IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.415 OF 2017

DISTRICT: Mumbai
SUB : Govt. Quarter/Penal Rent

1) Ramkrishna Baburao Palve,)
Age:- 60 yrs, Retired Police Head -)
Constable, Armed Police Worli,)
Mumbai 400 030 and R/at 03/04, Worli)
Police Camp, Sir Pochkhanwala Road,)
Worli, Mumbai 400 030.)

2) Smt. Mangala Ramkrishna Palve,)
Aged 30 years, Women Police Constable,)
Santacruz Police Station, Santacruz (W),)
Mumbai 400 054.)
R/at 03/04, Worli Police Camp, Sir -)
Pochkhanwala Road, Worli, Mumbai 30.)... **Applicants**

Versus

1) The Government of Maharashtra, through)
its Principal Secretary, Home Dept.,)
Mantralaya, Mumbai 400 032.)

2) The Government of Maharashtra, through)
Principal Secretary, General Administration)
Department, Mantralaya, Mumbai 400 032.)

3) Commissioner of Police, Mumbai, near)
Crawford Market, Dr. D. N. Road,)
Mumbai 400 001.)...**Respondents**

Shri M. D. Lonkar, learned Advocate for the Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

SHRI DEBASHISH CHAKRABARTY, MEMBER -A

DATE : 26.07.2023.

PER : SHRI A.P. KURHEKAR, MEMBER-J

JUDGEMENT

1. The Applicants have challenged the legality of Note below Clause 8 of G.R. dated 10.10.2000 pursuant to which married daughter of police officer is held ineligible for transfer of quarter from her father and also challenged recovery orders dated 30.12.2016 and 11.04.2017 issued by Respondent No.3 - Commissioner of Police, Mumbai invoking jurisdiction of this Tribunal under Section Administrative Tribunals Act, 1985.

2. Following are the admitted facts giving rise to this O.A.

(i) Applicant No.1 – Ramkrishna B. Palve joined as Police Constable on the establishment of Respondent No.3 – C.P, Mumbai on 01.02.1981.

(ii) During the course of service, police quarter (Flat No.3/4), Worli, Mumbai was allotted to him. He stands retired on 31.07.2015 as Head Constable.

(iii) Before his retirement, his daughter (Applicant No.2) Mangala R. Palve joined Police Force on the post of Lady Police Constable on 04.08.2010.

(iv) After retirement, Applicant No.1 made an application to Respondent No.3 – C.P, Mumbai on 25.08.2015 for transfer of quarter in the name of his daughter Applicant No.2 in view of her employment stating that she is staying with him.

(v) Applicant No.2 also made an application on 01.10.2015 for transfer of quarter in her name stating that since joining she is staying with her father and not received HRA. She also undertook to maintain parents.

(vi) However, Applicant No.3 by communication dated 30.12.2016 directed Applicant No.1 that he was entitled to retain quarter for three months after retirement i.e. up to 31.10.2015 and imposed penal charges of Rs.1,25,091/- for unauthorized retention of quarter for the period from 01.11.2015 to 30.11.2016.

(vii) Applicant No.1 again made representation on 23.02.2017 that action of imposing leaving penal charges is illegal and quarter ought to have been transferred in the name of his daughter.

(viii) Respondent No.3 again issued communication dated 11.04.2017 stating that in view Note below Clause 8 of G.R. dated 10.10.2000, married daughter is not eligible for transfer of quarter and sought to justify imposition of penal charges and further stating that quarter can

be transferred in the name of Applicant No.2 only after depositing penal charges.

3. It is on the above background, the Applicants have filed present O.A. challenging legality of Note below Clause 8 of G.R. dated 10.10.2000 as well as orders dated 30.12.2016 and 11.04.2017 imposing penal charges.

4. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail Note below Clause 8 of G.R. dated 10.10.2000 as well as impugned communication dated 30.12.2016 and 11.04.2017 inter-alia contending that exclusion of married daughter from G.R. Dated 10.10.2000 is totally discriminatory and violative of Article 14 of the Constitution of India. He further submits that Applicant No.2 by virtue of her employment in police department is entitled to police quarter and her status as a married daughter could not make her ineligible for transfer police quarter in her name. He further raised the issue of parity inter-alia contending that in case of some other married daughters of police employees, quarters were transferred to them. To substantiate his submission, he placed reliance on certain decisions which would be dealt with little later.

5. Per contra, Smt. Archana B. K., learned P.O. in reference to contentions raised in Affidavit-in-reply sought to justify the impugned action inter-alia contending that in view of policy decision as reflected in G. R. dated 10.10.2000 issued by Home Department, married daughter is not eligible for transfer of quarter in her name. As regard transfer of quarter to some other employees (married daughters), she tried to contend that those applications were made in the maiden name and department had no record that they were married daughters. On this line of submission, learned P.O. prayed to dismiss the O.A.

6. In view of the submissions, the issue posed for consideration is whether Note below Clause 8 of G.R. dated 10.10.2000 is legally sustainable in law and secondly, impugned action of recovery of penal charges is legal and valid.

7. There is no denying that Applicant No.2 got married in 2006 and joined police force on 04.08.2010 and she is not paid HRA since joining. The Applicant's made an application on 20.08.2015 for transfer of quarter before expiration of three months period of entitlement of Applicant No.1 to retain the quarter after retirement.

8. At this juncture, it would be apposite to reproduce Note below Clause 8 of G.R. dated 10.10.2000 which excludes married daughter from the definition of 'Family Member' for transfer of quarter, which is as under:-

> *" टीप :- वरील सर्व प्रकरणी सदर पोलीस निवासस्थान नांवावर वर्ग करण्यासाठी पात्र समजली जाणारी ''कुटुंबिय व्यक्ती'' विचारात घेताना संबंधित सेवानिवृत्त पोलीस अधिकारी/कर्मचारी यांच्याबाबतीत त्याचा मुलगा/अविवाहीत/घटस्फोटीत मुलगी आणि संबंधित मृत पोलीस अधिकारी/कर्मचारी यांच्या बाबतीत त्याची विधवा पत्नी/विधूर पती किंवा त्याचा मुलगा/अविवाहीत/घटस्फोटीत मुलगी यांना पात्र व्यक्ती म्हणून विचारात घेण्यात यावे.''*

9. In first place, we do not find any such rational or reasonableness in excluding married daughter from the definition of 'family member'. The Affidavit in Reply filed by the Respondents does not disclose as to what is the rational for excluding married daughter from the definition of 'family member'. Needless to mention that for any such exclusion/ classification, it must be shown founded on intelligible differentia and such intelligible differentia must have some rational relation to the object sought to be achieved. In absence of any such reasonable classification or intelligible differentia, the exclusion of married daughter from the definition of 'family member' by G.R. dated 10.10.2000 is nothing but gender discrimination and violative of Article 14 of the Constitution of India.

10. Notably, the Respondent No.1 and 2 (Government) in their Affidavit in Reply stated that though there is exclusion of unmarried daughter in G.R. dated 10.10.200, the Government - Home Department is contemplating to review the said definition of the term 'family member' and after review, additional Affidavit in Reply will be filed. However, till date no such review is taken. Thus, it appears that Home Department is also contemplating to review the definition of 'family member' probably realizing that exclusion of married daughter from getting police quarter of father transferred in her name will not pass a test of reasonableness or rational.

11. Indeed, illegality of such restriction in Government policy or Circular from getting quarter transferred in name of married daughter is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in ***(1996) 2 SCC 380 [Savita Samdevi and Anr. Vs.Union of India].*** In that case, the Hon'ble Supreme Court dealt with Railway Board Circular dated 27.12.1982 which was restricting eligibility of married daughter of retiring officials. The Hon'ble Supreme Court held that any such prohibition on transfer of quarter in the name of married daughter suffers from gender discrimination and violative of Article 14 of the Constitution of India. Para Nos.5 to 9 of the Judgment are important and need to be reproduced, which are as under :-

> *"5. As is obvious from the plain reading of the Circular, the married daughter of a retiring official is eligible to obtain regularization if her retiring father has no son. She thus has a foothold, not to be dubbed as an outcaste outright. In case he has a son, she shall not be in a position to do so, unless he is unable to maintain the parents, e.g. like a minor son, but then she should be the only person who is prepared to maintain her parents. It is thus plain that a married daughter is not altogether debarred from obtaining regularization of a railway quarter, but her right is dependent on contingencies. The authorities concerned as also the Central Administrative Tribunal seemed to have overlooked the important and predominant factor that a married daughter would be entitled to regularization only if she is a railway employee as otherwise, she by mere relationship with the retiring official, is not entitled to regularization. Logically it would lead to the conclusion that the presence of a son or sons, able or unable to maintain the parents, would again have to be railway employees before they can oust the claim of the*

married daughter. We are not for the moment holding that they would be capable of doing so just because of being males in gender. Only on literal interpretation of the Circular, does such a result follow, undesirable though.

6. A common saying is worth pressing into service to blunt somewhat the Circular. It is -

> *"A son is a son until he gets a wife. A daughter is a daughter throughout her life."*

7. The retiring official's expectations in old age for care and attention and its measure from one of his children cannot he faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he was only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularization of railway accommodation. It is only in the case of more than one children in Railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the railways authorities irrespective of the gender of the child. There is no occasion for the railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The railway Ministry's Circular in that regard appears thus to us to be wholly unfair, gender biased and unreasonable, liable to be struck down under Article of the Constitution. The eligibility of a married daughter must be placed at par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, above -quoted.

8. The Tribunal took the view that when the Circular dated 11.8.1992 had itself not specifically been impugned before it and ex-facie the conditions contained in the said Circular had not been satisfied in the present case, no relief need be given to the appellants. The Tribunal viewed that when there were two major sons of the second appellant, gainfully employed, the fact that they were not railway employees, not residing in Delhi, did not alter the situation that the terms of the Circular dated 11.8.1992 had not been satisfied, under which alone regularization was permissible. As brought about before, the Tribunal overlooked this aspect that the Circular was meant only to enlist the eligible, who could claim regularization, but the important condition of one being a railway employee had to be satisfied before claim could be laid. In the instant case, the first appellant, on that basis, alone was eligible (subject to gender disqualification going). So the second appellant could exercise his choice/option in her favour to retain the accommodation, obligating the railway authorities to regularise the quarter in her favour, subject of course to the fulfilment of other conditions prescribed. The error being manifest is hereby corrected, holding the first appellant in the facts and circumstances to be the sole eligible for regularization of the quarter.

9. It was also pointed out before us that the Central Administrative Tribunal, Bombay Bench in one of its decisions in OA 314 of 1990 decided on 12.2.1992 (Ann. P-8) relying upon its own decision in Ms.

Ambika R. Nair and another vs. Union of India and others (T.A. No. 467 of 1986) in which the earlier Circular of the railway board dated 27.12.1982 had been questioned, held that the same to be unconstitutional per se as it suffered from the twin vices of gender discrimination and discrimination inter se among women on account of marriage. We have also come to the same view that the instant case is of gender discrimination and therefore should be and is hereby brought in accord with Article 14 of the Constitution. The Circular shall be taken to have been read down the deemed to have been read in this manner from its initiation in favour of the married daughter as one of the eligible, subject, amongst others, to the twin conditions that she is (i) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularization. It is so ordered."

12. Notably, the issue of gender discrimination has arisen before the Hon'ble Supreme Court way back in 1979 in the matter of ***Miss C. B. Muthamma, I.F. S. V/s Union of India and Ors. (1979) 4 SCC 260.*** The Hon'ble Supreme Court while considering I.F.S. (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 held that the Rules making marriage of women employees and their domestic involvement, as a ground for disentitlement for some service benefits is unconstitutional unless justified by the peculiarities and in the nature of employment. In present case, no such justification is forthcoming.

13. In view of the aforesaid decisions particularly decision in ***Savita Samvedi's*** case (cited supra) being directly on the issue involved in the present matter, the stand taken by the Respondents in denying transfer of quarter from petitioner no.1 to petitioner no.2 is gender discrimination and totally unsustainable in law. True, the Government is empowered to adopt particular policy in the administration but where such policy is violative of fundamental rights guaranteed under Article 14 of the Constitution, such policy is unconstitutional per se. In present case, it suffers from vices of gender discrimination inter se amongst women on account of marriage. Resultantly, G.R. dated 10.10.2000 has to be read down in favour of married daughter for transfer of quarter if such married daughter is in employment and retiring employee has consented for transfer of quarter in her name. Suffice to say, the eligibility of

married daughter must be placed on par with an unmarried daughter for transfer of quarter in her name.

14. Insofar as transfer of quarter to other women police constables namely Smt. Varsha Magdum, Nilam Shinde and Nidhi Naik as seem from quarter transfer orders dated 26.10.2016 & 24.12.2016 is concerned, it is apparent from these orders that the applications for transfer of quarter was made in maiden names. It appears while transferring quarter in their name, the Respondent No.3 has not verified about the status as to whether they were married or unmarried at the relevant time. Indeed, the Respondent No.3 ought to have verified this aspect before transferring the quarter in their name. Be that as it may, this issue pales into insignificance since very exclusion of married daughter from G.R. dated 10.10.2000 itself is gender discrimination and unconstitutional.

15. In view of above, rejection of claim of Applicant No.2 for transfer of quarter in her name is totally arbitrary, and unsustainable in law. The Respondent No.3 ought to have transferred the quarter in the name of Applicant No.3 in pursuance of application made by her father on 25.08.2015. Consequently, action of imposing penal charges is totally illegal and liable to be quashed. The quarter in question deems to have been transferred in the name of Applicant No.2.

16. The totality of the aforesaid discussion leads us to conclude that exclusion of married daughter for transfer of quarter from Note below Clause 8 of G.R. dated 10.10.2000 is totally unconstitutional being violative of Article 14 of the Constitution. Impugned orders of recovery dated 30.12.2016 and 11.04.2017 being based upon unconstitutional provision are also liable to be quashed and set aside. The O.A. deserves to be allowed. Hence, the following order :-

ORDER

(A) The Original Application is allowed.

(B) The exclusion of married daughter from Note below Clause 8 of G.R. dated 10.10.2000 is declared unconstitutional.

(C) The quarter in question deems to have been transferred in the name of Applicant No.2 in pursuance of application made by Applicant No.1 on 25.08.2015.

(D) Impugned action of recovery of penal charges by order dated 30.12.2016 and rejection of claim for transfer of quarter by communication dated 11.04.2017 is quashed and set aside.

(E) The Respondent No.3 is directed to issue formal order of transfer of quarter in favour of Applicant No.2 within a month from today.

(F) No order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(A.P. Kurhekar)
Member(J)

Place: Mumbai
Date : 26.07.2023
Dictation taken by: Vaishali Santosh Mane
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