

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 691 OF 2017
(Subject – Compassionate Appointment)**

DISTRICT: JALNA

Smt. Surekha W/o Jitendrasing Pawar,)
Age: 32 years, Occu. : Household,)
R/o. Kinhola, Tq. Badnapur, Dist. Jalna.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through the Chief Secretary,)
(Irrigation), Mantralaya, Mumbai- 1.)
- 2) **The Soil Survey Officer,**)
Irrigation Research & Development)
Division, Pune-1.)
- 3) **The Deputy Engineer,**)
Directorate of Irrigation Research and)
Development, Pune-1.)
- 4) **The Executive Engineer,**)
Irrigation Research Division,)
Aurangabad.) .. **RESPONDENTS**

APPEARANCE : Shri D.K. Rajput, Advocate for the Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 06.10.2018.

O R D E R

1. The applicant has challenged the communication dated 19.10.2013 issued by the respondent No. 2 to the

respondent No. 4 and communications dated 21.11.2013, 28.02.2014 and 01.09.2014 issued by the respondent No. 2 to her and the communication dated 06.08.2014 issued by the respondent No. 2 and prayed to quash and set aside the same by filing the present Original Application. She has also prayed to direct the respondents to consider her application dated 07.10.2013 and to declare her eligible to be appointed on compassionate ground.

2. Deceased Shri Narayansing Bhikasing Rajput was serving as a Peon in Irrigation Department of State of Maharashtra. The applicant is a daughter of Shri Narayansing Bhikasing Rajput, who died on 07.02.2013 while in service. At that time, he was serving at Basmatnagar, Dist. Hingoli. The applicant is sole heir of deceased Shri Narayansing Bhikasing Rajput. After the death of Shri Narayansing Bhikasing Rajput, she had filed an application with the respondent No. 2 praying to appoint her on compassionate ground. But the respondent No. 2 rejected her application by communications dated 21.11.2013, 28.02.2014 and 01.09.2014 without considering it. It is her contention that she is the only legal heir of deceased Shri Narayansing Bhikasing Rajput, though she was married. She is used to visit her place of father on and often. It is her contention

that after death of her father, she applied for heir-ship certificate before the competent Court. She is the only sole heir of deceased Shri Narayansing Bhikasing Rajput and therefore, she is entitled to get appointment on compassionate ground. But the respondents had not considered the said aspect and rejected her application. Therefore, she has challenged the communications dated 21.11.2013, 28.02.2014 & 01.09.2014 before the Hon'ble High Court by filing W.P. No. 11136/2015, but thereafter, she had withdrawn the same with liberty to file O.A. Thereafter, she had filed the present Original Application. It is her contention that the respondents had rejected her application without considering the provisions of various G.Rs. and without applying mind. Therefore, she prayed to quash and set aside the said communications and prayed to direct the respondents to consider her application dated 07.10.2013 and give her appointment on compassionate ground.

3. The respondent Nos. 1 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that deceased Shri Narayansing Bhikasing Rajput was serving as Peon in the Water Resources Department of Government of Maharashtra. They have admitted the fact that deceased Shri Narayansing Bhikasing Rajput died on 07.05.2013

while in service. It is their contention that as per the service record of deceased Shri Narayansing Bhikasing Rajput, his wife died on 10.03.1987 before his death. Shri Narayansing Bhikasing Rajput has only one daughter viz. Surekha Narayansing Rajput, who married with Shri Jitendra Singh Pawar on 22.05.1997. Shri Narayansing Bhikasing Rajput has no other child except daughter Smt. Surekha Jitendra Pawar and there is no other dependent in their family. It is their contention that after death of Shri Narayansing Bhikasing Rajput, the applicant has filed an application for getting appointment on compassionate ground on 07.10.2013.

4. It is their contention that as per the G.R. dated 26.02.2013, if married daughter is survived by deceased Government employee and other family members of deceased employee are depending on the married daughter in such case married daughter of deceased Government employee is eligible for getting appointment on compassionate ground. It is their contention that as per the scheme and the G.R. dated 26.10.1994 the same is applicable to the family members, who have no source of income. It is their further contention that the marriage of the applicant had been performed on 22.05.1997 and her husband Shri Jitendra Pawar is taking her care. Nobody

from the family of deceased Shri Narayansing Bhikasing Rajput is depending on the applicant and therefore, she is not entitled to get appointment on compassionate ground. It is their contention that the respondents have rightly rejected the applications of the applicant in view of the provisions of the G.Rs. dated 26.10.1994 and 26.02.2013 and there is no illegality in it. Therefore, they prayed to dismiss the present Original Application.

5. Learned Advocate for the applicant has filed affidavit in rejoinder and contended that the respondents have misinterpreted the provisions of the G.Rs. dated 26.10.1994, 26.02.2013, as well as, G.R. dated 17.11.2016. It is his contention that a married daughter is also entitled to get appointment on compassionate ground, but the respondents have not considered the said aspect and wrongly rejected the application of the applicant. It is his contention that in view of the various decisions of the Hon'ble Apex Court and Hon'ble Highs Courts, the provisions have been made in the scheme and married daughter is also included in the list of the eligible persons to get appointment on compassionate ground. The Government has made the provisions to remove disparity and discrimination in between married son and daughter and

extended the benefits to the married daughter also. Therefore, he prayed to allow the present Original Application.

6. I have heard Shri D.K. Rajput, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

7. Admittedly, deceased Shri Narayansing Bhikasing Rajput was father of the applicant. He was serving in the Irrigation Department of State of Maharashtra as Peon. He died on 07.05.2013 when he was serving at Basmatnagar, Dist. Hingoli. Admittedly, the applicant is sole heir of deceased Shri Narayansing Bhikasing Rajput. Admittedly the wife of deceased Shri Narayansing Bhikasing Rajput died on 10.03.1987 before death of Shri Narayansing Bhikasing Rajput. Admittedly, the marriage of the applicant Ms. Surekha Narayansingh Rathod has been performed with Shri Jitendra Pawar on 22.05.1995. Admittedly, the applicant has filed an application dated 07.10.2013 with the respondents claiming appointment on compassionate ground immediately after death of her father Shri Narayansing Bhikasing Rajput. Admittedly, the respondents rejected the claim of the applicant by communication dated

19.10.2013 on the ground that no other family member of deceased Shri Narayansing Bhikasing Rajput is dependent on the applicant, who is a married daughter of deceased Shri Narayansing Bhikasing Rajput and therefore, the provisions of G.R. dated 26.02.2013 are not applicable to her.

8. Learned Advocate for the applicant has submitted that deceased Government servant viz. Shri Narayansing Bhikasing Rajput was serving as a Peon in Irrigation Department of State of Maharashtra. He was father of the applicant. He died on 07.05.2013 leaving behind the applicant i.e. married daughter as his sole heir. He has submitted that mother of the applicant died on 10.03.1987 before the death of Shri Narayansing Bhikasing Rajput. He has submitted that the applicant is only legal heir of deceased Shri Narayansing Bhikasing Rajput. He has submitted that after the death of deceased Shri Narayansing Bhikasing Rajput, the applicant has moved an application for getting her appointment on compassionate ground with the respondents on 07.10.2013. He has submitted in view of the provisions of G.R. dated 26.02.2013, the married daughter of deceased employee is entitled to get appointment on compassionate ground. He has submitted that the respondents had rejected the application of the applicant on the ground that

no other family members of deceased employee is survived and depending on the applicant and it has rejected the application on the basis of provisions contained in the G.R. dated 26.02.2013. He has submitted that the respondents had misinterpreted the provisions of G.R. dated 26.02.2013. He has submitted that the said G.R. provides that the married daughter is also eligible to be appointed on compassionate ground, but the respondents misread the provisions and rejected the application of the applicant and therefore, he prayed to quash and set aside the impugned communications.

9. Learned Advocate for the applicant has submitted that initially there was no specific provision in the scheme entitling the married daughter to be appointed on compassionate ground, but the Hon'ble High Court, as well as, Hon'ble Apex Court time and again held that the provisions of the scheme not including the name of married daughter in the list of the eligible candidates is against the provisions of Constitution of India. In support of his submissions, he has placed reliance on judgment in case of **the State of Maharashtra and Ors. Vs. Medha Prashant Parkhe** in **W.P. No. 6056/2010** decided on 26.10.2010 by the Hon'ble High Court of Judicature at Bombay, as well as, the judgment of Hon'ble Calcutta High Court in case

of **Usha Singh Vs. State of West Bengal and Ors. reported in 203(1)CalLJ 407.**

10. Learned Advocate for the applicant has submitted that the respondent No. 2 has not considered the provisions of G.R. dated 26.02.2013 with a proper perspective and thereby, wrongly rejected the application of the applicant. Therefore, he prayed to allow the present Original Application and to quash and set aside the communications dated 19.10.2013, 21.11.2013, 28.02.2014, 01.09.2014 and 06.08.2014 and to direct the respondents to consider the application of the applicant dated 07.10.2013.

11. Learned Presenting Officer has submitted that the respondents had rightly rejected the application of the applicant dated 07.10.2013 as per the provisions of G.R. dated 26.02.2013. He has submitted that as per the provisions mentioned in G.R. dated 26.02.2013, if there is a married daughter in the family of deceased Government servant and no other family member of deceased Government servant is depending on the married daughter, in such case married daughter of deceased employee is eligible to get appointment on compassionate ground. He has submitted that as the applicant is sole survived legal heir of

deceased Shri Narayansing Bhikasing Rajput and no other family member was depending on her, she is not entitled to get appointment on compassionate ground and therefore, respondents have rejected her application. He has submitted that there is no illegality in the impugned communications and therefore, he prayed to reject the present Original Application.

12. The Government of Maharashtra took a policy decision in the year 1976 i.e. on 23.04.1976 and introduced a scheme initially to give appointment to the eligible family members of deceased Government employee, who died in harness and framed a scheme. 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 amendment in the said provisions. The list of the eligible candidates was mentioned in the G.Rs. The married daughter was not included in the said list. On 26.02.2013, the Government issued the 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 Prakalpa 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 :-

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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-१०९३/२३३५/प्र. क्र. ९०/९३/आठ, दिनांक २६/१०/१९९४
- २) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१०९५/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 -

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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.”

13. 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:-

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अनुकंपा नियुक्ती धोरणातील
तरतूदीमध्ये सुधारणा

महाराष्ट्र शासन

सामान्य प्रशासन विभाग

शासन निर्णय क्रमांक : अकंपा १०१४/प्र.क्र. 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.

क्र. ९०/९३/आठ, दिनांक २६/१०/१९९४

- २) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१०९५/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
- ४) शासन निर्णय, सामान्य प्रशासन विभाग, क्र. : अकंपा१०१३/प्र.क्र. ८/आठ,
दि. २६.०२.२०१३

प्रस्तावना -

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शासन निर्णय :-

१. शासन निर्णय क्र. अकंपा १०१३/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 ह्यात 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.”

14. On Perusal of both the G.Rs. it is crystal clear that the married daughter was held eligible for getting appointment on compassionate ground by virtue of the said G.Rs. The only condition incorporated in the said G.R. 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. The said 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.

15. On perusal of the impugned communications issued by the respondents from time to time, it reveals that the respondents had misinterpreted the provision of G.R. dated 26.02.2013. It does not provide that the married daughter is eligible to get appointment on compassionate ground, only when the other family members of deceased Government servant are depending on her. Therefore, the reasons mentioned in the initial communication dated 19.10.2013, while rejecting the application of the applicant by the respondents is not in accordance with the provisions of G.R. dated 26.02.2013. The respondents had not considered the provisions of G.R. dated 26.02.2013 with proper perspective while rejecting the

application of the applicant initially by communication dated 19.10.2013 and thereafter also by communications dated 21.11.2013, 28.02.2014, 01.09.2014 and 06.08.2014. The respondents have not dealt with the provisions of G.R. dated 26.02.2013 properly. They misread and misinterpreted the provisions of G.R. dated 26.02.2013. Therefore, in my view, the impugned communications rejecting the application of the applicant merely on the ground that she is sole survived married daughter of deceased Shri Narayansing Bhikasing Rajput and no other family member is depending on her are not legal one. The impugned communications are against the provisions of G.Rs. Hence, it require to be quashed and set aside by allowing the present Original Application.

16. In view of the discussions in foregoing paragraphs, I pass following order:-

ORDER

1. The Original Application is allowed.
2. The communication dated 19.10.2013 issued by the respondent No. 2 to the respondent No. 4, communications dated 21.11.2013, 28.02.2014 and 01.09.2014 issued by the respondent No. 2 to the applicant and communication dated 06.08.2014

issued by the respondent No. 1 to respondent No. 2 are hereby quashed and set aside.

3. The respondents are directed to consider the application of the applicant dated 07.10.2013 afresh in view of the G.R. dated 26.02.2013 and subsequent G.Rs. dated 17.11.2016 and 21.09.2017 and to take decision as per rules and the G.Rs. issued by the Government from time to time within a period of two months from the date of this order and communicate the decision therein to the applicant in writing.

There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 06.10.2018.

(B.P. PATIL)

MEMBER (J)

KPB S.B. O.A. No. 691 of 2017 BPP 2018 Comp. appointment