

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.669 OF 2018**

Smt. Smita Raghunath Varkhande )  
Age : 33 years, Occ : Nil )  
Residing at Talasari Vikas Pada, )  
Taluka : Talasari, Dist. Palghar )...**Applicant**

**Versus**

1) The State of Maharashtra, )  
(Through the Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai 400 032) )  
2) Project Officer, )  
Integrated Tribal Development )  
Project, Dahanu, Dist. Palghar )...**Respondents.**

Mr. L.S. Deshmukh, learned Advocate for Applicant.

Mr. A.J. Chougule, learned Presenting Officer for Respondents.

**CORAM** : **Justice Mridula Bhatkar (Chairperson)**  
**Ms. Medha Gadgil (Member) (A)**

**DATE** : **16.02.2023**

**PER** : **Justice Mridula Bhatkar (Chairperson)**

**J U D G M E N T**

1. The applicant prays that the Tribunal be pleased to quash and set aside the impugned termination order dated 21<sup>st</sup> April, 2018 issued by Respondent no. 2.

2. Applicant was appointed on compassionate ground as 'Kamathi' (Domestic Helper) on 02.05.2006 which is not disputed fact by the Respondent-State. Her father, Mr. Raghunath Dhakat Varkhande expired on 11.10.1998, who was working in the pay scale of Rs.7500-12000/-. Applicant was terminated from service on 21.04.2018 i.e., after 12 years of service. She was issued show cause notice on 06.07.2017 by Respondent no. 2. Learned Advocate relies on the Government Resolutions dated 26.10.1994, 23.8.1996, 28.03.2001 and 22.08.2005. These Government Resolutions pertains to the classification of the cadres and also appointment on compassionate ground. In the show cause notice given by the Project Officer the Applicant was called upon to give explanation within a stipulated period. It is also mentioned at the end of the notice if the explanation is found not satisfactory or it is not given within a stipulated time, then disciplinary action will be conducted against the applicant as per Rule 5(viii) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred as 'MCS Rules 1979' for brevity) which reads as under :-

5(viii) : *“removal from service which shall not be a disqualification for future employment under Government;”*

2. Learned Advocate for the applicant made two folds submissions:-
- (i) Perusal of this order does not show that the appointment of the applicant was contrary to the erstwhile policy of the appointment on compassionate ground. The first G.R. for appointment on compassionate ground was issued on 23.04.1976.
  - (ii) Even if it is assumed that the appointment was contrary to the G.R, yet it was necessary for the Respondent-State to conduct Departmental Enquiry. The Applicant has not committed any fraud and she was appointment by the Government and continued for 12 years. Therefore, she cannot be removed from the service for no fault on her part.

3. Learned Advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Vikas Pratap Singh & Ors Vs.**

**State of Chhatisgarh & Ors, (2013) 14 SCC 494**, on the point of removal of Government servant in the event a person is wrongly appointed.

4. Learned P.O. for the Respondents relies on the G.R. dated 23.04.1976. He submits that first G.R. on the compassionate ground was introduced on 23.04.1976, and thereafter it was amended on 08.03.1985. In Clause 4 of the G.R. dated 26.10.1994, it is mentioned that the relative of the Government employee falling in Group A and Group B can be appointed on a compassionate ground. The case of the applicant falls in Group A. He does not fall in Group C or D. The G.R. dated 12.10.1993 consists of the action taken against the Government servants when they are later found ineligible for their initial recruitment.

5. Learned P.O. submits that if the authority is satisfied that the Government servant was not entitled to avail of the benefit of compassionate appointment on the compassionate ground then without holding enquiry under Rule 8 of MCS Rules 1979 the authority has power to remove the Government employee from the service. Thus, the action taken by the Government is justified.

6. All the facts are admitted and as we have stated the G.R dated 12.10.1993 is applicable to the present case. The said G.R is about taking action against the Government servant who later found ineligible or not qualified for their initial appointment. If as per the contentions of the Respondent-State the applicant falls under this G.R, then the action to be taken against her on compliance of this G.R in totality. The relevant portion of the said G.R. is quoted below:-

*“If he has become a permanent Government servant, an inquiry as prescribed in Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 may be held and if the charges are proved,*

*the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.”*

Thus, it states that it is necessary to conduct an enquiry prescribed under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. We do agree that in the present case, the issue is not pertaining to the conduct of the applicant and she is not facing any charge of fraud or misrepresentation or suppression of fact etc. It appears that the decision is taken erroneously by the concerned authority while appointing the applicant.

7. Under such circumstances, there cannot be charges as contemplated under Article 311(2) of the Constitution as it is not in fact even a penalty for her misconduct. Be that as it may, we restrain ourselves to the compliance of the G.R dated 12.10.1993, which contemplated enquiry as prescribed under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 as a condition precedent of any decision of removal or dismissal from service.

8. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned termination order dated 21.4.2018, issued by Respondent no. 2 is hereby quashed and set aside.
- (c) The Respondents are directed to reinstate the applicant to the original post of 'Kamathi' in Government Ashram School, Varkhanda, Tal-Dahanu, Dist-Palghar and if there is no vacant post at the said place, she should be posted near the vicinity preferably in the same Taluka.

- (d) The applicant is not entitled to any back wages on the principle of 'No work No Pay', but she is entitled to other consequential service benefits.

**(Medha Gadgil)**  
**Member (A)**

**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**

**Date : 16.02.2023**

**Dictation taken by : A.K. Nair.**