

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 383 OF 2014**

**DISTRICT : SATARA**

Kum Jyoti Vilas Mane, )  
R/o: 95, Kesarkar Peth, )  
Tal & District – Satara. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Co-operation Department, )  
Mantralaya, Mumbai 400 032. )
2. The Divisional Joint Registrar )  
[Audit], Plot No. M-4, )  
Behind Shahu Market Yard, )  
Post Office Marg, )  
Kolhapur 416 005. )
3. The Divisional Joint Registrar )  
[Audit], Pune Division, )  
Pune. )...**Respondents**

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Shri R.M Kolge, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri R.B. Malik (Member) (J)**

**DATE : 17.02.2016**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri R.M Kolge, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 21.5.2014 terminating her services on the ground that her appointment by order dated 10.6.2013 was given on the basis of misleading and incomplete information furnished by the Applicant for Compassionate appointment.

3. Learned Counsel for the Applicant argued that the Applicant's father was working in Government as Auditor, Class-II and died on 26.12.2011, while in service. The Applicant made an application for


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compassionate appointment on 25.1.2012. In the application form, she disclosed full facts that his brother was having a job with monthly remuneration of Rs. 11,000/-. She also furnished no objections from other heirs of her deceased father for giving her appointment on compassionate basis. By order dated 10.6.2013, she was appointed as Clerk by the Respondent no. 2. Some complaint was received by the Respondent no. 2 that the Applicant was not eligible for compassionate appointment as her brother was already in Government service. She was given a show cause notice dated 5.4.2014, asking her to show cause why her services should not be terminated for furnishing misleading and incomplete information with a view to secure compassionate appointment when she was not eligible for such appointment. Learned Counsel for the Applicant stated that the Applicant submitted reply to the aforesaid show cause notice and placed documents on record to show that she was fully eligible to be appointed on compassionate basis. The Respondent no. 2 ignoring her reply, passed the impugned order dated 21.5.2014. Learned Counsel for the Applicant argued that the Applicant had fully disclosed information about employment of his brother and his monthly income. Therefore, to say that she had furnished incomplete or misleading information is incorrect. Learned Counsel for the Applicant argued that the Applicant was fully eligible to be appointed on compassionate ground. Her brother

was not living with the family and the Applicant had given undertaking to support her mother. As such, the impugned order dated 21.5.2014 is liable to be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was not eligible to be appointed on compassionate ground after her father died while in service. The Applicant had not disclosed full information about her brother, who was already in Government service. There was no claim made, much less proved, that the Applicant's brother was not supporting her mother and siblings. The Applicant was given compassionate appointment on the basis of incomplete and misleading information furnished by her. When this fact came to the notice of the Respondents, a show cause notice dated 5.4.2014 was issued to her and after considering her reply, her services were terminated by order dated 31.5.2014. Learned Presenting Officer argued that when Applicant's father late Shri Vilas Kondiba Mane died, the family was not left in indigent circumstances and his son Shri Shrikant V. Mane was already in Government service. The Applicant was not eligible for compassionate appointment in terms of G.R dated 26.10.1994.

5. We find that the Applicant was given appointment on compassionate grounds by order dated



10.6.2013 after her father died while in service on 26.12.2011. The application for compassionate appointment was filed by the Applicant on 25.1.2012. In appendix 'B' to the application, the Applicant has given following information about herself and other members of her family, viz:-

Sr No	Name	Relation with Govt. servant and age	If in service/doing business, his monthly income.
1.	Smt Mane Surekha Vilas	Wife - 42 years	Household
2.	Shri Mane Shrikant Vilas	Son - 26 years	Service, Rs. 11,000/-
3.	Kum Mane Jyoti Vilas	Daughter - 24 years	Student

An affidavit dated 21.1.2012 was filed by the Applicant which stated:-

“याप्रमाणे आम्ही मयतास वारस असून मला अनुकंपा तत्वावर नोकरी मिळणेसाठी अर्ज केलेला असून मला त्यांचे जागी नोकरी मिळालेनंतर मी माझे कुटुंबातील सर्वांचा सांभाळ व पालन करीन.”

There is another agreement/consent letter (संमतीपत्र) signed by her mother and brother, who had given their consent to the Applicant being given compassionate appointment. The Applicant has filed copies of two ration cards, one issued by Tahsildar, Satara, which has names of the Applicant and her mother (besides her father) and

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another issued by Tahsildar, Shahapur, Dist-Thane to her brother. Learned Counsel for the Applicant contended that these ration cards were evidence to show that Applicant's brother was living separately from his family and did not support her widowed mother and sister (the Applicant). We are afraid that this claim of the Applicant cannot be accepted. Mere fact that a son or brother is living in another place, cannot be said to be conclusive evidence to prove that he is not supporting his mother/sister. The Applicant, in her application, affidavit or consent has nowhere mentioned that her brother is not supporting her and her mother. In fact, her affidavit gives an impression that the Applicant had undertaken to support not only her mother but her brother also. Though, she had mentioned that her brother was in service, it is not clearly mentioned that he was in Government service. It cannot be said that the Applicant deliberately suppressed or misled the Respondents about the fact that her brother was in service. His monthly income of Rs. 11,000/- was also mentioned. However, the fact that her brother was in Government service was not specifically disclosed. Nor was there any averment that her brother was not looking after herself and her mother. The basic condition for giving compassionate appointment is that the family should be left in indigent circumstances. As has been held by Hon. Bombay High Court by order dated 19.11.2005 in Writ Petition no. 6777 of 2005 and other Writ Petitions that:-

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“The basic reason for providing appointment on compassionate ground is to give some monetary benefit to a family of a bereaved servant to tide over the bereavement period. Different set of rules has been made. All these rules are an exception to the mandate of Article 16 of the Constitution of India, which requires that there shall be equality of opportunity in the matter of public employment. Consequently, every such rule, making a deviation from the Constitution, has to be construed strictly.”

6. In the case of **SANTOSH KUMAR DUBEY Vs. STATE OF U.P & OTHERS** in **Civil Appeal No. 1955 of 2003**, the Hon'ble Supreme Court has observed that:-

“The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. This request for appointment on compassionate grounds should be reasonable and proximate to the time of the death.....” (emphasis supplied).

In the present case, the Applicant's brother was also an earning member of the family. There was no claim that he was not supporting his family. The request of the Applicant for compassionate appointment fails the test of reasonableness. Though the Applicant had disclosed that her brother was employed, it was not mentioned specifically that he was a Government servant, which gives a different complexion to service, especially at lower level.

7. It is true that the Respondent nos 2 & 3 have not shown due diligence, while giving compassionate appointment to the Applicant. However, the impugned order cannot be said to be bad in law, when the Applicant was clearly not entitled to be given compassionate appointment.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

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

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 17.02.2016**

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