



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

WRIT PETITION NO. 4896/2023

1. Anand s/o Bhagwan Raut,
aged about 47 yrs., Occ. Nil,
R/o. Savanga (Bk), Post Deurwada,
Tah. Digras, Dist. Yavatmal.
2. Harshak s/o Anand Raut,
Aged about 15 yrs., Occ. Student,
R/o Savanga (Bk), Post Deurwada,
Tah. Digras, Dist. Yavatmal, through
natural guardian father, petitioner No.1

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary, Department
of Rural Development, Mantrayalay,
Mumbai-32.
2. Zilla Parishad, Yavatmal through
its Chief Executive Officer, Dist.
Yavatmal.

RESPONDENTS

Mr. V. B. Rathi, Advocate h/f Mr. P.B. Patil, Advocate for petitioners
Mr. A.M. Ghogare, AGP for respondent No.1
Mr. R.D. Bhuibhar, Advocate for respondent No.2.

CORAM : VINAY JOSHI AND
SMT. M. S. JAWALKAR, JJ..

DATE : 23.07.2024

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

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

2. The wife of petitioner No.1 namely Rupali was appointed as Health Worker in the establishment of respondent No. 2 Zilla Parishad, Yavatmal on regular basis. She died on 04.08.2009 while in service. In turn, petitioner No.1 husband had applied for compassionate appointment on 19.11.2009. The name of petitioner No.1 was included in the waiting list maintained by the department for grant of compassionate appointment. The petitioner No.1 could not reach in the seniority to get appointment, but he has completed 45 years of age. Having regard to said fact, respondent No. 2 employer vide communication dated 25.10.2021 has struck down the name of petitioner No.1 from the list maintained for compassionate appointment on the ground that the petitioner No.1 has completed the age of 45 years.

3. Thereafter, within short span, petitioner No.1 has requested to substitute name of his son Harshak (Petitioner No.2) in his place to be considered for grant of compassionate appointment. However, no decision was taken by the department, meaning thereby the urge for substitution was rejected. Therefore, the petition seeks for substitution of the name of the petitioner No.2 in the waiting list. The petitioner drew support from the Full Bench decision of this Court in case of **Kalpana wd/o Vila Taram & anr. Vs. The State of Maharashtra & ors.** (Writ Petition No. 3701/2022 alongwith connected matters decided on 28.05.2024). While answering the reference, this Court has expressed that seeking substitution of the name of another member in place of a member who has applied, on account of crossing the age limit of 45 years is not contrary to the object and purpose for which compassionate appointment must be granted.

4. It is brought to our notice by respondent No.2 that though in view of Full Bench decision, substitution is permissible, however petitioner No.2 is still minor and thus, he cannot be appointed as urged in prayer clause (a) of the petition. Since the Full Bench has already decided the issue that substitution is

permissible even after crossing of the age limit 45 years, there can be no hurdle in allowing the substitution. However as the petitioner No. 2 is minor, he cannot be employed, but he can be replaced in waiting list after attaining majority.

5. In view of above, we direct the petitioners to apply fresh within three months after the petitioner No. 2 attained majority on which he shall be placed in the place where the petitioner No.1 was in the list.

6. Petition stands disposed of in above terms.

(SMT. M. S. JAWALKAR, J)

(VINAY JOSHI, J.)

Gohane