

(2023) 05 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 4061 Of 2021

Shubhangi Vitthal Kamodka

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Citation : (2023) 05 BOM CK 0024

Hon'ble Judges : R. D. Dhanuka, J;Gauri Godse, J

Bench : Division Bench

Advocate : ??Yashodeep Deshmukh, Vaidehi Deshmukh, Aditi Athavale, Vinod P. Sangvikar, Dinesh Kadam, V. S. Gokhale

Final Decision : Allowed/Disposed Of

Judgement

Gauri Godse, J

1. This Petition is filed for quashing and setting aside the letter dated 22nd June 2021 issued by the Deputy Commissioner, Public Service Department of Nashik Municipal Corporation. The Petitioner has also prayed for issuing directions for substituting the name of the Petitioner in place of her brother's name mentioned at serial no. 22 in the waitlist maintained by Nashik Municipal Corporation for appointment on compassionate ground.

2. It is the case of the Petitioner that the Petitioner's father was employed by Nashik Municipal Corporation as a senior clerk, and he worked in that post till his death. The Petitioner's father expired on 27th April 2014 while discharging his duties. After the demise of Petitioner's father, her brother Gouresh Kamodkar who was then eligible from the family for appointment on compassionate ground filed an application on 17th May 2014. The Petitioner's case is that she completed her graduation in the year 2018. Considering her qualification, she became eligible to seek an appointment on compassionate ground. Hence, by letter dated 5th June 2021, she requested the Nashik Municipal Corporation to consider her appointment on compassionate ground and substitute her name in

place of her brother, who was already listed on the waitlist. The Petitioner's brother submitted no objection to such substitution of the name in the waitlist.

3. The Deputy Commissioner, Public Service Department of Nashik Municipal Corporation, by letter dated 22nd June 2021, informed her brother Gouresh Kamodkar to submit the documents pursuant to his application for the purpose of confirmation of his candidature in the waitlist for appointment on compassionate ground. It is the case of the Petitioner that though the Petitioner's application dated 5th June 2021 for substituting her name in place of her brother was pending, a requisition for compliance was issued to her brother. The Petitioner, therefore, contended that the letter of requisition for submitting the documents issued to the Petitioner's brother amounts to a rejection of the Petitioner's request to substitute her name in place of her brother. Hence, the Petitioner filed the present Petition seeking necessary directions for setting aside the letter dated 22nd June 2021 as well as for the issuance of directions to substitute the name of the Petitioner in place of her brother for the purpose of appointment on compassionate ground.

4. There is an Affidavit-in-Reply filed on behalf of Respondent Nos. 2 and 3. In the Affidavit-in-Reply, it is contended that after one year from the date of death of Petitioner's father, her brother had approached the Corporation for appointment on compassionate ground. The brother of the Petitioner had executed an Affidavit of undertaking, thereby agreeing to take care of his family members after his compassionate appointment. It is further stated that other family members of Petitioner's brother, including the Petitioner herself, had executed a consent letter dated 15th May 2014, thereby submitting no objection to appointing her brother on compassionate ground. By letter dated 20th April 2021, the Employee's Selection Committee of the Corporation, after following due process of law as well as the guidelines issued by the Urban Development Department, prepared a list of 202 candidates based on the applications submitted by the family members of the deceased employees of the Corporation seeking appointment on compassionate ground.

5. It is thus stated that as per the Committee meeting dated 20th April 2021, the name of the Petitioner's brother is notified at serial no. 22 of the waitlist. It is contended on behalf of Respondent Nos. 2 and 3 that as per the Government Resolution dated 21st September 2017, a comprehensive policy decision has been taken for making appointments on compassionate ground. It is further stated that as per Clause 21 of the Government Resolution dated 21st September 2017, there is no provision with respect to the substitution of the name of the candidate on the waitlist. The said Government Resolution provides for only one exception for substitution of the name, in the event of the death of the candidate notified in the waitlist. It is thus submitted that the request of the Petitioner to substitute her name in place of her brother is not permissible in view of the Government Resolution dated 21st September 2017.

6. Learned counsel appearing for the Petitioner submitted that in similarly

situated facts, the Aurangabad Bench of this Court has taken a decision in the case of The State of Maharashtra and others Vs Mohd Zakiyoddin Mohd Anisoddin Writ Petition No. 1384 of 2016 dated 27th February 2017 . Learned counsel appearing for the Petitioner submitted that Government Resolution dated 20th May 2015 was under consideration in the facts of the said case. In the facts of the said case of Mohd Zakiyoddin, Petition was filed in this Court to challenge the decision dated 24th March 2015 passed by the Maharashtra Administrative Tribunal. Before the Tribunal, there was a challenge to the communication issued, thereby refusing to substitute the name of the Applicant before the Tribunal in place of his sister for the purpose of appointment on compassionate ground. The Tribunal had set aside the decision by holding that Applicant before the Tribunal was the son of the deceased employee, and thus it was possible to give an appointment on compassionate ground. Thus, the State Government had challenged the decision of the Tribunal in this Court.

7. In the said case of Mohd Zakiyoddin, the submission of the State Government was that for the first time by Government Resolution dated 20th May 2015, the Government had permitted to bring on record other dependents of the deceased when in the past some other dependent was taken on the list for the purpose of appointment on compassionate ground. It was, thus, the case of the State Government that the condition for such substitution was only in the event of the death of the candidate who was notified on the waitlist.

8. In the said decision in the case of Mohd Zakiyoddin, this Court has taken a view that the State Government had a policy to give appointment on compassionate ground to the dependent of the deceased employee. The policy, thus, cannot be that rigid that it makes it impossible to implement the policy. In the said case, the decision of the Aurangabad Bench of this Court in the case of The State of Maharashtra and others Vs. Smt. Anjali w/o. Vijay Naikwade and another Writ Petition No. 5073 of 2007 dated 17th December 2008 was relied upon. This Court thus held that even when there was no Government Resolution to allow to change the name of the candidate, such substitution is possible if there was a policy to give appointment on compassionate ground. This Court had taken the view that there could not have been restrictions which would come in the way of the implementation of the policy of the Government. Thus, in the case of Mohd Zakiyoddin, this Court held that the Tribunal was right in setting aside the decision refusing to substitute the name of the Applicant before the Tribunal in place of another family member on the waitlist for appointment on compassionate ground.

9. Thus, learned counsel appearing for the Petitioner submitted that the decision of this Court in the case of Mohd Zakiyoddin squarely applies to the facts of this Case. He submitted that once there was a policy of the State Government to appoint the member of the deceased employee on compassionate ground, not allowing another family member to substitute the name of the original

member would amount to defeating the very purpose of the Government policy

for appointment on compassionate ground.

10. Learned counsel for the Petitioner thus submitted that though the name of the Petitioner's brother was added to the waitlist for appointment on compassionate ground, there was never any appointment order issued in the name of Petitioner's brother. Hence, the Petitioner's brother had accepted a job, and he had submitted no objection to the appointment of the Petitioner on compassionate ground in view of the death of their father. Learned counsel further submitted that Petitioner's mother was living with the Petitioner, and she is taking care of the old mother. Learned counsel further submitted that Petitioner's brother had already submitted a consent affidavit giving no objection to substituting the name of the Petitioner in place of her brother for the purpose of appointment on compassionate ground. Copy of the consent affidavit of Petitioner's brother is placed on record of the writ petition.

11. Learned counsel, therefore, submitted that the action of Respondent Nos. 2 and 3 of not substituting the name of the Petitioner in place of her brother on the waitlist is high-handed and an arbitrary action and thus necessary directions be issued for substituting the name of the Petitioner in the waitlist in place of her brother.

12. Learned counsel appearing for Respondent Nos. 2 and 3 submitted that since Government Resolution specifically provides for substitution of the name only in the event of death of the candidate named in the waitlist, the request of the Petitioner to substitute her name is not permissible. It was submitted that Government Resolution dated 21st September 2017 provides guidelines regarding the appointment on compassionate ground. He submitted that the said Government Resolution specifically states that there is no Government policy which permits the change of the name of the candidate in the waitlist for appointment on compassionate ground. However, the only exception to this restriction is in the event of the death of the candidate listed in the waitlist. It was thus submitted that in such circumstances, the request of the Petitioner to substitute her name in place of her brother on the waitlist is not permissible.

13. We have heard the parties. We have gone through the record of the Writ Petition. A perusal of the Government Resolution dated 21st September 2017 provides for the guidelines for appointment on compassionate ground. Clause 21 of the said Resolution specifically states that there is no Government Policy permitting the change of name of the candidate in the waitlist for appointment on compassionate ground. As per Clause 21 of the said Resolution, the only exception provided for the substitution of the name is in the event of the death of the candidate on the waitlist.

14. We have gone through the decision of this Court in the case of Mohd Zakiyoddin. This Court was dealing with a similar Government Resolution of the year 2015, which also restricted the substitution of the name of the candidate on the waitlist of candidates for appointment on compassionate ground. This Court,

in the case of Mohd Zakiyoddin, held that the State Government had a specific policy to give appointment on compassionate ground to the dependent of the deceased employee. After going through the relevant portion of the Government Resolution of the year 2015, this Court held that the policy of the Government cannot be that rigid that it makes it impossible to implement the policy. This Court thus confirmed the decision of the Tribunal, thereby setting aside the decision refusing to substitute the name of the Applicant in the waitlist.

15. In the present case father of the Petitioner expired on 27th April 2014. The name of the Petitioner's brother was included in the waitlist for appointment on compassionate ground as per his application dated 17th May 2014. It is not disputed that the application of the Petitioner's brother was not decided, and the same is pending. It is the case of the Petitioner that since her brother was not given any appointment, he had already accepted the job at some other place. Since the Petitioner completed her education and her mother was dependent on her, she made an application to substitute her name in place of her brother. It is also not disputed by Respondent Nos. 2 and 3 that Petitioner's brother had given consent for such substitution. The Petitioner made an application to substitute her name on 5th June 2021. Instead of deciding her application for substituting her name, Respondent Nos. 2 and 3 issued a letter dated 22nd June 2021 directing Petitioner's brother to comply with certain requisitions. Though the application filed by Petitioner's brother was pending since 17th May 2014, it was only after Petitioner's application for substituting her name was submitted on 5th June 2021 a letter of requisition was issued on 22nd June 2021 calling upon the Petitioner's brother to comply with certain conditions. Thus the action of Respondent Nos. 2 and 3 amounts to refusal to substitute the Petitioner's name in place of her brother for compassionate appointment. Respondent Nos. 2 and 3 have refused to substitute the name of the Petitioner only on the basis of restrictions imposed by the Government Resolution dated 21st September 2017.

16. In the case of Mohd Zakiyoddin, a similar Government Resolution of the year 2015, was relied upon. This Court, in the said case, has taken the view that such restriction amounts to making it impossible to implement the policy of the Government permitting the appointment on compassionate ground. The principles laid down by this Court in the case of Mohd Zakiyoddin, squarely applies to the facts of the present case. We do not see any valid reason for refusing to substitute the name of the Petitioner in place of her brother in the waitlist of Respondent No.2 for appointment on compassionate ground. Thus, for the reasons stated above, we pass the following order:

I. Writ Petition is allowed in terms of prayer clauses (a) and (b) which read thus:

“(a) That this Hon'ble Court may be pleased to issue a Writ in the nature of mandamus or any other appropriate Writ, order or direction of like nature and quash and set aside the impugned letter dated 22/06/2021 (ExhibitA) issued by the Dy. Commissioner, Public Service Department, Municipal Corporation Nashik.

(b) This Hon'ble Court may be kind enough to give directions to substitute the name of the petitioner in place of her brother maintaining the position of Sr. No. 22 in the waitlist for appointment on compassionate ground."

II. Necessary compliance shall be made by Respondent Nos. 2 and 3 within a period of 4 weeks from today.

III. Writ Petition is disposed of. Rule is made absolute in the above terms.

IV. All parties to act on authenticated copy of this order.