

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 458 OF 2015 (MUMBAI)
ORIGINAL APPLICATION NO 92 OF 2013 (AURANGBAD)**

DISTRICT : AURANGABAD

Trupti D/o Vinayak Astekar,)
Occ : Service, R/o Plot no. 4,)
Uttaranagari, Chikalthana MIDC,)
Aurangabad.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Forest Conservation and Wild)
Life Department, Mantralaya,)
Mumbai 400 032.)
2. Deputy Forest Officer,)
Forest Department,)
Aurangabad.)
3. Deputy Forest Officer,)
Wild Life Department,)
Aurangabad, [copy to be served)
upon Presenting Officer at)
MAT Bench at Aurangabad.)...**Respondents**

Shri A.S Deshpande, learned advocate for the Applicant.

Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

CORAM : Justice Shri A.H Joshi (Chairman)

Shri Rajiv Agarwal (Vice-Chairman)

RESERVED ON : 10.04.2017

PRONOUNCED ON : 05.06.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.S Deshpande, learned advocate for the Applicant and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. This Original Application has been filed challenging the order dated 19.12.2012 terminating the services of the Applicant from the post of Junior Clerk, on the ground that she was not eligible to be given compassionate appointment.

3. Learned Counsel the Applicant argued as follows:-

The Applicant's father was working as a Forest Guard at Aurangabad. He died, while in service on 5.3.2007. The Applicant applied for compassionate appointment on 7.1.2008 and was given appointment as Junior Clerk by order dated 6.11.2012 by the Respondent no. 2 (incidentally Deputy

Conservator of Forests, Aurangabad is referred to Deputy Forest Officer, Forest Department, Aurangabad by the Applicant in the title of this Original Application). The Applicant was unmarried at the time of filing of application in the year 2007-2008 and got married on 24.5.2008, i.e. after filing the application for compassionate appointment. After appointment by the Respondent no. 2, the Applicant was transferred to the office of the Respondent no. 3 by order dated 19.11.2012. On 3.12.2012, the Respondent no. 3 issued a notice to the Applicant calling her to explain as to why her services should not be terminated for concealing her marital status, as she was married when she was appointed by order dated 6.11.2012 and in her application form she had mentioned that she was unmarried. The Applicant submitted her explanation on 7.12.2012 and explained that at the time of filing application, she was unmarried and she got married on 24.5.2008. The Applicant had not suppressed her marital status as the nomination form, she has nominated her daughter, which clearly shows that she was married.

4. Learned Counsel for the Applicant further argued as follows:-

Even if it is held that the Applicant was a married daughter of the deceased Government servant, she was eligible to be appointed on compassionate ground as has been held by Hon'ble High Court in the case of **THE STATE OF MAHARASHTRA Vs. MEDHA PARKHE, WRIT PETITION NO 6056 OF 2010**. The Applicant had filed O.A no 942/2012 against the show cause notice dated 3.12.2012 before

Aurangabad Bench of this Tribunal. During the pendency of the aforesaid Original Application, the services of the Applicant were terminated by order dated 19.12.2012, issued by the Respondent no. 3. The Respondent no. 2, however, cancelled the order dated 19.12.2012 issued by the Respondent no. 3 on 19.12.2012 and issued another order dated 19.12.2012 terminating the services of the Applicant. This Tribunal disposed of O.A no 942/2012 with liberty to file a fresh Original Application. The present Original Application has been filed challenging the order dated 19.12.2012 of the Respondent no. 2 terminating Applicant's services.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents as follows:

The Applicant had applied for compassionate appointment on 7.1.2008 and sent a reminder dated 20.5.2009. The Applicant admittedly got married on 24.5.2008 and on the date of sending reminder on 20.5.2009, she was already married. However, she suppressed the fact of her marriage in the application dated 20.5.2009. After the Respondent no. 2 issued order of appointment on 16.11.2012, the Applicant filled the application form on 3.1.2012 and again furnished false information that she was not married. As per G.R dated 26.10.1994, a married daughter of a deceased Government servant is not entitled to get compassionate appointment. The Applicant has suppressed vital facts while getting compassionate appointment. She was aware that she was not eligible for compassionate appointment as a married daughter. The

impugned order dated 19.12.2012 is, therefore, legal and proper.

6. The Respondents in their affidavit dated 20.6.2013 have admitted that the Applicant had applied for compassionate appointment on 7.1.2008. A copy of the said application is annexed as Exhibit R-1 at page 50 of the Paper Book. It is also an admitted fact that the Applicant's father was working as a Forest Guard and died, while in service, on 5.3.2007. The Applicant has claimed that she got married on 24.5.2008 and at the time she had applied for the compassionate appointment on 7.1.2008, she was not married. This fact has not been denied by the Respondents. The Respondents' justification for the impugned order dated 19.12.2012 is two folds viz:

- (i) The Applicant was married when the appointment order dated 3.12.2012 was issued and in terms of G.R dated 26.10.1994, a married daughter is not eligible to be given compassionate appointment; and
- (ii) The Applicant had furnished false information on 3.12.2012 that she was unmarried and has not shown honesty and has never come forward with true facts before the appointing authority.

7. Let us first examine the issue of eligibility of a married daughter for compassionate appointment. There is no doubt that clause 3(A) of G.R dated 26.10.1994 prescribes that only an unmarried daughter of a deceased Government

servant is eligible to be given compassionate appointment. The Applicant has relied on the judgment of Hon'ble Bombay High Court dated 26.10.2010 in W.P no 6056 of 2010 in the matter of **THE STATE OF MAHARASHTRA & ORS Vs. MEDHA PRASHANT PARKHE**. Rule 3(A) of G.R dated 26.10.1994 is interpreted by Hon'ble High Court, who have observed as follows:-

“21. In my opinion, therefore, Rule 3(A) which discriminate, against married women is arbitrary and, therefore, it cannot be said that the termination of service of the respondent was legal.”

This fact is mentioned in para 6.7 of the Original Application. The Respondents in their affidavit in reply dated 20.6.2013 in para 6 have not been dealt with this issue at all. It has to be, therefore, held that the Applicant was not ineligible to be given compassionate appointment, merely on the ground that she was a married daughter of a deceased Government servant.

8. The Respondents have relied on G.R dated 12.10.1993, which has been issued in the wake of judgment of Hon'ble Supreme Court in the case of **COLLECTOR OF VIZIANAGARAM Vs. N. TRIPURA SUNDEVI DEVI : 1990(3) SLR 237**. This G.R has the following provisions:-

“ त्यानुसार आता असे ठरविण्यात आले आहे की, ज्या प्रकरणात असे आढळून येईल की एखादा शासकीय कर्मचारी शासन सेवेतील मूळ नेमणुकीसाठी संबंधित पदाच्या सेवाप्रवेश नियमातील तरतुदीप्रमाणे पात्र नव्हता किंवा विहित अर्हताप्राप्त नव्हता किंवा त्याने नेमणूक मिळण्यासाठी

खोटी माहिती दिली होती किंवा खोटे प्रमाणपत्र सादर केले होते त्या कर्मचा-याला सेवेत ठेवण्यात येऊ नये. जर तो परिवीक्षाधीन किंवा अस्थायी शासकीय कर्मचारी असल्यास, त्याला सेवामुक्त करण्यात यावे अथवा त्याच्या सेवा समाप्त करण्यात याव्यात.’’

The Respondents claims that the Applicant had furnished false information about her marital status, therefore, her services were rightly terminated. The Applicant had definitely suppressed information about her marriage in her representation dated 20.5.2009 (Exhibit 'B', page 16 of the Paper Book). In the application she had filed on 3.1.2012 (part of Exhibit R-1, page 56 of the Paper Book) again, she has claimed that she was 'unmarried'. The Applicant claims that in the nomination form, she had mentioned that she had a daughter and had nominated her. This is admitted by the Respondents in para 5 of their affidavit in reply. However, it cannot be held that the Applicant had furnished truthful information to the Respondents, especially on 3.12.2012, when she was offered compassionate appointment. This fact has to be weighed against the fact that ordinarily, the marital status of the Applicant would not have been important for compassionate appointment, if the Applicant was a male. In our opinion, balance of equity is in favour of the Applicant in the circumstances.

9. Having regard to the aforesaid facts and circumstances of the case, the impugned order of the Respondent no. 2 dated 19.12.2012 is quashed and set aside. The Respondent no. 2 is directed to reinstate the Applicant as Junior Clerk within four weeks from the date of this order. The Applicant will not be eligible to get any back wages but

shall be entitled for continuity in service. There will be no order as to costs.

(Rajiv Agarwal)
Vice-Chairman

(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 05.06.2017
Dictation taken by : A.K. Nair.