

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 736 OF 2023**

**DISTRICT : AURANGABAD**

**Ushabai Prakash Tupe,** )  
Age : 28 years, Occu. : Household, )  
R/o Savitri Nagar, Chikalthana, Aurangabad.)

.... **APPLICANT**

**V E R S U S**

**1. The State of Maharashtra,** )  
Through its Principal Secretary, )  
Home Department, New Administrative )  
Building, 9<sup>th</sup> Floor, Mantralaya, )  
Mumbai 400 032. )

**2. Superintendent of Police,** )  
Office of Superintendent of Police, )  
T.V. Centre Road, Cidco, N-10, )  
Aurangabad. )

**3. Thakubai Arjun Tupe,** )  
Age : 74 years, Occu.: Household, )  
R/o. Rajiv Gandhi Nagar, Khultabad, )  
Tq. Khultabad, Dist. Chh. Sambhajinagar.)

... **RESPONDENTS**

**APPEARANCE** : Shri Akshay S. Tilve, Counsel for Applicant.

: Smt. Resha Deshmukh, Presenting Officer for  
respondent authorities.

: Shri Deelip K. Khivesara, counsel for  
respondent No. 3 (**Absent**).

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

**DATE** : 14.08.2024

**ORDER**

1. Heard Shri Akshay S. Tilve, learned counsel appearing for the applicant and Smt. Resha Deshmukh, learned Presenting Officer appearing for respondent authorities. Shri Deelip K. Khivesara, learned counsel for respondent No. 3, is **absent**.

2. The present Original Application is disposed of finally with the consent of both the parties at admission stage.

3. By filing the present Original Application, the applicant is seeking directions to the respondent authorities more particularly respondent No. 2 to appoint the applicant on compassionate ground as per her educational qualification and also to decide representation dated 22.10.2021 preferred by the applicant for extending appointment on compassionate ground without insisting for consent letter/No Objection Certificate from the mother of deceased Government employee.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

- (i) The husband of the applicant viz. Prakash Arjun Tupe was serving as Police Constable with Maharashtra

Police and posted in the office of Superintendent of Police, Aurangabad. On 10.07.2021, husband of the applicant died while in harness. Copy of the death certificate dated 23.08.2021 is marked as Annexure A-1. The family of the applicant was wholly dependent on the income earned by deceased Prakash Tupe by way of his salary and due to his untimely death, the applicant is on the verge of starvation. Thus, the applicant had preferred representation dated 22.10.2021 (Annexure A-2) along with application to the respondent No. 2 for considering her candidature for the post of Police Constable, on which her husband was working on the basis of compassionate appointment. The applicant has also submitted heir-ship certificate (Annexure A-3) to respondent No. 2. The applicant and mother of deceased Government servant aged about 71 years old are the only legal heirs of deceased Government servant.

(ii) It is the further case of applicant that on the basis of her application, name of the applicant was incorporated in the waiting list maintained for appointment on compassionate ground for the candidates at Sr. No. 15 and the applicant was accordingly called for submission and

verification of essential documents vide letter dated 16.06.2023 (Annexure A-4). By representations dated 23.06.2023 and 30.06.2023 (Annexure A-5 colly.) respectively, the applicant has informed to respondent No. 2 explaining her inability to produce consent letter / No Objection Certificate of mother of deceased i.e. mother-in-law, as she is not cooperating with the applicant and does not want the applicant to have the job. After taking into consideration representation dated 10.07.2023 preferred by the applicant, the respondent No. 2 vide its letter dated 12.07.2023 (Annexure A-9) was pleased to reject the same on the ground that the applicant had failed to produce consent letter/NOC from the other family members as prescribed in Scheduled-A para No. 9 of G.R. dated 21.09.2017. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant is well qualified. She has completed her 12<sup>th</sup> HSC Board and pursuing her further education. She has also completed MSCIT course and having a good knowledge of computer. Thus, the educational qualifications held by the applicant are sufficient to grant her appointment on compassionate ground.

6. Learned counsel for the applicant submits that in view of the consolidated G.R. dated 21.09.2017, issued by the General Administration Department, particularly clause Nos. 3 and 4, the person can be appointed on compassionate basis as per the qualification criteria mentioned in the service rules for the said post. Thus, the applicant is eligible for appointment on the post of Police Constable in any establishment governed by the respondents.

7. Learned counsel for the applicant submits that the applicant had already filed affidavit dated 22.10.2021 stating therein that she is ready to take care of mother of deceased i.e. mother-in-law of the applicant and she has also deposed the same before the respondent No. 2. Accordingly her statement was recorded by respondent No. 2 on 29.05.2023. Learned counsel submits that NOC or consent letter from remaining members shall not become a tool to harass the eligible candidate and the same shall not be considered, if the remaining family members are not completely dependent on the income of the deceased Government servant.

8. Learned counsel for the applicant submits that mother of deceased Government employee cannot come under

the dependents as mentioned in the G.R. dated 21.09.2017. Even otherwise, mother-in-law of the applicant i.e. respondent No. 3 herein is residing with her other sons and they are taking care of her. She is not even dependent upon the applicant. Learned counsel for the applicant submits that present Original Application deserves to be allowed.

9. Learned counsel for the applicant in order to substantiate his contentions placed his reliance on in a case of **Mamoni Gorai v. State of Jharkhand, reported in AIR Online 2021 Jha 690.**

10. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that the applicant was in waiting list at Sr. No. 15. The applicant was also called for submission and verification of essential documents vide letter dated 16.06.2023. Learned P.O. submits that the mother-in-law i.e. respondent No. 3 herein did not give consent letter / No Objection Certificate to the applicant to receive the appointment on compassionate ground. Learned P.O. submits that by representation dated 23.06.2023, the applicant has sought time of two months to complete the document procedure, as the mother-in-law viz. Thakubai Arjun Tupe is 71 years old

receiving father-in-law's pension is not eligible for recruitment as Police Constable.

11. Learned Presenting Officer submits that the respondent by letter dated 12.07.2023 directed the applicant to produce consent letter of members of the family of the applicant in terms of clause 9 of G.R. dated 21.09.2017. There is no compliance of the same. Learned P.O. submits that as per Appendix-A of clause-(9) of the said G.R. dated 21.09.2017, the compassionate appointment is admissible to a single eligible relative of the family. It is therefore, necessary to submit no objection certificate of other family members of the family. Until all the documents required for compassionate appointment are received from the candidates, is/her name cannot be included in the waiting list on the day when complete documents are received. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

12. Though the respondent No. 3 is duly served and represented by Shri Deelip L. Khivesare, however, neither learned counsel remained present at the time of hearing of the O.A. nor respondent No. 3 has filed affidavit in reply.

13. Though name of the applicant was incorporated in the waiting list at Sr. No. 15, however, the respondents have refused her to give appointment on compassionate ground solely for the reason that there is no compliance of para No. 9 of Appendix-A of G.R. dated 21.09.2017. In view of the same, para Nos. 4, 8 & 9 of Appendix –A of G.R. dated 21.09.2017, which are relevant for the present discussion, are reproduced herein below :-

**“(४) अनुकंपा नियुक्तीसाठी पात्र कुटुंबिय:-**

(अ) अनुकंपा तत्वावरील नियुक्तीसाठी खालील नमूद केलेले नातेवाईक पात्र राहतील व त्यांपैकी 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 हयात 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 हयात 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 प्राधिकाऱ्याने 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 लग्न करण्यास प्रतिबंध नसेल अशा कर्मचाऱ्याच्या एकापेक्षा जास्त पत्नी हयात 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).”

14. In view of above, para No. 4 of Appendix-A of G.R. dated 21.09.2017, the applicant, who is wife of deceased Government employee is eligible to be appointed on compassionate ground, whereas the mother of deceased Government servant i.e. mother-in-law of the applicant is not eligible for appointment on compassionate ground. In view of para No. 9 of Appendix-A of G.R. dated 21.09.2021 as reproduced hereinabove, if there are more than one eligible candidate in the family to be appointed on compassionate ground and since the compassionate appointment can be given to only one of the members of the family, “No Objection” of such eligible family members is required. In terms of para No. 8 of Appendix-A of G.R. dated 21.09.2021, it is however incumbent upon the eligible candidate to file an affidavit before appointment on compassionate ground that he / she maintain the other family member, who were dependent upon the income of deceased Government employee. In view of para No. 9 of the aforesaid

G.R., since the mother of deceased Government employee is not one of the eligible members of the family to be appointed on compassionate ground, there is no question of placing no objection certificate before the authorities concerned. Further despite the fact that respondent No. 3, who is mother-in-law of the applicant, is getting family pension of her deceased husband, she cannot be said to be dependent wholly on the income of her deceased son. The applicant has already filed an affidavit before the authorities concerned that she would take care of her mother-in-law in future. In view of the same, there is a sufficient compliance of clause Nos. 4 & 8 read with clause No. 9 of Appendix-A of G.R. dated 21.09.2017.

15. In view of the discussions as above, the present Original Application deserves to be allowed. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby allowed.
- (ii) Communication dated 12.09.2023 (Annexure A-2) issued by respondent No. 2 is hereby quashed and set aside.
- (iii) The respondent authorities are hereby directed to appoint the applicant on compassionate ground as per her

educational qualification by observing her previous seniority in the waiting list.

- (iv) The respondent authorities are hereby further directed to appoint the applicant on compassionate ground without insisting for consent letter / no objection certificate from the mother of deceased Government employee i.e. respondent No. 3 viz. Thakubai Arjun Tupe.
- (v) In the circumstances there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.

**PLACE : Aurangabad.**  
**DATE : 14.08.2024**

**(Justice V.K. Jadhav)**  
**Member (J)**