

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.154 of 2016

Smt. Firdous Mohammad Yunus Patel,)
R/o. Block No.7/8, Sadar Bazar, Police Line,)
Kashkar, Solapur -3.) ...Applicant

Versus

1. The Commissioner of Police, Solapur)
City, O/at. Solapur.)
2. The Director General & Inspector)
General of Police (M.S.), Mumbai, O/at)
Old Council Hall, Shahid Bhagatsinh)
Marg, Mumbai 400 039.)
3. The State of Maharashtra, through)
Principal Secretary, Home Department,)
O/at. Mantralaya, Mumbai 32.)Respondents

Shri B.A. Bandiwadekar, Advocates for Applicant.

Smt Archana B.K., Presenting Officer for Respondents.

CORAM : SHRI R.B. MALIK (MEMBER-JUDICIAL)

DATE : 30.01.2017

JUDGMENT

1. This O.A. is made by the second wife of the late Shri Mohammad Yunus Patel, the employee who died in harness and the applicant seeks appointment on compassionate ground.

2. I have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Smt. Archana B.K., the learned P.O. for the Respondents.

3. The course of action that has to be adopted in this particular O.A. is such as to necessitate utmost economy of expression so as

to avoid possibility of prejudice to one or other parties. In that context, therefore, the facts that must be set out for the purposes of the decision of this OA are that the said deceased left behind two widows. The applicant is the second one. The said deceased had three children from the first wedlock and two children from the second wedlock. There were some intra-family settlements, etc. and court proceeding which is not necessary for me to mention in detail herein. It may only be recorded that I have perused and returned the certified copies of the court orders in Misc. Civil Application No.188/2008 in the court of District Judge, Solapur **(Shri Sadiq Maqbul Kudale V/s. Police Commissioner, Solapur & 5 Ors, dated 29.06.2011)** and Succession certificate issued by the Joint Civil Judge, Senior Division, Solapur in Civil Misc. Application No.351/2008 **(Smt Firdos Mohammad Yunus Patel & 7 Ors. V/s. Police Commissioner Office, Solapur, dated 23.10.2009).**

4. Returning to this OA, there were two objections to the move of present applicant on behalf of the Respondents. In the first place, an objection was raised that the application requesting for compassionate appointment was made more than one year after the demise of the said deceased and the second objection was that the said deceased having left more than two children behind, the application for compassionate appointment could not be entertained. In support of this stand, the Respondents apparently rely upon the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (to be herein after called the said rules). The said rules define small family to mean wife and husband including two children.

5. Shri Bandiwadekar, the learned Advocate for the Applicant told me that in so far as the delay aspect of the matter is concerned, too narrow and too technical approach should not be adopted and the interest of justice should be the paramount consideration and in that connection, he also refers me to G.R. dated 11.02.2009 which according to him casts preliminary duties on the Respondents to set the ball in motion.

6. In my opinion, the aspect highlighted by the learned Advocate will have to be taken into consideration by the

respondents and peculiar facts of this case will have to be borne in mind and, therefore, the whole thing cannot be thrown out on the basis of what the respondents called the delay. I may only mention that in **O.A. No.21/2013 (Smt Archana R. Badmanji & 1 anr. V/s. Superintendent Engineer & 1 Anr, dated 20.08.2014)**, the 2nd bench of this Tribunal speaking through me had in effect and in the manner of speaking condoned the delay.

7. Now, turning to the more important aspect of the matter, Rule 6 of the said rules empowers the Government to relax the provisions of the said rules. In the said provision, it is mentioned, “.....under such circumstances in such manner as shall appear it be just and reasonable and shall record the reasons for in such relaxation”. The above provision would make it very clear that the Government has power to relax by emphasizing that the Governmental decision must be manifested by writing exemplifies the fact that the Government has to apply its mind to this aspect of the matter and take a decision on whether necessary relaxation could be made. The learned P.O. Smt. Archana B.K. is being instructed by Shri G.K. Pakale, Desk Officer, Home Dept., Mantralaya, Mumbai. (Resp.No.3) and she clearly submits that the Government was not moved for such a relaxation although the matter may have been referred to General Administration Department (GAD).

8. In my opinion, the requirement of Rule 6 of the said rules has got to be observed and it is clear that in this particular matter, the Government had no occasion to apply its mind in that aspect of the matter, I am in no position to arrogate to myself the power that the Government has got and the functions that it has to perform. Assuming without holding if the decision were to go against the applicant upon a proper consideration of the provisions of the said rules, then may be the question of invocation of jurisdiction of judicial review of administrative action would again arise. Therefore, the matter will have to be referred back to the 3rd respondent - the State of Maharashtra for taking a proper decision under Rule 6 of the said rules.

9. The learned Advocate invites reference to what can be described as the earlier decisions reflected on page 46 where the Government in case of legal descendants of the deceased government employees (4 in number) had in the manner of speaking relaxed the said condition. I must make it quite clear that I express no opinion on the merit of the case of the applicant but at the same time, the applicant will have to be given opportunity to try and fortify her case and include all factual aspects which according to her should make her the recipient of the benediction of the Rule 6 of the said rules and at that time, the Respondent may also consider the earlier instances. The Respondent No.3 shall give an opportunity of being heard to the applicant in the context of what I have mentioned just now. I must again mention that I express no opinion on the merit of the matter but even then, the proper opportunity of being heard must be given to the applicant.

10. The matter is remitted back to the Respondent No.3 with a direction to consider the case of the Applicant on the anvil of Rule 6 of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 in accordance with the observations herein above made, after giving an opportunity to the applicant of being heard. The said decision be taken within a period of three months from today and its outcome be communicated to the applicant within one week thereafter. It is clarified that no other issue has been decided except one pertaining to Rule 6 of the said rule. The OA stands disposed of in these terms with no order as to costs. Hamdast.

(R.B. Malik)
Member (J)
30.01.2017

Diction taken by :-vsm

E:\VSO\2017\January 2017\O.A.154-16-SB.doc