
(2020) 03 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 6267 Of 2018

Dnyaneshwar

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 03 BOM CK 0047

Hon'ble Judges : Z.A. Haq, J;S.M. Gavhane, J

Bench : Division Bench

Advocate : Avinash M. Reddy, Satish Bhosale, V.D. Gunale, S.R. Yadav, V.V. Bhavthankar

Final Decision : Allowed

Judgement

Z.A. Haq, J

1. Heard.

2. Rule. Rule made returnable forthwith.

3. Undisputedly, the father of the petitioner was working as primary teacher with the Zilla Parishad, Parbhani as a confirmed employee and while in

employment, he died on 06.09.2005. At that time, the petitioner was minor (aged about 6 years). The mother of the petitioner applied for appointment

on compassionate ground and her name was included in the list of persons seeking appointment on compassionate ground. After the name of

petitioner's mother was included in the list of persons seeking appointment on compassionate ground, the grand parents of petitioner objected for

giving appointment on compassionate ground to mother of the petitioner and proposed that appointment on compassionate ground should be given to

the petitioner. At that time, the petitioner was minor (aged about 8 or 9 years).

4. The Chief Executive Ofcer, Zilla Parishad conducted hearing in 2013. At the time of hearing, mother of the petitioner gave up her claim for

appointment on compassionate ground and requested that petitioner be given appointment on compassionate ground. At that time also, the petitioner

was minor. On becoming major, the petitioner submitted fresh application on 18.06.2015 seeking appointment on compassionate ground. This

application is rejected by respondent no.2 - Chief Executive Ofcer, on the ground that the name of the petitioner cannot be substituted in place of his

mother's name, in the list of persons seeking appointment on compassionate ground. For this, the respondent no.2 - Chief Executive Ofcer relied

on the Government Resolution dated 20.05.2015, which lays down that name of any legal representative of deceased employee would not be

substituted in place of any other legal representative, in the list of persons seeking appointment on compassionate ground.

5. After hearing learned advocates for the parties and going through the Government Resolution dated 20.05.2015, we are of the view that the

prohibition imposed by the Government Resolution dated 20.05.2015 that name of any legal representative of deceased employee would not be

substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the

fundamental rights guaranteed by Article 14 of the Constitution of India. As the per the policy of the State Government, one legal representative of

deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution

dated 20.05.2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another

legal representative of that deceased employee cannot be substituted in the list in place of the other legal representative who had submitted his/her

application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the

contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated. It is not the case of

respondent no.2 that petitioner's mother was given appointment on compassionate ground and then she resigned and proposed that petitioner should be

given appointment. The name of petitioner's mother was in waiting list when she gave up her claim and proposed that the petitioner should be considered for appointment on compassionate ground.

6. In this view of the matter, we find that the restriction imposed by the Government Resolution dated 20.05.2015 that name of legal representative of deceased employee cannot be considered in place of another legal representative of that deceased employee whose name happens to be in the waiting list for giving appointment on compassionate ground, is unjustified. Hence, we pass the following order:

ORDER

I) We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.

II) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.

III) The respondent no.2 - Chief Executive Officer is directed to include the name of the petitioner in the waiting list of persons seeking appointment on compassionate ground, substituting his name in place of his mother's name.

IV) The respondent no.2 - Chief Executive Officer is directed to consider the claim of the petitioner for appointment on compassionate ground on the post commensurate with his qualifications and treating his seniority as per the seniority of his mother.

V) Rule is made absolute in the above terms.

VI) In the circumstances, the parties to bear their own costs.