under :-

1. The impugned communications issued by respondents Nos.3 and 4 dated 08/12/2022 and 02/02/2022 are hereby quashed and set aside.
2. Respondent No.4 is directed to submit an appropriate proposal to respondent No.1 for a grant of compassionate appointment to the petitioner in accordance with the law.
3. Rule is made absolute in the above terms.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]