



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

WRIT PETITION NO.5005 OF 2024

Smt Rajni wd/o Sahebrao Tayde, Tq. Pusad, Dist. Yavatmal and anr.

-VS-

State of Maharashtra, Thr. Secretary, Dept. of GAD, Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri Vikas Kulsange, Advocate for petitioner.

Shri H. D. Marathe, Assistant Government Pleader for respondent Nos.1 and 2.

Shri P. P. Deshmukh, Advocate for respondent No.3.

CORAM : BHARATI DANGRE AND ABHAY J. MANTRI, JJ.

DATE : September 26, 2024

P. C.

1. The learned Assistant Government Pleader Shri H. D. Marathe, representing the respondent Nos.1 and 2 and Shri P. P. Deshmukh, learned counsel representing the respondent No.3, Nagar Parishad, Pusad, District Yavatmal are *ad idem* with the grievance of the petitioner stands infact answered by the Full Bench in case of *Kalpana and ors. vs. State of Maharashtra and ors. 2024(4) Mh LJ 312*, which has answered the question referred to it being formulated as “*Whether the policy of the State, which provides for creating a list of candidates for compassionate appointment is contrary to the object and purpose for which a compassionate appointment has to be granted ?*”

In paragraph 46 of the judgment, the Full Bench answered the aforesaid question in the negative by holding 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.

While coming to the aforesaid conclusion, the Full Bench has observed in paragraph 40 of the judgment thus :

“40. ... as the substitution in case of death of a waitlisted member is permitted under the State’s policy, resultantly the name of such substituted member will continue for long period in the waiting list. However, at the same time, substitution of name on any other ground is being opposed by citing a justification that, contrary to the object of the compassionate appointment the name of a substituted member would be continued for long period. Thus, it is evident that, the State has applied two different criteria for similarly circumstanced persons in the matter of compassionate appointments, which amounts to treating equals unequally in violation of Article 14 of the Constitution of India.”

2. Worth it to note that the Full Bench was referring to the relevant clause contained in Government Resolution dated 21/09/2017, which in fact has effect of superseding all earlier Government Resolutions including Government Resolution dated 20/05/2015 issued by the General Administration Department of Government of Maharashtra and the petitioner is aggrieved by imposition of condition No.1 Clause (c) of the said Government Resolution which provides for substitution in the waiting list of the candidates for appointment on compassionate ground for any reason other than death and it is the specific case of the petitioners that inclusion of such a condition is illegal, arbitrary and

contrary to the purpose and object for which appointment on compassionate ground is to be granted.

3. As this very issue find an answer in the decision of the Full Bench and the condition imposing such a restriction providing substitution except in case of death has been held to be arbitrary, the case of the petitioners is covered by the Full Bench judgment.

4. In view of aforesaid discussion, given effect to the decision of the Full Bench in case of *Kalpana and ors.* (supra), the name of the petitioner No.2 deserves to be allowed in the waiting list. However, in order to judge the suitability of substitution of petitioner No.1 in the waiting list, the Chief Officer, Nagar Parishad, Pusad, District Yavatmal i.e. respondent No.3 shall grant hearing to the petitioners with all necessary documents within their possession to assess the eligibility of petitioner No.2 by fixing up a date which shall be intimated at least a week in advance for being included by substitution in the waiting list.

Let the entire exercise be carried out within a period of six weeks from today.

With the aforesaid directions, the writ petition is disposed of. No order as to costs.

(Abhay J. Mantri, J.)

(Bharati Dangre, J.)