

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 544 OF 2022

DIST. : JALNA

Jagdish s/o Narsaiyya Yengupatla,)
Age. 42 years, Occu. Nil,)
R/o Ramnagar, Near Ram Mandir,)
Vinkar Colony, Jalna, District - Jalna.) ..

APPLICANT

V E R S U S

1. The State of Maharashtra,)
Through the Principal Secretary,)
General Administration Department,))
Mantralaya, Mumbai – 32.)
2. Home Department, Mantralaya,)
Mumbai – 32,)
Through Principal Secretary.)
3. The Commissioner of Police,)
Office of Commissioner of Police,)
Mill Corner, Aurangabad.)
4. Manisha wd/o Anil Yengupatla,)
Age. 31 years, Occu. Housewife,)
R/o C/o Suresh Rajaiyya Battin,)
Ramnagar, Nnear Ram Mandir,)
Vinkar colony, Jalna,)
District Jalna.)..

RESPONDENTS

APPEARANCE :- Shri S.N. Pagare, learned counsel for
the applicant.

: Smt. Resha S. Deshmukh, learned
Presenting Officer for the respondent
authorities.

: Shri Jiwan Patil, learned counsel for
respondent no. 04.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)
DATE : **29.02.2024**

ORAL - ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri S.N. Pagare, learned counsel for the applicant, Smt. Resha S. Deshmukh, learned Presenting Officer for the respondent and Shri Jiwan Patil, learned counsel for respondent no. 04.
2. The present applicant is real brother of deceased Anil Narsaiyya Yengupatla. Deceased Anil was in the Police Services. He died while in service. His wife namely Manisha wd/o Anil Yengupatla thereafter applied for appointment on compassionate ground and her name has been included in the wait list prepared of the candidates eligible to be appointed on compassionate ground. The applicant has alleged that wife of deceased Anil had tortured deceased Anil in his lifetime and Anil died because of that. It is the contention of the applicant

that having regard to the conduct of the wife of deceased Anil, she is not entitled to claim compassionate appointment in place of her husband. It is the further contention of the applicant that wife of the deceased is residing separately and is not taking care of the mother of the deceased or other dependents of the deceased. According to the applicant, for all aforesaid reasons the wife of the deceased Anil cannot be considered for giving appointment to her on compassionate ground.

3. Present applicant had earlier also filed O.A. No. 305/2022, however, he withdrew the said O.A. on 02.05.2022 obtaining liberty from this Tribunal to file a fresh O.A. on the same cause of action by challenging the concerned G.R. which regulates the appointments on compassionate ground. In the present O.A. prayer has been, however, made for modification in clause 04 in the G.R. dated 21.09.2017 and consequently give appointment to the present applicant. Prayer has also been made that the wife of deceased shall not be considered for appointment on compassionate ground.

4. In her affidavit in reply respondent No. 4 i.e. wife of deceased Anil has denied all the allegations made against her and resisted the contentions raised in the O.A., as well as,

prayers made therein. The other respondents i.e. the State authorities have also filed the affidavit in reply and opposed the contentions raised in the O.A.

5. Shri S.N. Pagare, learned counsel appearing for the applicant vehemently argued that having regard to the conduct of the wife of deceased Anil, which the applicant has tried to bring on record, she cannot be given compassionate appointment in place of her husband. Copies of the complaints are placed on record. Learned counsel further argued that the G.R. dated 21.09.2017 must be containing a provision making entitled the brother of the deceased, if he is possessing disablement to a greater extent and in the appropriate case such brother also shall be held eligible for making application and for being appointed on compassionate ground. Learned counsel submitted that main prayer made in the present O.A. by the applicant is in that regard. Learned counsel further pointed out that for the death of deceased Anil the cruel treatment given by his wife is responsible and the applicant, as well as, other family members have time and again even before the death of Anil have made complaints against her. Even deceased Anil had made complaint against his wife. Learned counsel submitted that in the circumstances the wife of

deceased Anil is disentitled from claiming such appointment. Learned counsel further submitted that the present applicant is the real brother of deceased Anil and is having physical disability to a greater extent and, as such, he was depending upon the income of the deceased. According to learned counsel, the brother, if is unable to earn any income for his livelihood and is depending upon the deceased Government servant, he shall be considered as one of the claimants for compassionate appointment after the death of Government servant while in service.

6. Submissions so made on behalf of the applicant are opposed by Shri Jiwan Patil, learned counsel appearing for respondent No. 4. Learned counsel pointed out that earlier O.A. filed by the applicant was withdrawn stating that G.R. dated 27.09.2017 is to be challenged. Learned counsel pointed out that in the present O.A. the applicant had not given any challenge to the said G.R. and prayer made is in respect of modifying the concerned clause in the said G.R. Learned counsel further submitted that bald statement has been made that the said G.R. is discriminatory etc. however, nothing has been brought on record by the applicant to show instances and in what manner it is discriminatory. In the G.R. dated

21.09.2017 list is given of the relatives who are held eligible for making application seeking appointment on compassionate ground. Learned counsel pointed out that as provided in the said G.R. brother will be considered as dependents of the deceased only in case the Government servant is unmarried and suffers death while in service as unmarried person. Learned counsel submitted that the deceased was married person and his wife has preferred application for compassionate appointment. Learned counsel further submitted that the wife of the deceased has promptly applied for compassionate appointment and has also filed all required documents before the authorities and hence, her name has been included in the waiting list maintained of the candidates held eligible for to be appointed on compassionate ground. Learned counsel further submitted that only because some complaints were made and the applicant filed present O.A. before this Tribunal that the further process in respect of giving appointment on compassionate ground to the wife of the deceased has not taken place. Learned counsel invited our attention to the said remarks as 'matter subjudice'. Learned counsel submitted that merely because present O.A. is pending before the Tribunal, the appointment order has not yet been issued in favour of the wife

of the deceased. Learned counsel further pointed out that applicant has suppressed many material facts from the Tribunal while filing the present O.A., as well as, while filing rejoinder affidavit in the matter.

7. Smt. Resha S. Deshmukh, learned Presenting Officer submitted that there is no substance in the challenge raised by the applicant and the name of the wife of the deceased is rightly included in the waiting list maintained of the candidates eligible for to be appointed on compassionate ground and as and when her turn comes she is likely to be issued with the order of appointment. It is further contended by her that from remark column it is evident that on the pretext of the Court matter pending that the appointment has not been given to her. Learned P.O. further submitted that the constitutional validity if is to be challenged such case needs to be made out, which is lacking in the present matter. Learned P.O. in the circumstances, prayed for dismissal of the O.A.

8. We have carefully considered the submissions made by the learned counsel for the applicant, learned Presenting Officer for the State authorities, as well as, learned counsel for respondent No. 4. It is not in dispute that earlier also the

applicant had filed O.A. claiming same relief as has been claimed in the present O.A. and withdrew the same after filing of the reply in the said matter by the State authorities obtaining liberty from the Tribunal that the concerned G.R. is to be challenged. Considering the pleadings in the O.A. it appears to us that the only case of the applicant is that the concerned G.R. needs some modification making entitled the disabled brother of the deceased also one of the dependents so as to apply for appointment on compassionate ground on demise of the Government servant while in service. We have carefully gone through the G.R. dated 21.09.2017 and the relevant clauses in the said G.R. From no angle it appears to us that the G.R. is making discrimination amongst the legal heirs of the deceased. On the contrary, the legal heirs are mentioned in the said G.R. in their hierarchy and all blood relatives of the deceased in the said hierarchy are made entitled to claim compassionate appointment. Reading of the G.R. dated 21.09.2017 makes it clear that wife of the deceased is given preference for granting the compassionate appointment. In the present matter the wife of deceased has made application and her name is included in the waiting list prepared of the candidates held eligible for to be appointed on compassionate ground. Though it is the

contention of the present applicant that the wife of the deceased was in fact responsible for death of the deceased, from the documents placed on record it is difficult to agree with the submissions so made on behalf of the applicant. It is true that some complaints were made by the present applicant against wife of the deceased alleging that she is residing separately and in life time of the deceased had tortured the deceased.

9. Respondent no. 04 in her affidavit in reply has resisted the allegations made against her and has placed on record the material showing that none of the allegation made against her has any foundation. Learned counsel pointed out that the applicant and other family members have utterly failed in bringing on record the fact that in any way the wife of the deceased had harassed the deceased and further that said harassment become ultimate cause for death of the deceased. The order passed by the Hon'ble Bombay High Court, Bench at Aurangabad in Criminal Application No. 361/2023 filed by the mother of the deceased on 14.03.2023 is also placed on record. After having gone through the order so passed, it is revealed that the applicant or other legal heirs of the deceased failed in making out any case against the wife of the deceased. On the

ground that the deceased Government servant was ill-treated or cruel treatment was given to him by his wife.

10. From the record it is revealed that name of the wife of the deceased is included in the wait list prepared of the candidates eligible to be appointed on compassionate ground. As noted above, in the remark column against the name of the wife of the deceased the reason mentioned for non-issuance of the order of appointment till date is that the Court matter is pending. There is substance in the contention so raised by the learned counsel appearing for respondent no. 04 that because of the present O.A. the respondents have refrained themselves from issuing appointment order in favour of the wife of the deceased though her name is included in the wait list prepared of the candidates eligible to be appointed on compassionate ground and though her turn has come.

11. After having considered the entire material on record, no case is made out by the applicant so as to accept the prayer made in the O.A. for modification in clause 04 of the G.R. dated 21.09.2017. The allegation that for the death of deceased the ill-treatment given by his wife was the main cause has also not been established by the applicant. Having considered the

facts as aforesaid, we do not see any case in favour of the applicant so as to consider other prayers in the O.A. Hence, we pass the following order:-

ORDER

The Original Application is dismissed, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 29.02.2024