

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 322 OF 2016

DISTRICT: - HINGOLI.

**Swati Narhari Joshi,
Swati w/o Anil Kulkarni,**
Age – 27 years, Occu : Unemployed,
R/o. Gavalipura, Hingoli, At present
House No. 5/4, At Post Kotgir,
Bramhan Galli, Post/Mandal Kotgir,
Nizamabad (Telangan).

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through : Secretary, Department of
Irrigation, Mantralaya, Mumbai.
2. The Deputy Engineer,
Irrigation Department,
Hingoli, Dist. Hingoli.
3. The Executive Engineer,
Minor Irrigation Department,
Chaityana Nagar, Nanded-5,
District Nanded.
4. The Superintending Engineer,
Irrigation Department,
Behind Old High Court Building,
Sinchan Bhavan, Aurangabad.
District Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri B.S. Kudale, learned Advocate
for the applicant.

: Shri V.R. Bhumkar, learned
Presenting Officer for the
respondents.

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)

DATE : **29TH JUNE, 2018**

ORDER

The applicant has challenged the communications dated 27.6.2011 & 3.8.2013 issued by respondent No. 4 and respondent No. 1 respectively and prayed to quash and set aside the same by filing the present Original Application. The applicant has further sought direction from this Tribunal to the respondents to consider her claim for appointment on compassionate ground.

2. Deceased Narhari Narayan Joshi was father of the present applicant. He was serving as Junior Clerk in the office of respondent No. 2 at Hingoli. He died on 25th May, 2010 while in service leaving the applicant and his widow viz. Chandrakala Narhari Joshi as his legal heirs. Narhari Narayan Joshi had one more son viz. Nilesh, but he died on 22.11.2008 prior to the death of deceased Narhari. After death of Narhari Narayan Joshi, the applicant

submitted an application dated 18.5.2011 to the respondents seeking appointment on compassionate ground. She has furnished all the required information along with the documents. She possesses required qualification for appointing her on compassionate ground. The respondent No. 3 had forwarded the proposal to the respondent No. 4, but at the same time he has informed the respondent No. 4 that as mother of the applicant viz. Chandrakala is receiving pension, the applicant is not eligible for appointment on compassionate ground. The respondent No. 4 by communication dated 27.6.2011 informed the applicant that she is not eligible for appointment on compassionate ground, as she is married daughter.

3. On 26.2.2013 the Government issued Government Resolution and thereby declared that the married daughter is also eligible legal heir for appointment on compassionate ground. Therefore, the applicant moved an application dated 8.5.2013 along with the necessary documents, but the respondent No. 1 informed her by

communication dated 3.8.2013 that she is not eligible to be appointed on compassionate ground and her claim was rejected. Thereafter, again she moved an application dated 30.8.2014 with the same request.

4. It is contention of the applicant that the applicant and her husband are maintaining her mother, as her mother has no source of income to maintain herself. Her husband is also ready to submit the undertaking required as per the Rules. It is contention of the applicant that the Government has issued the resolution dated 26.2.2013 on the basis of decisions given by the Hon'ble High Court of Judicature at Bombay in W.P. No. 1284/2011 dated 1st August, 2011 and other decisions delivered by the Hon'ble Apex Court, but the respondents have not considered her request. Therefore, she approached this Tribunal and prayed to quash and set aside the communications dated 27.6.2011 and 3.8.2013 issued by respondent Nos. 4 & 1 respectively, thereby rejecting her claim for appointment on compassionate ground. She has sought directions of the Tribunal to consider her claim for appointment on

compassionate ground in view of the GRs issued by the Government from time to time.

5. Respondent Nos. 1 to 4 have filed their affidavit-in - reply and resisted the contentions of the applicant. They have not disputed the fact that the deceased Narhari N. Joshi was father of the applicant and he died on 25th May, 2010 while in service as Junior Clerk. They have not disputed the fact that the applicant and his mother are legal heirs and the applicant is married daughter of deceased employee Narhari N. Joshi. They have not disputed the fact that the applicant moved an application for getting appointment on compassionate ground after death of her father and her application came to be rejected as there was no provision to give appointment to the married daughter. They have also admitted that the applicant has moved an application after issuance of the Government Resolution dated 26.2.2013 and claimed appointment on compassionate ground, but her application came to be rejected. It is their contention that the respondent No. 4 issued letter dated 27.6.2011 to the

respondent No. 3 stating that the applicant is not entitled for appointment on compassionate ground in view of the Government Resolution dated 23.8.1996, as she is a married daughter of deceased employee Narhari N. Joshi. The said communication was already communicated to the applicant by respondent No. 3. Thereafter, the applicant again filed an application claiming appointment on compassionate ground in view of the Government Resolution dated 26.2.2013, but her claim came to be rejected by the letter dated 3.8.2013. Thereafter, the applicant filed another representation dated 30.8.2014. Respondent No. 4 vide letter dated 19th September, 2014 informed her on the basis of earlier communication issued by the respondents dated 3.8.2013 that she is not entitled to get appointment on compassionate ground. It is their contention that the application of the applicant has been rejected, considering the provisions contained in the G.R. dated 23.8.1996 and, therefore, there is no illegality. Therefore, they prayed to reject the present Original Application.

6. I have heard Shri B.S. Kudale, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed on behalf of the respondents. I have also perused the documents placed by both the sides.

7. Admittedly, deceased Narhari Narayan Joshi was father of the present applicant. He was serving as Junior Clerk in the office of respondent No. 2 at Hingoli. He died on 25th May, 2010 while in service leaving behind the applicant and his widow viz. Chandrakala Narhari Joshi as legal heirs. Admittedly, son of Narhari Narayan Joshi viz. Nilesh died on 22.11.2008 prior to the death of deceased employee Narhari. There is no dispute about the fact that the marriage of the applicant performed during the life time of Narhari and she is a married daughter of Narhari. Admittedly, after death of Narhari Narayan Joshi, the applicant submitted an application dated 18.5.2011 to the respondents along with required documents for getting appointment on compassionate

ground. She has also submitted consent letter of her mother. Admittedly, the said application came to be rejected by respondent No. 3 and the respondent No. 3 informed the applicant that she is not eligible for appointment on compassionate ground as she is married daughter and the said order has been communicated to her by respondent No. 3 by letter dated 27.6.2011. Admittedly, on 26.2.2013 the Government took decision that married daughter is also eligible for appointment on compassionate ground. Admittedly, thereafter the applicant moved an application dated 8.5.2013 with the respondents claiming appointment on compassionate ground on the basis of the said G.R., but her application came to be rejected, by the respondent No. 1 by communication dated 3.8.2013. Thereafter, again she moved another application dated 30.8.2014, but that application was not considered by the respondents in view of the earlier order passed by them and accordingly she was informed by communication dated 19th September, 2014. The application of the applicant has been rejected initially in the year 2011 on the ground that she was not

eligible to be appointed as she being a married daughter of deceased employee Narhari and there was no provision in the G.R. dated 23.8.1996 in that regard. Her subsequent application has been rejected on the ground that the G.R. dated 26.2.2013 is not applicable in the case of the present applicant as her father died in the year 2010 and the G.R. has no retrospective effect.

8. Learned Advocate for the applicant has submitted that the applicant is legal heir of the deceased employee Narhari. She is a married daughter of deceased employee. Her mother viz. Chandrakala was not able to do work and she has no source of income. Therefore, the applicant applied for getting appointment on compassionate ground. He has submitted that as per clause 3 (a) of the Government Resolution dated 26th October, 1994, the benefit under the scheme was not made available to the married daughters. He has submitted that the clause 3 (a) contained in the G.R. dated 26th October, 1994 was considered by the Hon'ble High Court of Judicature at Bombay in W.P. No. 1284/2011. The Hon'ble High Court

has considered various judgments delivered by the Hon'ble High Courts and Hon'ble Apex Court. While deciding the W.P. No. 1284/2011, the Hon'ble High Court considered the following judgments of Hon'ble Apex Court & Hon'ble High Courts :

1. **SAVITA SAMDEVI AND ANR. VS. UNION OF INDIA AND OTHERS (1996) 2 SCC 380;**
2. **DR. MRS. VIJAYA MANOHAR ARBAT VS. KASHIRAO RAJARAM SAVAI AND ANR. (1987) 2 SCC 278;**
3. **R. JAYMMA VS. KARNATAKA ELECTRICITY BOARD AND ANR. (AIR 1993 I LLJ 587);**
4. **THE STATE OF MAHARASHTRA AND ORS. VS. MEDHA PRASHANT PARKHE (W.P. No. 6056/2010) DECIDED BY HON'BLE HIGH COURT ON 26TH OCTOBER, 2010;**
5. **MANJULA VS. STATE OF KARNATAKA BY ITS SECRETARY, DEPARTMENT OF COOPERATION BANGALORE AND ANR. (2005 (104) FLR 271;**
6. **U. ARULMOZHI VS. THE DIRECTOR OF SCHOOL EDUCATION DECIDED BY HON'BLE MADRAS HIGH COURT (W.P. No. 18916/2004 DECIDED ON 20TH FEBRUARY, 2006 REPORTED IN (2006) 2 LW 324 (MAD) (DB); and other judgments.**

9. In the aforesaid judgment the Hon'ble High Court has placed reliance on the judgment in case of **Savita**

Samdevi & Anr. reported in (1996) 2 SCC 380 (supra); wherein circulars issued by the Railway Board were under challenge.

10. Learned Advocate for the applicant has submitted that considering the observations made by the Hon'ble Apex Court and High Court in various decisions, it is crystal clear that the condition in respect of married daughters were wholly unfair, gender-biased, unreasonable and liable to be struck down under Article 14 of the Constitution. He has submitted that on the basis of the said decision delivered by the Hon'ble High Court in case of **APARNA NARENDRA ZAMBRE & ANR. VS. ASSISTANT SUPERINTENDENT ENGINEER AND OTHERS (W.P. No. 1284/2011)** and the decisions of the Hon'ble Apex Court, the Government has issued the circular dated 26.2.2013 and included married daughters in the category of legal heirs, who can claim appointment on compassionate ground. He has submitted that considering the said aspect the respondents ought to have considered the applications of the applicant afresh and

included her name in the list of eligible candidates to be appointed on compassionate ground, but the respondents had not considered the said aspect and wrongly rejected the application of the applicant. Therefore, he prayed to quash the impugned orders dated 27.6.2011 and 3.8.2013 and to direct the respondents to consider the claim of the applicant afresh.

11. Learned Presenting Officer has submitted that the father of the applicant viz. Narhari died on 25th May, 2010 while he was in service leaving behind the applicant and his widow as his legal heirs. He has submitted that the applicant submitted the application for appointment on compassionate ground on 18.5.2011. At that time there is no provision in the G.R. dated 26th October, 1994, as well as, G.R. dated 23.8.1996 thereby making the married daughters eligible for the appointment on compassionate ground. As per the provisions then prevailing in the GRs only unmarried daughter is eligible heir for claiming appointment on compassionate ground. Therefore, her application came to be rejected vide communication dated

27.6.2011. Thereafter, on 26.2.2013 the Government issued the Resolution thereby included the married daughter in the list of the heirs, who can be appointed on compassionate ground. Thereafter, the applicant moved another application for appointment on compassionate ground. The said G.R. came into the force with prospective effect and it has no retrospective effect. Therefore, the applicant is not eligible to claim appointment on compassionate ground on the basis of the G.R. dated 26.2.2013. At the time of death of Narahari, the G.R. dated 26.2.2013 was not existence. Therefore, her application came to be rejected. He has submitted that as there are no provisions to give appointment to married daughters on compassionate ground in the year 2010 her application has rightly been rejected by the respondents. There is no illegality therein and, therefore, he prayed to reject the present Original Application.

12. On perusal of the record it reveals that when the first application was moved by the applicant dated 18.5.2011, there is no provision in the G.Rs. dated 26th October,

1994, as well as, 23.8.1996 to appoint the married daughter on compassionate ground and, therefore, her application dated 18.5.2011 came to be rejected by the communication dated 27.6.2011. No doubt in case of **APARNA NARENDRA ZAMBRE & ANR. (W.P. No. 1284/2011) decided on 1.8.2011 (supra)**, the Hon'ble High Court of Judicature Bombay has considered the issue as to whether the provisions contained in clause No. 3 (a) of the G.R. dated 26th October, 1994 restricting the concession only to an unmarried daughter is *ultra vires* to the Constitution. While dealing with the said aspect the Hon'ble High Court referred and relied on the decision in case of **SAVITA SAMDEVI AND ANR. VS. UNION OF INDIA AND OTHERS (1996) 2 SCC 380** and observed that the Hon'ble Apex Court in the above said judgment has observed that condition in respect of married daughter incorporated in the circular issued by the Railway Board were wholly unfair, gender-biased, unreasonable and liable to be struck down under Article 14 of the Constitution.

13. On the basis of the said decision and other decisions of the Hon'ble Apex Court and Hon'ble High Court the Government issued G.R. dated 26.2.2013 and thereby declared the married daughter as legal heir to be appointed on compassionate ground.

14. The record shows that the respondents had not considered the decision of the Hon'ble High Court, as well as, Hon'ble Apex Court as cited above while deciding the subsequent application dated 8.5.2013 and 30.8.2014 filed by the applicant. No doubt in the year 2011 when the applicant filed first application there is no provision in the GRs making married daughter eligible for the appointment on compassionate ground. However, in the year 2013 the Government issued G.R. and declared married women as legal heir, who can claim appointment on compassionate ground. The respondents ought to have considered applications of the applicant dated 8.5.2013 and 30.8.2014 independently in view of the G.R. dated 26.2.2013. The respondents ought to have considered the fact that the applicant was eligible to apply as married

daughter of deceased employee Narhari in view of the G.R. dated 26.2.2013. The respondents ought to have considered the observations of the Hon'ble High Court in case of **APARNA NARENDRA ZAMBRE & ANR. (W.P. No. 1284/2011) (supra)** and Hon'ble Apex Court in the above cited decisions on the basis of which the Govt. issued the G.R. on 26.2.2013 by which married daughter is also made eligible for appointment on compassionate ground. The respondents ought to have considered the aspects while taking decision regarding eligibility of the applicant, who is married daughter of the deceased employee Narhari as per the rules and provisions, but the respondents simply rejected the application of the applicant dated 30.8.2014 on the ground that earlier application of the applicant was rejected and she was not eligible for appointment on compassionate ground. Not only this, but the respondents have not been considered the judicial pronouncements and ratio laid down by the Hon'ble High Court and Hon'ble Apex Court as regards rights of the married daughter as heir of deceased employee Shri Narhari while issuing the communication dated

27.6.2011. Therefore, in my opinion the said communications dated 27.6.2011 and 3.8.2013 rejecting the claim of the applicant merely on the ground that she was not eligible as she being a married daughter of deceased Narhari, are not legal one. Therefore, the same requires to be quashed and set aside.

15. In view of this, in my opinion, it is just to direct the respondents to take appropriate afresh decision as per the rules and the applications submitted by the applicant in view of the decisions rendered by the Hon'ble High Court in case of **APARNA NARENDRA ZAMBRE & ANR. (W.P. No. 1284/2011) (supra)** and other decisions of Hon'ble High Court and Hon'ble Apex Court. Consequently, the present Original Application deserves to be allowed.

16. In view of the above discussions in foregoing paragraphs, the present Original Application is allowed and impugned communications dated 27.6.2011 and 3.8.2013 issued by respondent Nos. 4 and 1 respectively are quashed and set aside and the respondents are directed to consider the claim of the applicant for

appointment on compassionate ground afresh in view of the provisions of GRs issued by the Government from time to time and in view of the decision rendered by the Hon'ble High Court in case of **APARNA NARENDRA ZAMBRE & ANR. (W.P. No. 1284/2011) (supra)** and decisions of the Hon'ble Apex Court in that regard.

17. The respondents are directed to take decision on the application of the applicant afresh within a period of six months from the date of this order and communicate the decision in writing to the applicant. There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

Date : 29th June, 2018

O.A.NO. 322-2016 – compassionate appointment