

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.1006 OF 2015**

**DISTRICT : NASHIK**

1. Shri Amol Gautam Dcore, )  
Age 38 years, Clerk (on contract basis) in the )  
office of M/s. Mahatma Phule Multi-Services, )  
Kondhava (Khurd), Pune 48 )
  
2. Smt. Shobha Gautam Dcore, )  
Wd/o Gautam Budhaji Deore, )  
Age 53 years, occ. household, )  
Both R/o Gayatri Nagar. Panchavati, )  
Dindori Road, Nasik )..Applicants

Versus

1. The Additional Commissioner of Sales Tax, )  
Nasik Zone, Vikrikar Bhawan, Prashant Nagar, )  
Pathardi Phata, Nasik-10 )
  
2. The Additional Commissioner of Sales Tax, )  
Punc Zone, Vikrikar Bhavan, Airport Road, )  
Yerawada, Pune-6 )
  
3. The Commissioner of Sales Tax, )  
3<sup>rd</sup> floor, Vikrikar Bhavan, Mazgaon, Mumbai-10 )



4. The State of Maharashtra, )  
Through the Principal Secretary, )  
Finance Department, Mantralaya, Mumbai-32 )
5. The State of Maharashtra, )  
Through the Additional Chief Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicants

Shri K.B. Bhise - Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri Rajiv Agarwal, Vice-Chairman

Reserved on : 11<sup>th</sup> July, 2017

Pronounced on : 7<sup>th</sup> August, 2017

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

(Per : Shri Justice A.H. Joshi, Chairman)

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. The applicant no.1 is the son and applicant no.2 is the widow of deceased Government servant Late Shri Gautam Budhaji Deore (the deceased) who was working as a Clerk in the Sales Tax Department of Government of Maharashtra.

3. Shri Gautam Budhaji Deore met with an accidental injury on 14.8.2008 while he was on way to office in a bus for attending his duties. He suffered injuries to his spine resulting into permanent disablement due to loss of capacity to use all four limbs apart from other complications.

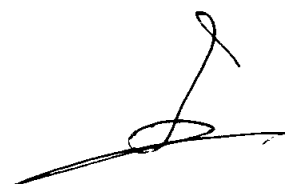
4. On the basis of disability certificate dated 8.9.2009 and actual incapacity to work on the post which he was holding, and also on any post whatsoever, the Additional Commissioner of Sales Tax, Pune issued order dated 11.9.2009 under Rule 80 of the Maharashtra Civil Services (Pension) Rules, 1982 declaring Shri Gautam Budhaji Deore the government servant as retired on invalid pension.

5. The deceased government servant Shri Gautam Budhaji Deore died on 12.6.2013. The deceased government servant Shri Gautam Budhaji Deore was getting pension and his widow the applicant no.2 is getting the family pension.

6. The applicant no.1 applied for appointment on compassionate basis pursuant to policy of Government. The applicant no.1's request for appointment on compassionate basis is rejected by communication dated 8.8.2013 (Exhibit 'K' page 47). Similarly, applicant no.1's representation to higher office is also rejected which is communicated to the applicant by letter dated 13.11.2014 (Exhibit 'A' page 31). Both these communications are based on the changed policy of State as enunciated in GR dated 22.8.2005 Exhibit N at page 74 of paper book.

7. In the present OA, the applicants have made the prayers, which run at great length, however, those are condensed for convenience and for quick reference narrated as follows:

- (I) (a) That the order of retirement passed on 11.9.2009 (Exhibit 'C' at page 35) thereby ordering that Shri Gautam Budhaji Deore retires on invalid pension as well as the impugned communications dated 8.8.2013 (Exhibit 'K' page 47) and 13.11.2014 (Exhibit 'A' page 31) be quashed and set aside.



(b) It be declared that the deceased government servant Shri Gautam Budhaji Deore continued in employment and was entitled to receive full salary and allowances treating that he was in employment on a supernumerary post by virtue of second proviso to sub-section (1) of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the said Act") and consequential protection of service, salary and allowances till the date of superannuation of deceased government had he not been declared to have retired on invalid pension.

- (II) (a) Part of the GR dated 22.8.2005 (Exhibit 'N' page 52) thereby changing the policy of compassionate appointment, which reads thus:

“२. याशिवाय अनुकंपा योजनेच्या सध्याच्या प्रचलित तरतुदीस खालीलप्रमाणे सुधारणा सदर आदेश निर्गमित झाल्याच्या दिनांकापासून करण्यात येत आहेत:-

(१) गट 'क' व 'ड' मधील कर्मचारी कर्करोग, पक्षघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबियांना गट 'क' व 'ड' मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येत आहे. यापुढे केवळ सेवेत असतांना दिवंगत झालेल्या गट 'क' व 'ड' च्या कर्मचाऱ्यांच्या पात्र कुटुंबियांनाच अनुकंपा नियुक्ती अनुज्ञेय राहिल.”

be quashed and set aside.

(b) Communication rejecting the request of Gautam Budhaji Deore to appoint his son on compassionate basis based on GR dated 22.8.2005 (which communication is dated 8.8.2013, copy whereof is at Exhibit K page 47 of the OA), be quashed and set aside.

(c) It be declared that applicant no.1 is entitled for appointment on compassionate basis.

8. The applicant has placed reliance on following two judgments of the Hon'ble Supreme Court in support of respective prayers namely:-

- (a) Kunal Singh Versus Union of India & Anr. 2003 SCC (L&S) 482.
- (b) V. Sivamurthy Versus State of Andhra Pradesh & Ors. (2009) 1 SCC (L&S) 335.

**Benefit under Section 47(1) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.**

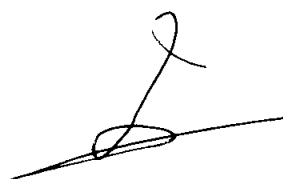
9. Kunal Singh's case (supra) is relied on in support of the challenge to order dated 11.9.2009 Exhibit 'C' page 35 directing that Gautam Budhaji Deore has retired on invalid pension due to permanent incapacity to serve on any post whatsoever.

10. Strong and fervent reliance is placed by applicants on paras 4 and 12 of judgment in Kunal Singh (supra). It shall suffice to refer to the text of para 12 which is reproduced below for ready reference:

"12. Merely because under Rule 38 of the CSS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits, if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act."

(Quoted from the judgment of Hon'ble Supreme Court in Kunal Singh Versus Union of India & Anr. 2003 SCC (L&S) 482 and underlining is done for emphasis.)

11. In Kunal Singh's case supra, Hon'ble Supreme Court has prescribed/laid down the conditions to be fulfilled by an applicant who



claims the benefit under Section 47(1) of said Act. Those conditions are as follows:

- (a) The Government servant must have suffered the Locomotor Disability as defined in Section 2(i)(v) of the said Act.
- (b) The disability must have occurred during the tenure of employment.

12. Admittedly, Shri Gautam Budhaji Deore had suffered 'Quadripareisis' which comprehends locomotor disability. The disability due to Quadripareisis consists of all four limbs which is essentially in excess of bare locomotor disability. Due to Locomotor Disability a person becomes immobile due to loss of capacity to use lower limbs while due to Quadripareisis even his arms become weak and immobile and incapable of use. Due to this disability Shri Gautam Budhaji Deore was declared by competent medical board to be unfit for any job whatsoever and was retired having become invalid and was granted invalid pension under Rule 80 of Maharashtra Civil Services (Pension) Rules, 1982.

13. It is evident that the disability subject-matter is not one which has occurred either before joining the employment or after superannuation.

14. Therefore, the judgment of the Hon'ble Supreme Court in Kunal Singh's case (supra) squarely governs and applies to the issue involved in present case as a precedent and as an anatomically concurrent text book picture to the facts of applicants' case.

15. In the aforesaid premises it is clear that the respondents have failed to observe and abide by the mandatory provision of law to undertake the obligation cast upon them by the second proviso to sub-section (1) of Section 47 of the said Act. In turn, the order of invalid pension to Shri

Gautam Budhaji Deore impugned in present OA is contrary to mandatory provisions of law and deserves to be quashed and set aside. The result of quashing has to mandatorily follow the situation that by disregarding the impugned order, the Government servant Gautam Budhaji Deore would be deemed to be continued on the establishment on a supernumerary post and would be entitled to receive all salary and allowances till he attains his normal date of superannuation.

**Validity of amendment in prevailing rules of compassionate appointment by impugned text through GR dtd 22.8.2005.**

16. Now this Tribunal has to examine the legality and validity of action of the respondents in partially withdrawing the scheme of compassionate appointment which is done through GR dated 22.8.2005. Relevant portion of the scheme which is challenged is quoted in foregoing para 7 (II) (a). By the impugned text, the dependents of Government servants who have been retired due to disability on account of cancer, paralysis or accident, are now excluded from the scheme of compassionate appointment.

17. In support of applicant's submission seeking to quash the relevant portion contained in GR, reliance is placed on reported judgment of the Hon'ble Supreme Court in the case of V. Sivamurthy (supra).

18. On reading of the judgment in V. Sivamurthy (supra) it transpires that the Hon'ble Supreme Court had laid down in unambiguous terms as to what shall be the principles which shall govern the compassionate appointment, in para 18 and 25 to 29 thereof.

19. In para 26 to 29 the Hon'ble Supreme Court has ruled that graver and harder degree of hardship exists and operates when the disability is



suffered by the family members of the Government servant who is alive than the hardship suffered by family members of a Government servant who dies in harness. Though it shall consume space, it is considered imperative to quote ad verbatim the dictum as is contained in para 18, 25, 26, 27 and 29 of V. Sivamurthy's case (supra) which is done as below:

"18. The principles relating to compassionate appointments may be summarized thus :

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is,



class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.

25. We may also notice that this Court dealt with provisions relating to compassionate appointments on medical invalidation in several cases, but did not hold that such appointments were violative of Article 16. Reference may be made to *W.B. State Electricity Board vs. Samir K. Sarkar* - 1999 (7) SCC 672, and *Food Corporation of India vs. Ram Kesh Yadav* - 2007 (9) SCC 531. **Be that as it may. The assumption by the High Court, that this Court had held that compassionate appointments can be only in death-in-harness cases and not in retirement on medical invalidation cases, is not sound.**

26. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a "higher footing" when compared to sickness. The inference is compassionate appointment in case of medical invalidation cannot be equated with death in harness cases, as medical invalidation is not of the same degree of importance or gravity as that of death; and that as medical invalidation is not as serious as death in harness, exception can be made only in cases of employees dying in harness. **But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences on his family, may be much more serious than the consequences of an employee dying in harness.**

27. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. **Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact for more than the consequences of death in harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness etc.**

28. ....  
.....



29. When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible.”

(Quoted from the judgment of Hon'ble Supreme Court in V. Sivamurthy Versus State of Andhra Pradesh & Ors. (2009) 1 SCC (L&S) 335 and underlining is done for emphasis.)

20. From the quotation contained in foregoing para 18 (b) and (c) it transpires that Hon'ble Supreme Court has laid down certain conditions which shall be decisive of eligibility of appointment on compassionate grounds as follows:-

- (a) Right of appointment on compassionate basis is not an absolute right.
- (b) Scheme governing appointments on compassionate basis must exist.
- (c) A post and vacancy for such appointment has to exist.
- (d) Appointment on compassionate grounds is aimed to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.
- (e) Appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

21. Now we have to examine the challenge to GR on the touchstone of the precedent aforesaid i.e. V. Sivamurthy's case.

22. It is seen that by the impugned GR the existing policy was varied and the eligibility condition which was governing the field viz. GR dated 26.10.1994 as modified from time to time was partly revoked as regards one section of dependants of Government servants. Revocation applies to the category of persons referred to and quoted in foregoing para 7(II)(a).

23. It would be useful to have a glance at the text/the language of impugned GR through which the concession of appointment of dependant of Government servant retired on account of permanent disability caused due to cancer, paralysis or accident, is withdrawn, is quoted for ready reference as follows:

“२. याशिवाय अनुकंपा योजनेच्या सध्याच्या प्रचलित तरतुदीस खालीलप्रमाणे सुधारणा सदर आदेश निर्गमित झाल्याच्या दिनांकापासून करण्यात येत आहेत:-

(१) गट 'क' व 'ड' मधील कर्मचारी कर्करोग, पक्षघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबियांना गट 'क' व 'ड' मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येत आहे. यापुढे केवळ सेवेत असतांना दिवंगत झालेल्या गट 'क' व 'ड' च्या कर्मचाऱ्यांच्या पात्र कुटुंबियांनाच अनुकंपा नियुक्ती अनुज्ञेय राहिल.”

(Quoted from page Exhibit N page 52 of the OA)

24. By impugned which is text quoted in foregoing para, the said class of dependants of Government are excluded from the concession of the compassionate appointment. However, this exclusion cannot stand to the test of reasonableness in view of law as is laid down in the judgment of Hon'ble Supreme Court in case of V. Sivamurthy (supra). Scheme existed however the class of persons who were eligible according to the extant scheme as existed prior to 22.8.2005 is now restricted. The challenge in



present OA is to the said act of the Government decision of restricting the scheme.

25. Para Nos.25, 26, 27 & 29 from the judgment of the Hon'ble Supreme Court in V. Sivamurthy (supra) are quoted in extenso and relevant text is emphasized by making the text in bold print. At the cost of repetition, relevant part contained in para 29 is reproduced herein below:

**"29. When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination."**

(Quoted from the judgment of Hon'ble Supreme Court in V. Sivamurthy Versus State of Andhra Pradesh & Ors. (2009) 1 SCC (L&S) 335 and underlining is done for emphasis.)

26. Now, the dictum in V. Sivamurthy's case (supra), it is the law of land as a binding precedent. Whenever dependents recognized by the Government under the scheme are declared eligible to get benefit of the scheme of compassionate appointment, creating a class of dependents by carving out another dependants of medically invalidated government servants within the class of dependants who are declared eligible for appointment on compassionate appointment amounts to giving differential treatment and discriminating them in an extremely hostile manner.

27. Hon'ble Supreme Court has held and laid down in V. Sivamurthy's case (supra) that the dependents of invalidated government servants do not suffer lesser hardship and lesser deprivation due to medical invalidation in comparison with the dependents of the government

servants who suffered death in harness. Thus, the policy decision of the government dated 22.8.2005 to the extent it takes away the benefit does not hold good rather it is in utter violation of the principles laid down by the Hon'ble Supreme Court in V. Sivamurthy's case (supra).

28. It has to be kept in mind that an attempt to minimize the sufferance of dependent of Government servant who suffered disability is concerned, while in Government service can be viewed to take away a particular employment to those who are aspiring to enter the government service, however, it is to be seen as an exception as is held in para 18(a) of V. Sivamurthy's case (supra). Moreover, the measure to provide compassionate appointment has to be viewed as a step forward towards social security measure which could consist of variety of measures, one amongst which could be appointment on compassionate ground.

29. In the light of clear dictum of the Hon'ble Supreme Court, the Government Resolution which is impugned cannot stand to the test of reasonableness when tested at the touchstone and the test as propounded in V. Sivamurthy's case in para no.29 thereof.

30. We, therefore, hold that the portion of GR dated 22.8.2005, which is quoted in para 7(II)(a) withdrawing the concession of compassionate appointment class of dependants referred therein is contrary to the test of the law laid down by the Hon'ble Supreme Court and is hereby quashed and set aside.

31. In so far as the fact situation is concerned, the applicants have succeeded on first count i.e. protection under first proviso to sub-section (1) of Section 47 of the said Act. In the result the deceased Government servant would be deemed to be in employment till he attains the age of superannuation on supernumerary post and shall be entitled to get full



salary and allowances after deducting amounts of invalid pension and retiral benefits already paid to him. He would also get all benefits due on superannuation, had he retired in normal course on superannuation after deducting whatever payments are actually made.

32. Having succeeded on the first issue of protection to disabled Government servant, the applicant's success on the second point of compassionate appointment turns out to be contingent though not academic.

33. Due to success on the point of Section 47 of said Act retirement of Shri Gautam Budhaji Deore on account of having become medically unfit is nullified. Therefore, Gautam Deore would retire only on superannuation. Since notionally Gautam Deore would have continued in employment till normal date due for superannuation and would also be entitled to all monetary consequences and perks as admissible as per rules, had he actually served till superannuation, and applicants claim and would be entitled to receive those, his heirs or dependents do not become eligible and qualified for compassionate appointment under scheme as was in vogue prior to issuance of GR dated 22.8.2005.

34. Therefore, it would be open for the applicants to elect amongst the two benefits.

35. If the applicants chooses to avail the benefit of Section 47(1) of the said Act, the applicants' case would fall outside the eligibility of policy of the Government to grant employment on compassionate basis to a Government servant who has retired on account of permanent disability as the Government decision would stand after quashing of the conditions contained in para 7 (II)(a) of the said GR or as it stood before 22.8.2005 (Exhibit N at page 54 of the OA).

36. If the applicants elect to forego the benefit accrued to Shri Gautam Budhaji Deore under Section 47(1) of said Act, applicants would be entitled to take recourse to compassionate appointment as per the scheme of the Government as described in foregoing paragraph.

37. It is hoped that the applicant shall have to take a prudent decision as to electing any one amongst two streams which have become available to him by virtue of his claim in present OA and this judgment.

38. We, therefore, pass the order as follows:

- (a)
  - (i) We declare that order dated 11.9.2009 Exhibit 'C' page 35 of invalid pension granted in favour of the applicant is contrary to law and the government servant Shri Gautam Budhaji Deore would be declared to be in the employment till he attains the age of superannuation on a supernumerary post and shall be entitled to one and all benefits by deducting payments already made.
  - (ii) The term "all benefits" will mean and include each and every benefit and perks available during employment or accruing after retirement, subject to the observations contained in order at clause (c) & (d).
- (b) The text quoted in para 7 of the order viz. as contained in GR dated 22.8.2005 (Exhibit 'N' page 52 of OA) is quashed and set aside and the claimant will be eligible to apply for compassionate appointment in furtherance to the policy of the Government in vogue before issuance of GR with modification made through GR dated 22.8.2005 except the portion which is quashed.
- (c) The applicant shall have to elect whether he wants the benefit of order clause (a) or (b) and submit suitable representation of exercise of their choice.
- (d) As and when the representation electing the benefit either under clause (a) or (b) is furnished, the respondents shall take

action and act thereupon within three months thereafter according to law.

- (e) In the result, Original Application succeeds in the above terms.
- (f) Parties are directed to bear own costs.

Sd/-  
(Rajiv Agarwal)  
Vice-Chairman  
7.8.2017

Sd/-  
(A.H. Joshi, J.)  
Chairman  
7.8.2017

Dictation taken by: S.G. Jawalkar.