



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

WRIT PETITION NO. 3322 OF 2024

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| 1] State of Maharashtra, through its
Secretary, Tribal Development
Department, Mantralaya, Mumbai. | } | .. Petitioners |
| 2] The Project Officer,
Ekatmik Tribal Development Project,
Pandharkawada, District : Yavatmal | | |

Versus

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| Yogesh S/o Ashok Sakharkar,
Aged about 27 years, Occ. : NIL,
R/o At Chapdoh, Post Bhosa,
Taluka & District : Yavatmal. | } | .. Respondent |
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Ms.N.P.Mehta, Additional Government Pleader for the petitioners.
Mr.N.S.Warulkar, Advocate for the respondent.

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

DATED : JULY 24, 2024

ORAL JUDGMENT (Per : Nitin W. Sambre, J.)

Rule. Rule is made returnable forthwith. Heard finally
by the consent of the learned Counsel appearing for the parties.

(2) The respondent had preferred Original Application
No.96/2020 before the Maharashtra Administrative Tribunal with a

prayer for issuing directions to the petitioners to include his name in the waiting list maintained with them for the candidates, who were claiming appointment on compassionate ground. Further directions were sought against the petitioners to issue an appointment order to the respondent. Such prayers of the respondent were entertained by the Maharashtra Administrative Tribunal vide impugned order dated 24/06/2022 and not only the directions were issued to the petitioners to include the name of the respondent in the wait list of the candidates, who were claiming appointment on compassionate ground, but also to issue an appointment order to the respondent in the light of the Government Resolution dated 21/09/2017.

(3) The aforesaid order is questioned by the petitioners on the ground that grant of compassionate appointment is not a right. It is to be decided on a case to case basis and after assessing the financial hardship, the claim for compassionate appointment can be considered and granted. According to the petitioners, even if substitution is permissible, such substitution cannot be granted by a stereo-type order unless the Authority maintaining the wait list is satisfied that the candidate whose substitution is sought is fulfilling the norms prescribed in the Government Resolution and the foremost requirement is that of the hardship being faced by the family of the deceased employee.

(4) In addition to above, drawing support from the Full Bench Judgment of this Court in the case of **Kalpana wd/o. Vilas Taram and another vs. The State of Maharashtra and others [Writ Petition No.3701/2022 decided on 28/05/2024]** and two Division Bench judgments of the Apex Court in the matter of **Ravindra Sahebrao Tarange and another vs. The State of Maharashtra and others [Special Leave Petition (Civil) No.52821/2023 decided on 03/01/2024]** and in the matter of **Akshaykumar Balaji Kesgire vs. The State of Maharashtra and others [Special Leave Petition (Civil) No. 26781/2023 decided on 21/07/2023]**, it is claimed by the petitioners that the claim put forth by the respondent ought not to have been granted, particularly when it is not factually disputed that the elder brother of the respondent whose candidature was included in the wait list had already got a Government job. Based on the above undisputed fact, it is claimed that the financial hardship faced by the respondent's family stands extinguished.

(5) It is further claimed by the petitioner that the Apex Court in the matter of **N.C.Santosh vs. State of Karnataka, reported in 2020 Mh.L.J. Online (SC) 71**, particularly in para 19 has observed thus :-

“19. Applying the law governing compassionate appointment culled out from the above-cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of

consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

As such, learned Additional Government Pleader would urge that the claim for compassionate appointment culled out from the Government policy warrants consideration of candidature on the basis of policy as prevailing the date of the application and not on the date of death of the employee in whose place the compassionate appointment is sought. Learned Additional Government Pleader would further urge that the learned Tribunal has not recorded any reasons so as to substantiate the grant of relief of not only inclusion of the name of the respondent in the wait list, but also for grant of appointment of respondent. That being so, it is urged that the impugned judgment is liable to be quashed and set aside.

(6) As against above, Mr. Warulkar, learned Counsel for the respondent, would urge that the father of the respondent, who was in the employment of the petitioners, while working in a Ashram School died on 30/09/2007 because of cancer. It is claimed that the family of the deceased employee was left in a financial disgrace and was facing hardship. By consent, the candidature of the brother of the respondent Suresh was taken on the wait list maintained by the petitioners. It is

claimed that the brother, who is married and residing separately, even if got employment with the Government, that by itself would not remove the financial hardship faced by the respondent, who is maintaining and taking care of his mother. It is claimed that the petitioners cannot take advantage of the fact of the employment being secured by the brother of the respondent, particularly when the married brother is staying independently and not maintaining the family viz. the respondent and mother and that the substitution is permitted in view of the policy of the Government as reflected in Government Resolution dated 21/09/2017.

(7) According to Mr. Warulkar, learned Counsel for the respondent, even if the reasons are not recorded by the learned Tribunal in detail, the ultimate decision rendered by the learned Tribunal is quite justified as the substitution and the consideration of claim for grant of compassionate employment is based on the Scheme of the Government.

(8) We have considered the rival submissions.

(9) It appears that in view of the assessment of hardship faced by the family of the deceased employee, the candidature of the elder brother of the respondent, namely Suresh was taken on the wait list. Suresh secured a Government job in 2013, which had prompted

the respondent to approach the respondent Authorities on 03/07/2013 to substitute the name of the respondent. The petitioners instead of taking decision on such application, maintained the position as it is. The same had prompted the respondent to secure the relevant documents under the Right to Information Act and based on the same the respondent had approached the learned Tribunal seeking not only substitution of his candidature, but also issuance of directions to the petitioners to grant compassionate appointment to him.

(10) The learned Tribunal after considering the factual matrix vide impugned order has directed the name of the respondent to be included in the wait list and to grant him employment on compassionate ground as per the policy of the Government.

(11) The fact remains that whether such a substitution is permissible, particularly when the petitioners have raised an objection that the brother of the respondent having secured public employment and such an issue should have been gone into by the Tribunal.

(12) Apart from above, whether such substitution is warranted, particularly having regard to the observations of the Apex Court in the matter of **N.C.Santosh** (cited supra) should also be looked into and assessed by the learned Tribunal by recording appropriate findings.

(13) What can be noticed is by a cryptic order, the Tribunal only after considering the submissions issued directions to include the name of the respondent in the wait list maintained with the petitioners and also issued further directions to grant the compassionate appointment to the respondent as per the policy of the Government.

(14) Clause 5(e) of the Government Resolution dated 21/09/2017, provides that the Authority should ascertain whether any family member of the deceased employee is already in public employment and he is supporting the family of the deceased employee or not and what is the financial condition of the family of the deceased employee so that grant of employment on compassionate appointment is not misused. All these issues have not been looked into by the learned Tribunal.

(15) In our view, the learned Tribunal has failed not only to look into the Scheme referred above, but also to record the reasons in support of the conclusion drawn. In this background, we deem it appropriate to allow the present petition, thereby quashing and setting aside the impugned order dated 24/06/2022.

(16) We direct the respondent to appear before the petitioner No.2 Project Officer on 05/08/2024. The Project Officer within four

weeks shall pass a reasoned order thereby deciding whether the respondent's claim for substitution is permissible. Let there be speaking order passed to that effect by petitioner NO.2 Project Officer. Once such an order is passed and it is held that the respondent's claim for compassionate appointment can be considered, in such an eventuality the respondent's name be permitted to be substituted as per the existing policy of the Government and his claim be considered as per the seniority.

(17) In case the order is adverse to the interest of the respondent, it shall be open for him to question the same before the learned Tribunal. We expect the learned Tribunal to pass a reasoned order in such an eventuality without being influenced by the findings recorded herein above.

(18) As such, the petition stands partly allowed in the above terms. No costs.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

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