

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 232 OF 2023

(Subject:- Compassionate Appointment)

DISTRICT:-LATUR

Anjali W/o Balaji Narhare,)	
Age:- 23 Years, Occ: Household,)	
R/o Wadhona (kh.),)	
Tal. Udgir, Dist. Latur.))APPLICANT

V E R S U S

1. The State of Maharashtra)	
Through its Secretary,)	
Home Department,)	
Mantralaya, Mumbai -32.)	
2. The Superintendent of Police,)	
Latur, Dist. Latur.)	
3. Sundarbai W/o Ram Narhare,)	
Age: 55 Years, Occu: Household,)	
R/o Haibatpur, Tal. Udgir,)	
Dist. Latur.))RESPONDENTS

APPEARANCE	:	Shri K.B. Bhise, learned counsel holding for Shri V.D. Gunale, learned counsel for the applicant.
	:	Shri D.M. Hange, learned Presenting Officer for the respondent Nos. 1 & 2.
	:	Shri K.P. Rodge, learned counsel for respondent No.3.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 12.04.2024.

PRONOUNCED ON : 10.06.2024.

ORDER

Heard Shri K.B. Bhise, learned counsel holding for Shri V.D. Gunale, learned counsel for the applicant, Shri D.M. Hange, learned Presenting Officer for the respondent Nos. 1 & 2 and Shri K.P. Rodge, learned counsel for respondent No.3 finally with consent at the admission stage.

2. By filing this Original Application the applicant is seeking direction to the respondent No.2 to appoint the applicant on compassionate ground on any suitable post in place of her deceased husband Balaji Narhare.

3. Brief facts giving arise to this Original Application are as follows:-

(i) The husband of the applicant namely Balaji Ramrao Narhare was in service as a Police Constable at Police Headquarter, Babhalgaon, Tal. and Dist. Latur since 2006. The applicant got married with the said Balaji Ramrao Narhare in the year 2015. The husband of the applicant died on 29.12.2015 while he was in service. The applicant and her mother-in-law namely Sundarabai Ramrao Narhare are only the legal heirs of her deceased husband Balaji Narhare.

(ii) It is the case of the applicant that after the death of her husband, she has filed an application for appointment on compassionate ground and along with the said application she has submitted the certificate of her educational qualification, certificate of heirship issued by Civil Judge, Junior Division, Udgir, death certificate and certificate of residence (Exh 'B'). On receipt of the said application vide communication dated 24.11.2016, the applicant was informed by the department to submit the notarized affidavit to the effect that after getting the service on compassionate ground the applicant will maintain her old age mother-in-law and also the consent letter of members of the family. The similar communication was also issued by the respondent No.2 on 31.12.2020 (Exh. 'C'). On receipt of the said communication, the applicant has submitted her notarized affidavit in the office of the respondent No.2 stating therein that she herself and her old age mother-in-law are only the legal heirs of her deceased husband Balaji Narhare. The said mother-in-law i.e. the respondent No.3 herein is having two other major sons and the applicant is not having any source of income and if she is appointed on compassionate ground, she is ready to maintain her old age mother-in-law.

(iii) It is the further case of the applicant that by communication dated 31.12.2020, the applicant was asked to produce the consent letter of the members of the family. The applicant is widow and pursuing the authorities for appointment on compassionate ground since from the date of death of her husband. She has submitted requisite documents. She has no independent source of income. She is possessing the educational qualification of 12th standard. The applicant has, therefore, filed the Writ Petition No. 7527/2021 before the Hon'ble High Court of Bombay, Bench at Aurangabad. However, by order dated 17.10.2022, the Hon'ble High Court of Bombay, Bench at Aurangabad has disposed of the said Writ Petition as withdrawn with liberty to the applicant to approach this Tribunal for the relief claimed. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant and the respondent No.3 are only the legal heirs of her deceased husband Balaji Narhare, who was working as Police Constable and died on 29.12.2015 in harness. The age of the respondent No.3 is 60 years. She is not eligible to be appointed on compassionate ground. Learned counsel for the applicant submits that the respondent Nos. 1 and 2 are

asking no objection certificate of respondent No.3, which is not required as no other family members are eligible to be appointed on compassionate ground.

5. Learned counsel for the applicant submits that in terms of clause No. 9 (a) of the Government Resolution dated 21.09.2017, the appointment on compassionate ground is to be given to any one eligible person of the family of deceased employee and therefore, no objection is required to be submitted. In the present case, except the applicant no other family persons are eligible to be appointed on compassionate ground.

6. Learned counsel for the applicant submits that the applicant has no source of income to survive. After the death of her husband, the applicant has filed Regular Civil Suit No. 144/2018 before the learned Civil Judge, Senior Division, Udgir, which was decreed on 25.01.2023. Learned counsel for the applicant submits that the applicant was thrown out from the house of her husband and there was denial by the respondent No.3 of her right to succeed to the property of her husband. Thus the applicant was constrained to institute the said suit to enforce her legitimate claim in respect of property. The said property is a small piece of land and the learned

Civil Judge, Senior Division, Udgir has allowed her 1/10th share of the property. However, till today, no partition has been effected by the Competent Authority and the entire property is in the custody of respondent No.3 and other family members. Thus, the applicant has no source of income for her livelihood.

7. Learned counsel for the applicant submits that admittedly ½ of the pensionary benefit has been given to the respondent No.3. The respondent No.3 is unnecessarily raising objection against the applicant by filing application before the respondent No.2. The said application is filed with an intention to deprive the applicant from getting appointment on compassionate ground. Learned counsel for the applicant thus submits that the Original Application deserves to be allowed.

8. Learned counsel for the applicant placed his reliance on the following cases:-

- (i) **Writ Petition No. 7648/2015** in a case of **Seema Kausar D/o. Mohammad Nasiruddin Vs. the State of Maharashtra & Ors.** decided on 03.04.2018
- (ii) **Original Application No. 1234 of 2023** in a case of **Kum. Kimaya Vinod Chavan Vs. the Director General of Police & Ors.** decided on 14.12.2023.

9. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 & 2 submits that the respondents have informed the applicant to submit the notarized affidavit to the effect that after getting the appointment on compassionate ground she will maintain her old age mother-in-law i.e. the respondent No.3 herein and the notarized consent letter of family members as per the guidelines issued by the State Government vide G.R. dated 21.09.2017. The applicant, however, has not submitted the consent form as the respondent No.3 has not given written consent to the applicant. There is no default on the part of respondent authorities.

10. Learned Presenting Officer submits that the respondent No.3 is mother-in-law of the applicant and as per the Rules, the applicant needs consent of her mother-in-law for her appointment on compassionate ground. On the other hand, the respondent No.3 has submitted an application to the respondent No.2 and taken objection for giving appointment to the applicant on compassionate ground.

11. Learned Presenting Officer submits that the applicant has only submitted an undertaking on notarized affidavit as per Rule 8 of the State Government Resolution,

but not submitted the consent form of the members of the family as per Rule 9 of the guidelines issued by the State Government vide G.R. dated 21.09.2017. Learned Presenting Officer submits that the applicant being a wife of deceased Balaji Narhare has got first right to get the appointment on compassionate ground, but the respondent No. 3 has taken objection for her appointment. Learned Presenting Officer submits that the applicant has not complied with the same till today. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

12. Learned counsel for respondent No.3 submits that the applicant has received an amount to the tune of Rs. 78,978/- towards Leave Encashment earned by deceased Balaji Narhare and also an amount of Rs. 3,98,428/- towards Ex-gratia amount. Thus the contention of the applicant that she is facing starvation is baseless.

13. Learned counsel for respondent No.3 submits that though the applicant has filed an application seeking appointment on compassionate ground, however, she has filed a false affidavit that after getting the appointment on compassionate ground, she will maintain her mother-in-law

(the present respondent No.3). Learned counsel for the respondent No.3 submits that the applicant on one hand submits that she would maintain her mother-in-law, however at the same time, the applicant had filed suit for partition and separate possession in the Court of Civil Judge, Junior Division at Udgir bearing R.C.S. No. 91 of 2017 (New R.C.S. No. 144/2018). The said Suit came to be decreed by judgment and order dated 25.01.2023 in favour of the applicant. Learned counsel for the respondent No.3 submits that if the applicant is genuinely concerned with respondent No.3, she would not have instituted a suit for partition. However, the applicant has not produced the consent letter which is mandatory as per Rule 9 of the G.R. dated 21.09.2017. In fact, the respondent No.3 vide her representation dated 27.04.2018 made to the respondent No.2 requested to appoint one of her sons on compassionate basis in place of her deceased son Balaji. Further, vide representations dated 23.02.2021 and 11.01.2023, the respondent No.3 has requested to respondent No.2 not to appoint the applicant since she has instituted a suit for partition against her and her family members and also on the ground that the applicant is not maintaining her.

14. Learned counsel for the respondent No.3 submits that the consent of surviving parents is mandatory for compassionate appointment. Therefore, only submitting an affidavit stating that the applicant would maintain her mother-in-law in itself is not sufficient unless accompanied by the consent letter by the surviving legal heirs/parents of the deceased employees.

15. In Rule 9 of the said G.R. dated 21.09.2017, it is specifically mentioned that while seeking compassionate appointment, the submission of the consent letter is obligatory. Therefore, non-compliance of the said clause by the applicant is fatal and she is not entitled for compassionate appointment. Learned counsel for the respondent No.3 submits that the Original Application is thus liable to be rejected.

16. I have carefully perused the pleadings of the parties to the Original Application and the annexures submitted along with the affidavits. In the context of the rival submissions about the compassionate appointment as claimed by the applicant, Clause Nos. 4, 8 and 9 of the G.R. dated 21.09.2017 necessary to be reproduced hereinbelow

which are relevant for present discussion. Clause Nos. 4, 8 and 9 are reproduced as follows:-

“(४) अनुकंपा नियुक्तीसाठी पात्र कुटुंबिय:-

(अ) अनुकंपा तत्वावरील नियुक्तीसाठी खालील नमूद केलेले नातेवाईक पात्र राहतील व त्यापैकी एका पात्र नातेवाईकास नियुक्ती अनुज्ञेय राहिल.

(१) पती/पत्नी,

(२) मुलगा/ मुलगी (अविवाहीत/ विवाहीत), मृत्युपूर्वी कायदेशीररित्या दत्तक घेतलेला मुलगा/मुलगी (अविवाहीत/विवाहीत)

(३) दिवंगत शासकीय कर्मचाऱ्याचा मुलगा ह्यात नसेल किंवा तो नियुक्तीसाठी पात्र नसेल तर त्याची सून

(४) घटस्फोटित मुलगी किंवा बहिण, परित्यक्ता मुलगी किंवा बहीण, विधवा मुलगी किंवा बहीण,

(५) केवळ दिवंगत अविवाहीत शासकीय कर्मचाऱ्यांच्या बाबतीत त्याच्यावर सर्वस्वी अवलंबून असणारा भाऊ किंवा बहीण (शासन निर्णय, दि. २६.१०.१९९४ व दि. १७.११.२०१६).

(आ) मृत अधिकारी / कर्मचाऱ्यांच्या पति / पत्नी ने कोणाची अनुकंपा तत्वावर नियुक्ती करावी याबाबत नामांकन देणे आवश्यक राहिल. मृत अधिकारी / कर्मचाऱ्यांचे पती / पत्नी ह्यात नसल्यास त्याच्या / तिच्या सर्व पात्र कुटुंबियांनी एकत्रित येऊन कोणाची नियुक्ती करावी याबाबत नामांकन करावे. (शासन निर्णय, दि. १७.०७.२००७)

(८) कुटुंबातील अन्य सदस्यांचा सांभाळ करण्याबाबतचे प्रतिज्ञापत्र:-

(अ) अनुकंपा तत्वावर नियुक्ती देण्यापूर्वी संबंधितांकडून कुटुंबातील अन्य व्यक्तींचा सांभाळ करण्याबाबत प्रतिज्ञापत्र घेण्यात यावे. (शासन निर्णय, दि. २३.०८.१९९६)

(आ) अनुकंपा तत्वावर नियुक्ती देण्यापूर्वी संबंधितांकडून दिवंगत कर्मचाऱ्यावर अवलंबून असलेल्या कुटुंबातील अन्य व्यक्तींचा सांभाळ करण्याबाबत प्रतिज्ञापत्र घेण्यात यावे. भविष्यामध्ये सदर प्रतिज्ञापत्राचे उल्लंघन झाल्याबाबतची तक्रार संबंधित कुटुंबातील सदस्यांनी केल्यास सदर तक्रारीची चौकशी संबंधित नियुक्ती प्राधिकारी / शिस्तभंगविषयक प्राधिकार्याने करावी. चौकशीअंती अनुकंपा नियुक्तीधारकाने प्रतिज्ञापत्राचे उल्लंघन केल्याचे निष्पन्न झाल्यास त्याला सेवेतून काढून टाकण्याची देखील शिक्षा देता येईल. (शासन निर्णय, दि. १७.११.२०१६)

(९) कुटुंबातील इतर सदस्यांचे संमतीपत्र:-

अ) अनुकंपा तत्वावर नियुक्ती ही कुटुंबातील एकाच पात्र नातेवाईकास अनुज्ञेय असल्याने (शासन निर्णय, दि. २६.१०.१९९४) कुटुंबातील इतर सदस्यांचे ना हरकत प्रमाणपत्र सादर करणे आवश्यक आहे.

आ) ज्या शासकीय कर्मचाऱ्यांना वैयक्तिक कायद्यानुसार एकापेक्षा जास्त लष्ण करण्यास प्रतिबंध नसेल अशा कर्मचाऱ्यांच्या एकापेक्षा जास्त पत्नी ह्यात असल्यास, ज्या पत्नीला किंवा तिच्या मुलाला/मुलीला अनुकंपा तत्वावर नियुक्ती द्यायची आहे त्या व्यतिरिक्त अन्य पत्नीचे देखील ना हरकत प्रमाणपत्र घेणे आवश्यक आहे. (शासन निर्णय, दि. २३.०८.१९९६).”

17. It is true that in terms of the provisions of Hindu Succession Act, 1956, the mother along with the widow would be Class-I legal heir. In view of same, the respondent No.3 is also legal heir of the deceased employee Balaji Narhare along with the applicant who is widow. In terms of clause No. 4 of the aforesaid G.R. dated 21.09.2017, the eligible persons of the family of the deceased employee are specified for appointment on compassionate ground. The respondent No. 3 (i.e. mother of the deceased employee) is not a person eligible to be appointed on compassionate ground. In terms of Clause No. 8 of the aforesaid G.R. dated 21.09.2017, if compassionate appointment is sought by eligible person of the family of the deceased employee, then he/she is required to file an affidavit stating therein that in case compassionate appointment is given, he/she would maintain the other family members. However, the said affidavit is also required to be given to maintain the family members who were dependent upon the income of the deceased Government employee. In the instant case as per annexures particularly title cause of R.C.S. No. 91/2017, not only husband of the respondent No.3 is alive and participating to the suit but there are two major

sons who are above the age of 25 years as on the date of institution of the suit in the year 2017.

18. It is difficult to accept that all the family members were dependent on the earning of the deceased Government employee at the time of his death. However, suffice to say that despite the said fact, the applicant has filed an affidavit to maintain the respondent No.3 (i.e. the mother of the deceased Government servant) in future.

19. In the context of the present discussion, Rule 9 of the aforesaid G.R. dated 21.09.2017 plays important role. In terms of Rule 9 (a) of G.R. dated 21.09.2017, the compassionate appointment can be given to only one of the eligible family members and in view of same, 'No Objection' of other family members is required. In view of said reference in clause No. 9(a) about the eligible family members, the unequivocal meaning thereby is that the other eligible family members to be appointed on compassionate ground are required to give no objection certificate. There is marked difference between clause No.8 and clause No.9. In terms of clause No. 8 eligible family member seeking appointment on compassionate ground is required to file an affidavit to maintain other family members who were dependent on the

earning of the deceased employee at the time of his death. So far as Clause No. 9 (a) is concerned, the word 'No Objection' has been used indicating that if there are more than one person in the family of the deceased Government employee eligible to be appointed on compassionate ground, then the person who is seeking appointment on compassionate ground is required to file 'No objection Certificate' of the other eligible family members. In the present case, except the applicant no other members of the family of the deceased employee Balaji Narhare is eligible to be appointed on compassionate ground in terms of clause No. 4 of the said G.R. dated 21.09.2017. In view of same, there is a sufficient compliance of clause No. 9 (a) of the said G.R. dated 21.09.2017 and the applicant need not submit the No Objections of the other members of the family since the applicant is the only eligible person to be appointed on compassionate ground.

20. Furthermore, the respondent No.3 i.e. mother of deceased Government employee being a legal heir of deceased Government employee has received 50% of the retiral benefits. There are other family members including two other major sons and husband of the respondent No.3 to take care of her. On the other hand, the applicant herein had to fight

to get her legitimate share in the property to the extent of share of her deceased husband by instituting the suit for partition and separate possession. The respondent No.3 and the other family members strongly contested the said suit and thus declined her right in the property to the extent of share of her deceased husband. However, on perusal of the decree passed by the Civil Court it appears that the applicant has got only 1/10th share in the property which is only 1H.14R agricultural land bearing Gat No.93, Gat No. 131 ad-measuring 2R and house bearing Grampanchayat No. 136 ad-measuring east-west 32 feet and south-north 58 feet.

21. Admittedly, the applicant did not get separate possession of the said property. It is difficult to predict as to when the applicant would get her separate possession as determined by the Civil Court when the other family members are at liberty to file first appeal and second appeal as the case may be.

22. The respondent No.3 had not only filed application before the respondent No.2 authority raising an objection for giving an appointment to the applicant on compassionate ground but also suggested the authorities to appoint her

another son on compassionate ground. However, in terms of clause No. 4 of the G.R. dated 21.09.2017 issued by the State Government, other two sons of respondent No.3 are not eligible persons to be appointed on compassionate ground. It thus appears that just for the sake of opposition, the respondent No.3 and since the relation between the applicant on one side and other family members have become strained, filed an application before the respondent authorities raising objection for an appointment of the applicant on compassionate ground. In my considered opinion, the respondent No.3 and other family members cannot use and mould the law at their whims by misinterpreting the provisions of G.R. dated 21.09.2017 to settle their personal score against the applicant.

23. In view of above discussion, the Original Application deserves to be allowed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby allowed.
- (B) The respondent No.2 is hereby directed to enlist the name of the applicant in the waiting list of the

eligible candidates maintained for compassionate appointment and her seniority in the said wait list shall be considered from the date of filing of her application i.e. from 23.08.2016.

- (C) The respondent No.2 is hereby directed to appoint the applicant on compassionate ground on any suitable post in place of her deceased husband namely Balaji Ramrao Narhare subject to vacancy of the post within the period of three months as far as possible from the date of this order.
- (D) In the circumstances, there shall be no order as to costs.
- (E) The Original Application is accordingly disposed off.

MEMBER (J)

Place:-Aurangabad

Date : 10.06.2024

SAS O.A. 232/2023(S.B.) Compassionate Appointment