

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8791 OF 2024

Mrs. Uma Prakash Patil and Anr.

...Petitioners

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Prashant Bhavake, Advocate for the Petitioners.

Mr. S.H. Kankal, Assistant Government Pleader for the Respondent Nos.
1 to 5/State.

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**CORAM : A.S.CHANDURKAR AND
M.M. SATHAYE, JJ.**

DATE : 27th FEBRUARY 2025

P.C. :

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

2. The Petitioners, who are widow and son of one Shri. Prakash Ramchandra Patil ('the deceased' for short), are challenging the order dated 15.04.2024 passed by the Member, Maharashtra Administrative Tribunal, Bench at Mumbai in Original Application No. 1168 of 2023 ('the said OA' for short). By the said OA, the Petitioners were challenging the order/communication dated 21.06.2023 passed by Respondent No.3 (Deputy Collector, Kolhapur) on behalf of Respondent No.2 (District Collector, Kolhapur) whereby name of Petitioner No.2 was deleted and name of Petitioner No.1 was restored in the waiting list of candidates seeking appointment on compassionate ground. A direction is also sought to restore the name of Petitioner No.2 in final

waiting list and to grant him compassionate appointment on suitable post taking into consideration his qualification.

3. The deceased was working as Talathi in Class-III post under Respondent No.2 from the year 2005 who passed away during service on 10.12.2009. At the time of his death, the Petitioner No.2 was minor being 13 years old and his younger sister was 11 years old and both were studying. In view of loss of sole breadwinner for the family, the Petitioner No.1 (widow) applied for compassionate appointment on 11.12.2009. Name of the Petitioner No.1 was accordingly included in the waiting list, however no appointment was given. When Petitioner No.2 attained majority, the Petitioner No.1 applied on 28.05.2014 requesting the Authorities to grant appointment to Petitioner No.2 instead of Petitioner No.1. The Respondents considered the application and in the provisional list, the name of Petitioner No.1 was removed and in her place, the name of Petitioner No.2 was included. Provisional waiting list was prepared and thereafter, final waiting list of candidates was published in which the name of Petitioner No.2 was shown at Serial No.9 for Class-IV post under covering letter dated 27.09.2016. The Petitioner No.2 completed his BA Degree and made an application dated 21.02.2019 requesting to include his name in waiting list of candidates for Class-III post instead of Class-IV post.

4. Record shows that vide letter dated 27.12.2019, Respondent No.3 asked the Petitioner No.2 to submit requisite documents, which were submitted along with letter dated 04.01.2021. This indicates that the request of Petitioner No.2 was being considered.

5. Since no steps were taken thereafter, the Petitioners sent

reminder. Thereafter, under communication/order dated 21.06.2023, it was informed that the name of the Petitioner No.1 will be restored in the waiting list and name of Petitioner No.2 will be deleted. Being aggrieved by this communication/order dated 21.06.2023, the Petitioners filed the said OA, which has been dismissed under impugned order. In these circumstances, the Petitioners have approached this court.

6. Learned Counsel for the Petitioners submitted that the order/communication dated 21.06.2023 and the decision thereunder is based on Government Resolution ('GR' for short) dated 21.09.2017, which is after the date of original application of 2009 and inclusion of name of Petitioner No.2 in the place of Petitioner No.1 in the year 2014. He submitted that therefore, the said GR cannot be applied to the Petitioners in retrospective manner. Relying on the Judgment of this Court (Nagpur Bench) dated 28.05.2024 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 petitions)**, it is submitted that the said GR dated 21.09.2017 is already considered by this Court in a Reference to Larger Bench and it is held that seeking substitution of the name of another member of family in the place of earlier member who had applied, is not contrary to the object and purpose of the compassionate appointment.

7. Learned Assistant Government Pleader appearing for Respondents/State supported the impugned order contending that the provision of the said Government Resolution is rightly applied to the Petitioners.

8. We have considered the rival submissions and the perused the record. Perusal of the impugned order shows that the argument about application of GR dated 21.09.2017 being later in point of time *vis-a-vis* inclusion of name of Respondent No.2 in waiting list was specifically advanced before the Tribunal. The Tribunal has held that name of the Petitioner No.2 was inadvertently substituted. On the basis that more than 15 years have elapsed since the death of deceased and since name of Petitioner No.1 is still appearing in the waiting list, the said OA has been dismissed. The Tribunal has held that in the scheme of compassionate appointment, there is no such provision for substitution of name during subsistence of the name of other heir in the waiting list.

9. It is obvious from the above dates that the Larger Bench of this Court has rendered the law on 28.05.2024 which is after the date of the impugned order i.e. 15.04.2024. Therefore the Tribunal did not have the advantage to consider the same.

10. In our view, since the matter relates to compassionate appointment after death in the year 2009, no purpose will be served by relegating the parties to the Tribunal again on this ground and therefore, we find it appropriate to consider the submissions in this petition.

11. This Court, after considering the very same GR dated 21/09/2017 has found that seeking substitution of name of another member of family in the place of earlier member who had applied, is not contrary to object and purpose of compassionate appointment. Also the said GR dated 21.09.2017 cannot apply retrospectively to the Petitioner No.2 whose name was admittedly included in the waiting list

on 30.08.2014. In light thereof, we find this to be a fit case to exercise our writ jurisdiction.

12. In the aforesaid facts and circumstances and for the reasons recorded above, the impugned order needs interference. Hence, the following order is passed.

(i) The judgment of the Maharashtra Administrative Tribunal, Mumbai dated 15th April 2024 in Original Application No.1168 of 2023 is set aside. Consequently, the said Original Application is allowed and the impugned communication dated 21.06.2023 is also set aside. The name of Petitioner no.2 shall be restored in the waiting list in terms of the communication dated 27.09.2016.

(ii) The Respondents shall re-consider the Petitioners' request for shifting name of the petitioner no.2 from the Waiting List of Class-IV to Class-III posts in terms of the communication dated 21.02.2019.

(iii) It is however clarified that entitlement of the petitioner no.2 for appointment on compassionate ground shall be considered in accordance with law. No observations in this judgment shall be considered as expression of any opinion in that regard.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

13. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S.CHANDURKAR, J.)