

(2022) 12 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No.1903 Of 2022

Sanjay Ramdas Dhote And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Citation : (2022) 12 BOM CK 0057

Hon'ble Judges : A. S. Chandurkar, J;Anil L. Pansare, J

Bench : Division Bench

Advocate : M. L. Chouhan, A. S. Fulzele, S. R. Agrawal

Final Decision : Dismissed

Judgement

Anil L. Pansare, J

1. At the outset, learned counsel for the petitioners seeks leave to amend the petition and the prayer clause to challenge the appointment order dated 22.04.2022 issued by the respondent no.3 in favour of younger brother of petitioner no.1.

Leave is granted as prayed for. Amendment be carried out forthwith.

2. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

3. The petitioners are aggrieved by rejection of their representation seeking to replace name of petitioner no.1 in place of his younger brother in the wait list for compassionate appointment and further on account of appointment order dated 22.04.2022 issued by the respondent no.3 in favour of the younger brother of the petitioner no.1.

4. One Ramdas Dhote was working as Higher Grade Head Master in Zilla Parishad Primary School, Paramdoli (Wani). He expired in harness on 23.11.2010. The petitioner no.1 is elder son of deceased Ramdas and petitioner no.2 is his wife.

On 04.02.2011, Swapnil - younger brother of the petitioner no.1 applied for his appointment on compassionate ground. He has allegedly on 17.12.2013 made a representation to the respondent no.3, stating therein that the name of his elder brother i.e. petitioner no.1 be substituted in place of his name in the wait-list maintained by respondent nos. 3 and 4 for appointment on compassionate ground.

5. The second representation was made on 11.01.2019, again for substitution of name of petitioner no.1 in place of his younger brother - Swapnil. Respondent no.3, did not take cognizance of the said representations.

6. On 29.07.2020, the petitioner no.1 then thought it proper to make representation with the same request viz. to substitute his name in place of his brother - Swapnil. Again, there was no response from respondent nos.3. The petitioner no.1, therefore, made another representation dated 04.11.2020 with similar request. On 07.12.2020, respondent no.4 issued a communication to the petitioner no.1 mentioning therein that his request for substitution of name cannot be acceded to in view of the Government Resolution dated 20.05.2015. Later on, pending petition, the respondent no.3 has issued an appointment order dated 22.04.2022 in favour of the younger brother of the petitioner no.1. According to the petitioners, both the acts are contrary to the law and, therefore, not sustainable.

7. The respondent no.3 has disputed that on 17.12.2013, Swapnil - younger brother of petitioner, has made a request to substitute name of the petitioner no.1 in his place in the wait list. According to the respondent no.3, Swapnil made an application on 04.02.2011. His second representation dated 11.01.2019 was after a period of about eight years. The respondent no.3 does not dispute the receipt of the second representation dated 11.01.2019 made by the petitioner no.1, but has disputed receipt of representation dated 17.12.2013. The respondent nos. 3 and 4 further submit that the representation dated 11.01.2019 was rejected by respondent no.4 vide communication dated 07.12.2020. The substitution was rejected in view of Government Resolution dated 20.05.2015. It is then submitted that on 22.04.2022, the appointment order has been issued in favour of Swapnil. The respondent nos. 3 and 4, accordingly submitted that they have discharged their duty. Accordingly, they prayed for dismissal of the petition.

8. We have given thoughtful consideration to the submissions made by both the sides. Mr. M. L. Chouhan, learned counsel for petitioners has urged that the respondent nos. 3 and 4 be directed to act upon the representation dated 17.12.2013. A categorical prayer has been made to that effect. Mr. Agrawal, learned counsel for respondent nos. 3 and 4, however contends that the said representation was either not sent at all and if it was sent, the same has not been received in the office of respondent no.3. Thus, respondent nos.3 has disputed the issuance of representation dated 17.12.2013. We have therefore inquired with Mr. Chouhan, learned counsel for the petitioners, as to whether the

petitioners have obtained acknowledgment. He answered in the negative. In that sense, there is nothing on record that younger brother of petitioner no.1 has made such a representation and in absence thereof, we are not inclined to consider the prayer made by the petitioners to direct the respondents to act upon the representation dated 17.12.2013.

9. So far as the communication dated 07.12.2020 is concerned, the respondent no.4 has declined to substitute the name of petitioner no.1 in view of the Government Resolution dated 20.05.2015. We find that the reliance placed by respondent no.4 on the Government Resolution dated 20.05.2015 to reject the request of the petitioner is against the law laid down by the coordinate bench of this Court in the case of Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and Ors. Writ Petition No.6267/2018 wherein Government Resolution dated 20.05.2015 to the extent of prohibiting the substitution of name, has been quashed. The petitioners have also relied upon judgment in the case of Jayesh s/o Jivan Dange Vs. The State of Maharashtra, through its Secretary Rural Development Department, Mantralaya, Mumbai and Ors. Writ Petition No.5291/2019 wherein the coordinate bench of this Court, of which one of us (A. S. Chandurkar, J.) was a member, by referring to the judgment of Dnyaneshwar's case supra observed that the substitution of name of the petitioner therein could not have been rejected by placing reliance upon Government Resolution dated 20.05.2015.

10. The impugned communication dated 07.12.2020 therefore is contrary to the law laid down by this Court. We are therefore inclined to quash and set aside the said communication and direct respondent no.3 to substitute name of petitioner no.1 in place of his younger brother. Once the name of the petitioner no.1 is substituted, he would be entitled for consideration for appointment on compassionate ground, if he is otherwise eligible. The substitution of name of petitioner no.1 in the wait list will further have impact on the appointment order dated 22.04.2022, issued by respondent no.3 in favour of younger brother of petitioner no.1 because the name of petitioner no.1's brother would stand deleted. Therefore, he cannot be appointed. Even otherwise, pending petition, the respondent no.3 ought not to have made such an appointment. The appointment order is, therefore, liable to be quashed.

11. The question however remains as to whether the appointment order could be quashed without giving an opportunity of hearing to the beneficiary of the order i.e. the younger brother of petitioner no.1. As such, the younger brother has already communicated his desire to substitute name of petitioner no.1 in his place and therefore he may not fall in the category of an aggrieved person, if the appointment order is quashed. However, by way of an abundant precaution, we deem it proper to direct respondent no.3 to seek consent of the younger brother of the petitioner no.1 for substituting petitioner no.1's name in the wait list and upon consent so given, to recall the order of appointment. Accordingly, we proceed to pass the following order.

12. The prayer made by the petitioners to direct the respondent nos.3 and 4 to act upon the representation dated 17.12.2013 is rejected.

The impugned communication dated 07.12.2020 issued by respondent no.4 in favour of petitioner no.1 is quashed and set aside.

Respondent no.3 is directed to substitute name of petitioner no.1 in place of his younger brother in the wait list prepared for granting appointment on the compassionate ground.

The respondent no.3 shall call upon younger brother of the petitioner no.1 and seek his consent prior to recalling the impugned order dated 22.04.2022 and upon receiving such consent, the impugned order shall stand recalled. Thereupon, the claim of the petitioner no.1 for compassionate appointment shall be considered by respondent no.3, in accordance with law.

Rule accordingly. No order as to costs.