

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 482 OF 2019

DIST. : JALNA

Surekha w/o Jitendrasing Pawar,)
Age. 35 years, Occu. : Household,)
R/o Kinhola, Tq. Badnapur,)
Dist. Jalna.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
(through Principal Secretary),)
Water Resources Department,)
Hutatma Rajguru Chowk,)
Madam Kama Marg, Mantralaya,)
Mumbai – 400 032.)
2. The Principal Secretary,)
General Administration Department,))
Mantralaya, Mumbai – 32.)
3. The Superintending Engineer)
and Director,)
Irrigation Research and)
Development Division,)
Directorate Office, Pune-411 001.)
4. The Survey Officer,)
Irrigation Research and)
Development Division,)
Directorate Office,)
Pune – 411 001.)
5. The Executive Engineer,)
Irrigation Research Division,)
Aurangabad Division,)
Aurangabad.).. **RESPONDENTS**

APPEARANCE :- Shri Deepak K. Rajput, learned Advocate
for the applicant.

: Shri D.R. Patil, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Acting Chairman**
RESERVED ON : **20th November, 2019**
PRONOUNCED ON : **22nd November, 2019**

ORDER

1. Applicant has challenged the order / communication dtd. 28.3.2019 issued by the respondent no. 1 to the respondent no. 3 rejecting her claim for appointment on compassionate ground and the communication issued by the respondent no. 4 on the basis of the said order dtd. 16.4.2019 informing her about rejection of her claim by filing the present Original Application and prayed to quash the impugned orders and direct the respondent nos. 1 to 3 to give her appointment on compassionate ground.

2. Deceased Shri Narayansing Rajput was father of the applicant. He was serving as a Peon in the Irrigation Department. He died on 7.5.2013 while in service leaving behind the applicant as the only legal heir. It is contention of the applicant that she is the only daughter survived after death of her father deceased Narayansing. Her mother died long back prior to death of her father i.e. on 10.3.1987. At the time of death of her father she is the only surviving legal heir of deceased. She has been married. It is her contention that after the death of her father she obtained

heir-ship certificate from the Court of Civil Judge Junior Judge, Ambad, Dist. Jalna dtd. 27.8.2013. Thereafter, she filed an application to the respondent no. 3 for getting appointment on compassionate ground on 7.10.2013 and annexed the requisite documents therewith. It is her contention that the respondent no. 3 forwarded the said proposal to the respondent no. 2 by the communication dtd. 10.10.2013, but the respondent no. 2 rejected the same. Respondent no. 2 intimated about the same to the respondent no. 3 vide his communication dtd. 19.10.2013. Thereafter, the respondent no. 3 intimated her about rejection of her claim for compassionate appointment vide his communication dtd. 21.11.2013. Dissatisfying with the said order the applicant again filed another application on 20.1.2014 to the respondent no. 3 to reconsider her application sympathetically. The respondent no. 3 forwarded a fresh proposal to the respondent no. 2 for reconsideration of the claim of the applicant for compassionate appointment vide his communication dtd. 23.1.2014. The respondent no. 2 sent a letter to the respondent no. 1 and sought directions in that regard. The respondent no. 1 ignoring the principles and object behind the scheme informed the respondent no. 2 by letter dtd. 6.8.2014 that there is no any dependent on the applicant and therefore she cannot be appointed on compassionate ground. The respondent no. 2 on the basis of the

guidelines given by the respondent no. 1 rejected her claim by the communications dtd. 28.2.2014 and 1.9.2014. Being aggrieved by the rejection of her applications by the communications dtd. 21.11.2013, 28.2.2014 and 1.9.2014 issued by the respondents she filed Original Application no. 691/2017 before this Tribunal. During pendency of the Original Application the Government issued G.R. dtd. 21.9.2017 compiling earlier G.Rs. and Circulars regarding the scheme of giving appointment on compassionate ground, which provide that the married daughter is eligible for appointment on compassionate ground.

3. This Tribunal decided the said O.A. no. 691/2017 on 6.10.2018 and quashed & set aside the earlier communications issued by the respondents and directed the respondents to consider the application of the applicant dtd. 7.10.2013 afresh in view of the G.R. dtd. 26.2.2013, 17.11.2016 and 21.9.2017 within a period of two months from the date of that order and communicate the decision therein to the applicant in writing. But the respondents have not taken the decision within the stipulated period. The respondent no. 1 communicated to the respondent no. 3 by the letter dtd. 28.3.2018 that the applicant is not entitled to get the benefit of the scheme for appointment on compassionate ground mentioning the same reasons which have been given by

him while deciding earlier applications of the applicant. It is her contention that the impugned order is in contravention of the G.Rs. issued by the Government from time to time and therefore it is illegal. Therefore, she has prayed to quash the said communication by allowing the present Original Application and also prayed to direct the respondents to give her appointment on compassionate ground.

4. Respondent nos. 1 to 5 filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the deceased Shri Narayansing Rajput was working as a Peon in the Water Resources Department and he died on 7.5.2013 while in service. They have not disputed the fact that wife of the deceased Shri Narayansing Rajput died before him i.e. on 10.3.1987. They have admitted the fact that the deceased has only one daughter namely Smt. Surekha Narayansingh Rajput (name before marriage), who is married with Shri Jitendrasingh Pawar on 22.5.1997 i.e. 16 years before the death of deceased Shri Narayansing Rajput. It is their contention that the deceased has no other child than the applicant, who is already married and hence there is no other dependent from the family of the deceased Shri Narayansing Rajput on the applicant. It is their contention that the husband of the applicant namely Shri Jitendrasingh Pawar

is taking care of the applicant and therefore she cannot be said as dependent of the deceased. Deceased Shri Narayansing, had not left any dependent than the applicant and therefore in view of G.R. dtd. 21.9.2017 the applicant is not entitled to get the appointment on compassionate ground. Therefore, the respondent no. 1 has rightly rejected the claim of the applicant by the impugned order. There is no illegality in the impugned order and therefore they justified the same and prayed to reject the O.A.

5. I have heard the arguments advanced by Shri Deepak K. Rajput, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

6. Admittedly the deceased Shri Narayansing Rajput was father of the applicant and he was serving as a Peon in the Irrigation Department. He died on 7.5.2013 while in service. Admittedly wife of deceased Shri Narayansing died before his death on 10.3.1987. Admittedly the applicant is the only issue born to the deceased from his wife. Her marriage has been performed on 22.5.1997 with Shri Jitendrasing Pawar. There is no dispute about the fact that Shri Narayansing died on 7.5.2013 while in service leaving behind the applicant as his sole legal heir. Admittedly, after the death of Shri Narayansing Rajput the

applicant obtained heir-ship certificate from the Court of Civil Judge Junior Judge, Ambad, Dist. Jalna dtd. 27.8.2013. Admittedly, on 7.10.2013 the applicant filed an application to the respondent no. 3 for getting appointment on compassionate ground and annexed the requisite documents therewith. Her application came to be rejected by the respondent no. 2 on 19.10.2013 and the respondent no. 3 communicated the said order to the applicant on 21.11.2013. She filed another application on 20.1.2014 to the respondent no. 3 to reconsider her application sympathetically and the respondent no. 3 forwarded a fresh proposal to the respondent no. 2 for reconsideration of the claim of the applicant for compassionate appointment vide his communication dtd. 23.1.2014. The respondent no. 2 sent a letter to the respondent no. 1 and sought directions in that regard. But, again the respondent no. 1 rejected the same vide his communication dtd. 6.8.2014 and same was communicated by him to the respondent no. 2. The respondent no. 2 again rejected the claim of the applicant by his communication dtd. 1.9.2014. Admittedly the applicant filed Original Application bearing no. 691/2017 before this Tribunal challenging the said communications and this Tribunal decided the said O.A. on 6.10.2018 and quashed & set aside the earlier communications issued by the respondents and directed the respondents to

consider the application of the applicant dtd. 7.10.2013 afresh in view of the G.R. dtd. 26.2.2013, 17.11.2016 and 21.9.2017 and to decide it within a period of two months from the date of that order and communicate the decision therein to the applicant in writing. In pursuance of the said directions given by the Tribunal the respondent no. 1 rejected her claim by the communication dtd. 28.3.2019 and the respondent no. 4 issued the communication accordingly on 16.4.2019 to the applicant in that regard.

7. Learned Advocate for the applicant has submitted that the applicant is the only legal heir of the deceased Shri Narayansing Rajput. He has argued that in view of the scheme framed by the Government for appointment on compassionate ground the married daughter is also eligible for getting appointment on compassionate ground and accordingly she moved an application time and again to the respondents claiming appointment on compassionate ground, but her previous applications have not been considered and therefore she filed O.A. no. 691/2017 before this Tribunal. While deciding the said O.A. on 6.10.2018 this Tribunal quashed & set aside the earlier communications issued by the respondents and directed the respondents to consider the application of the applicant dtd. 7.10.2013 afresh in view of the G.R. dtd. 26.2.2013, 17.11.2016 and 21.9.2017 within a period of

two months from the date of that order and communicate the decision therein to the applicant in writing. But the respondents had not considered the G.R. dtd. 21.9.2017 with proper perspective and rejected the application of the applicant on the ground that the applicant was not the dependent on the deceased. He has submitted that the impugned communications are against the provisions of the said G.Rs. and the policy decided by the Government. Therefore, he prayed to allow the present O.A.

8. Learned Presenting Officer has submitted that the respondents have rightly rejected the application of the applicant on the ground that the applicant is maintained by her husband and she was not dependent of the deceased Shri Narayansing Rajput. In view of the provisions of the said G.Rs. the dependents on the deceased Government employees are eligible to get employment on compassionate ground. He has submitted that deceased Shri Narayansing Rajput had not left any dependent other than the applicant and therefore in view of G.R. dtd. 21.9.2017 the applicant is not entitled to get the appointment on compassionate ground. He has submitted that the husband of the applicant namely Shri Jitendrasing Pawar is taking care of the applicant since her marriage and therefore she cannot be said as dependent of the deceased Shri Narayansing Rajput. He has

submitted that the applicant is not eligible to get employment on compassionate ground and hence the respondent no. 1 rightly rejected her application. Therefore, he supported the impugned orders and prayed to dismiss the O.A.

9. On going through the record it reveals that the deceased Shri Narayansing Rajput died on 7.5.2013 while in service leaving behind the applicant as the only legal heir. Admittedly the applicant is a married daughter of the deceased. In the year 1976 i.e. on 23.4.1976 the Government of Maharashtra has taken a policy decision and introduced a scheme initially to give appointment to the eligible family members of the deceased Government employee, who died in harness and framed a scheme in that regard. Thereafter, revised scheme for the appointment on compassionate ground has been introduced by the Government of Maharashtra on 26.10.1996. Thereafter, Circulars and G.Rs. had been issued by the Government from time to time making amendments in the said provisions. In the said G.Rs. a list of the eligible candidates for getting compassionate appointment has been mentioned. Initially the married daughter was not included in the said list. On 26.02.2013, the Government issued the fresh G.R. and decided to include the married daughter in the list of the eligible candidates/persons to be appointed on compassionate

ground in view of the decision rendered by the Hon'ble High Court in case of **Smt. Aparna Zambare Vs. Assistant Superintending Engineer, Krushna Koyana Upsa Sinchan Prkalpa Mandal & Ors.**, as well as, Hon'ble Apex Court in various cases. The said provisions are material and relevant and therefore, I reproduce the same below:-

“अनुकंपा नियुक्ती धोरणातील तरतूदीमध्ये सुधारणा - विवाहित मुलीस अनुकंपा नियुक्तीस पात्र ठरविणेबाबत

महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन निर्णय क्रमांक : अकंपा १०१३/प्र.क्र. ८/आठ
हुतात्मा राजगुरु चौक, मादाम कामा रोड, मंत्रालय, मुंबई ४०० ०३२.
तारीख : २६ फेब्रुवारी, २०१३.

वाचा -

- १) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१०१३/२३३५/प्र. क्र. ९०/१३/आठ, दिनांक २६/१०/१९९४
- २) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१०१५/प्र.क्र. ३४अ/आठ, दिनांक २३/८/१९९६
- ३) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१००६/प्र.क्र. १७४/०६/आठ, दिनांक १७/७/२००७

प्रस्तावना -

.....
.....

शासन निर्णय -

दिवंगत राज्य शासकीय कर्मचा-याच्या कुटुंबामध्ये फक्त विवाहित मुलगी हे एकमेव आपत्य असल्यास किंवा त्यांचे कुटुंब फक्त विवाहित मुलीवर अवलंबून असेल अशा प्रकरणी दिवंगत शासकीय कर्मचा-याची विवाहित मुलगी ही अनुकंपा नियुक्तीसाठी पात्र राहिल.

२) अनुकंपा तत्वावर नियुक्ती देताना त्या उमेदवाराकडून (विवाहित मुलीच्या बाबतीत तिच्यासह तिचे पतिकडूनही) दिवंगत शासकीय कर्मचा-याच्या कुटुंबीयांचा तो/ती सांभाळ करील असे प्रतिज्ञापत्र सादर करणे आवश्यक राहिल. मात्र अनुकंपा तत्वावर एकदा नियुक्ती मिळाल्यानंतर तो/ती (उमेदवार) कुटुंबीयांचा सांभाळ करित नसल्याचे आढळल्यास त्याची/तीची शासन सेवा तात्काळ समाप्त करण्यात यावी. तरी यासंदर्भात आवश्यक हमीपत्र (undertaking) नियुक्तीपूर्वी यापुढे उमेदवारांकडून स्टॅप पेपरवर घेण्यात यावे.

अविवाहित मुलीला अनुकंपा नियुक्ती मिळाल्यानंतर तिचा विवाह झाल्यास विवाहाच्या दिनांकापासून सहा महिन्यांच्या आत तिच्या पतिकडूनही तसे हमीपत्र घेण्यात यावे.”

10. The above said G.R. dated 26.02.2013 came to be cancelled in view of the decision rendered by this Tribunal at Mumbai in **O.A. No. 155/2012** in case of **Ku. Sujata Dinkar Nevase Vs. the State of Maharashtra and Ors.** on 21.07.2014, which was challenged before the Hon'ble High Court by filing W.P. No. 1131/2016. Thereafter, the Government has issued another G.R. dated 17.11.2016 and amended the list of the eligible heirs of deceased Government servant for the appointment on compassionate ground. The provisions of said G.R. dated 17.11.2016 are as follows:-

“अनुकंपा नियुक्ती धोरणातील तरतूदीमध्ये सुधारणा

महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन निर्णय क्रमांक : अकंपा १०१४/प्र.क. १५५/आठ
हुतात्मा राजगुरु चौक, मादाम कामा मार्ग,
मंत्रालय, मुंबई ४०० ०३२.
तारीख : १७ नोव्हेंबर, २०१६.

वाचा -

१) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१०९३/२३३५/प्र.
क. ९०/९३/आठ, दिनांक २६/१०/१९९४

२) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१०९५/प्र.क.
३४अ/आठ, दिनांक २३/८/१९९६

३) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१००६/प्र.क.
१७४/०६/आठ, दिनांक १७/७/२००७

४) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. : अकंपा १०१३/प्र.क. ८/आठ,
दि. २६.०२.२०१३

प्रस्तावना -

.....
.....

शासन निर्णय :-

१. शासन निर्णय क्र. अकंपा१०१३/प्र.क्र. ८/आठ, दि. २६.०२.२०१३ रद्द झाल्याने त्यानुषंगाने तसेच उपरोक्त संदर्भ क्र. १, २ व ३ अन्वये विहित केलेल्या अनुकंपा तत्वावरील नियुक्तीसाठी दिवंगत शासकीय कर्मचा-यांच्या पात्र नातेवाईकांच्या यादीमध्ये सुधारणा करण्यात येत असून खालील नमूद केलेले नातेवाईक हे अनुकंपा नियुक्तीसाठी पात्र राहतील व त्यापैकी एका पात्र नातेवाईकास नियुक्ती अनुज्ञेय राहिल.

१) पती/पत्नी,

२) मुलगा/मुलगी(अविवाहीत/विवाहीत), मृत्युपूर्वी कायदेशीररित्या दत्तक घेतलेला मुलगा/मुलगी (अविवाहीत/विवाहीत)

३) दिवंगत शासकीय कर्मचा-याचा मुलगा हयात नसेल किंवा तो नियुक्तीसाठी पात्र नसेल तर त्याची सून

४) घटस्फोटित मुलगी किंवा बहीण, परित्यक्ता मुलगी किंवा बहीण, विधवा मुलगी किंवा बहीण,

५) केवळ दिवंगत अविवाहीत शासकीय कर्मचा-यांच्या बाबतीत त्याच्यावर सर्वस्वी अवलंबून असणारा भाऊ किंवा बहीण.”

11. On Perusal of both the G.Rs. it is crystal clear that the married daughter is held eligible for getting appointment on compassionate ground by virtue of the said G.Rs. The only condition incorporated therein is that in case if other family members are available in the family of deceased Government servant, in that case the married daughter, as well as, her husband has to give an undertaking to maintain other family members of deceased Government servant. This condition is applicable only when other family members are available in the family of deceased Government servant. The said G.R. do not provide that the sole married daughter of deceased Government employee is not entitled to get appointment on compassionate ground, if other family members of deceased Government employee are not survived.

12. The respondent no. 1 had not considered the said provision with proper perspective while deciding the application of the applicant dtd. 7.10.2013 filed by the applicant afresh in view of the directions given by the Tribunal in O.A. no. 691/2017 though specific directions in that regard were given by the Tribunal. The respondent no. 1 has misinterpreted the G.R. dtd. 26.2.2013 and other subsequent G.Rs. The said G.R. nowhere provides that the married daughter is eligible to get appointment on compassionate ground only when other legal heirs of the deceased are survived. Therefore the reasons recorded by the respondents while rejecting the application of the applicant are not sound and in accordance with the above provisions mentioned in the G.Rs. The respondent no. 1 has rejected the application of the applicant illegally by arriving at a wrong conclusion. The order passed by the respondent no. 1 dtd. 28.3.2019 is not in consonance with the provisions of the G.R. / scheme framed by the Government. Therefore, the impugned order issued by the respondent no. 1 and subsequent communication issued by the respondent no. 4 on the basis of the said order require to be quashed by allowing the O.A.

13. In view of the discussion in foregoing paragraphs, the Original Application is allowed. The impugned communication dtd. 28.3.2019 issued by the respondent no. 1 to the respondent

no. 3 rejecting the claim of the applicant for appointment on compassionate ground and the communication dtd. 16.4.2019 issued by the respondent no. 4 to the applicant are hereby quashed and set aside. The respondents are directed to enroll the name of the applicant in the waiting list of the eligible candidates to be appointed on compassionate ground on the date on which her application has been complied with as required under G.Rs. and as per rules. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 22nd November, 2019