

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 292 OF 2018
(Subject:-Compassionate Appointment)**

DISTRICT: - JALGAON

Sau. Bhavana Hemant Thakare,)
Age: 35 years, Occu. : Nil,)
R/o. Ashirwad Bhavan, Plot No.19,)
Survey No.180, Near Mahadev Temple,)
Wagnagar, Jalgaon.)...**APPLICANT**

V E R S U S

- 1) The State of Maharashtra,**)
Through: Secretary,)
Revenue Department,)
Mantralaya, Mumbai-32.)
- 2) The Director,**)
Accounts and Treasuries,)
Nasik Division, Nasik.)
- 3) The Senior Treasury Officer,**)
Jalgaon.)...**RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde, Advocate for
the Applicant.

: Shri M.P. Gude, Presenting Officer
for the respondent authorities.

CORAM : **SHRI V.D.DONGRE, MEMBER (J).**

RESERVED ON : **12.12.2022.**

PRONOUNCED ON : **13.04.2023.**

ORDER

By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed seeking compassionate appointment. Prayer to challenge clause 7 of G.R. dated 22.08.2005 and clause 6 of G.R. dated 21.09.2017 are not pressed by the learned Advocate for the applicant during the hearing of the case.

2. The facts in brief giving rise to this application are as follows:

(i) That the husband of the applicant Hemant Sahebrao Thakare was working with respondent no.3 i.e. the Senior Treasury Officer, Jalgaon. He met with an accident and was on leave on medical grounds for a long period during the period of treatment. Ultimately, he was declared medically unfit in terms of Certificate dated 14.01.2016 (part of Annexure A-1 Collectively). Consequently, he was relieved of Government service vide order dated 31.08.2016 (Annexure A-2) with retrospective effect from 23.02.2016 issued by respondent no.3.

(ii) The applicant thereafter made application dated 08.09.2016 (Annexure A-3) to the respondent no.3 seeking compassionate

appointment on the post of Peon. However, no heed was paid to it. She, therefore, again made application dated 07.09.2017 (Annexure A-4) to the respondent no.3 making similar prayer.

(iii) The respondent no.3 in turn by communication dated 09.02.2017 (Annexure A-5) addressed to the applicant informed there that the benefit of providing compassionate appointment to the eligible family member of the medically unfit Government servant is cancelled as per G.R. dated 22.08.2005 and thereby the applications made by the applicant were filed.

(iv) It is contended that the basis of G.R. dated 22.08.2005 on which the claim of the applicant is decided stating that the benefit of compassionate appointment to the family member of the Government servant is declared incapacitated in service due to disability, is quashed and set aside by the judgment and order dated 07.08.2017 in O.A.No.1006/2015 passed by the Division Bench. Hence, the applicant, who is within age limit otherwise is entitled for compassionate appointment. Hence, this application.

3. This application is resisted by filing affidavit in reply (page 70 to 79 of the paper book) on behalf of the respondent nos.1 to 3. Thereby the respondents have justified the communication dated 09.02.2017 (Annexure A-5) issued by the respondent no.3

in view of G.R. dated 22.08.2005. As regards decision dated 07-08-2017 in O.A.No.1006/2015 in the matter of **Amol Gautam Deore & Anr. V/s.The Additional Commissioner of Sales Tax & Ors.** is concerned, it is stated that thereafter this Tribunal by the said judgment and order though quashed and set aside concerned part of G.R. dated 22.08.2005, the Government has not deleted or amended the said G.R. dated 22.08.2005 and hence the concerned clause do exist as of now also. Hence, there is no merit in the application and it is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer representing the respondents on the other hand.

5. From the rival pleadings and documents on record, it is evident that admittedly the husband of the applicant was relieved of Government service on 31.08.2016 with retrospective effect of 23.02.2016 as he was medically unfit because of disability acquired by him during the service as he met with an accident.

6. Further, admittedly the application was made from applicant dated 08.09.2016 (Annexure A-3) within prescribed period of limitation of one year for compassionate appointment. She subsequently made application dated 07.09.2017 (Annexure

A-4). However, by communication dated 09.02.2017 (Annexure A-5) she was informed that by G.R. dated 22.08.2005, benefit of compassionate appointment of the disable person relieved from Government service was cancelled. It is the fact that the relevant clause 2 of G.R. dated 22.08.2005 cancelling said benefit is as under:-

“२. याशिवाय अनुकंपा योजनेच्या सध्याच्या प्रचलित तरतुदीत 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 रूग्णता 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.

(२) यापुढे वयाच्या ४० वर्षापर्यंतच्याच उमेदवारांना अनुकंपा नियुक्ती अनुज्ञेय असेल. त्यामुळे प्रतिसूचीत नव्याने होणाऱ्या उमेदवारांना वयाच्या ४० वर्षापर्यंत नियुक्ती न मिळाल्यास त्यांची नावे वयाची ४० वर्षे पूर्ण होताच आवश्यक ती नोंद घेवून काढून टाकण्यात यावीत.

(३) अनुकंपा नियुक्तीसाठी पात्र कुटुंबियांकडून संबंधित नियुक्ती प्राधिकाऱ्याकडे अर्ज करण्याची सध्याची ५ वर्षांची मुदत कमी करून कर्मचारी दिवंगत झाल्याच्या दिनांकापासून एक वर्षाच्या मुदतीत अर्ज करणे आवश्यक राहिल.”

7. However the abovesaid clause of G.R. dated 22.08.2005 is quashed and set aside by order dated 07.08.2017 passed by the learned Division Bench of this Tribunal at Principal Bench in O.A.No. 1006 of 2015. Operative part of the same is as follows:-

“(b) The text quoted in para 7 of the order viz. as contained in G.R. dated 22.08.2005 (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 22.08.2005 except the portion which is quashed.”

8. In view of above, the contention raised by the respondents that the Government has not acted upon the said decision and has not deleted or amended the said clause of G.R. dated 22.08.2005 is totally illegal and defying, which cannot be accepted on the face of it. Hence, the decision of the respondent No.3 vide communication dated 09.02.2017 (Annexure 'A-5') is liable to be quashed and set aside.

9. Apart from that, there is another angle of this matter is that applicant has two daughters and one son aged about 14, 12 & 4 years respectively. In this regard, there is a provision in the earlier G.R. dated 28.03.2001, which is adopted in subsequent consolidated G.R. dated 21.09.2017 (Annexure 'A-6') in clause No.6, which is as follows:-

“(६) लहान कुटुंबांचे प्रमाणपत्र:—

दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचाऱ्यांच्या कुटुंबियास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही. (शासन निर्णय, दि.२८/३/२००१)”.

10. However, in this regard the learned Advocate for the applicant has placed reliance on the decision of the Hon'ble High Court dated 03.07.2019 in Writ Petition No. 7742 of 2014 in the

matter of **Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik & Ors.**, wherein it is observed as follows:-

“2. At the outset we record our displeasure to the fact that in the counter affidavit filed by Respondent No.3 in paragraph 6 a false statement of fact has been pleaded that there is a family dispute amongst the family of Sheshrao Trambak Wagh, an Assistant teacher under the first Respondent –Zilla Parishad, Nashik who died in harness, on 22 June 2007.

3. From his first pre-deceased wife he was blessed with two children. From the wedlock with the Petitioner a third child was born.

4. Under the policy of appointment on compassionate basis the Petitioner sought appointment which has been declined to her on the reason that the policy of the State Government prohibits public employment to a person who has begotten a third child after the cut-off date i.e. 31 December 2001. The policy decision concerning appointment on compassionate basis is dated 28 March 2001 and it also contains a stipulation that appointment on compassionate basis would not be granted to the dependent of deceased a government servant who had more than three children.

5. Aforesaid facts bring out that as regards the Petitioner she gave birth to only one child. Her deceased husband had two children from the previous wedlock.

6. The conditions in the policy decisions for grant of appointment on compassionate basis contains an

embargo to the applicant being disentitled on the fact of the ceased government servant having 3 children.

7. *Notwithstanding there being no prayer to quash and said condition as unconstitutional, we declare the same to be unconstitutional. For the reason in a given set of facts, as in the instant case, the Petitioner who has only one child would suffer the brunt of public employment being denied on the reasoning that her deceased husband was blessed with two children from the previous marriage. The intention behind the policy is to control the exploding population and not to prohibit remarriages. The Petitioner was the second wife of the deceased employee of Zilla Parishad as far as she was concerned, she born only one child.*

8. *Declaring the Petitioner to be eligible to be considered for grant of appointment on compassionate basis, we direct the Respondents to consider her entitlement as per policy, meaning thereby, the Respondents would consider whether the Petitioner is in such state of penury that she needs an appointment on compassionate basis so that she and her family can survive.”*

11. In view of above, the provision of G.R. dated 28.03.2001 is declared unconstitutional. Hence, the claim of the applicant cannot be denied on that ground.

12. In the circumstances, I hold that the applicant is entitled for the relief of compassionate appointment in accordance with law. In the result, I proceed to pass the following order.

ORDER

The Original Application is allowed in following terms:-

- (A) The communication dated 09.02.2017 (Annexure 'A-5') issued by the respondent No.3 is hereby quashed and set aside.
- (B) Consequently, the respondents and more particularly the respondent No.3 is directed to consider and give compassionate appointment to the applicant in accordance with law within the period of four months from the date of receipt of certified copy of this order by the respondents.
- (C) No order as to costs.

MEMBER (J)

Place:-Aurangabad
Date : 13.04.2023
SAS O.A.292/2018