

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 687 OF 2014

DIST. : DHULE

Asha d/o Somnath Masole @
 Asha w/o Santosh Patil,
 Age. 38 years, Occ. Nil,
 R/o A.P. Sadgaon,
 Tq. & Dist. Dhule.

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APPLICANT

V E R S U S

(1) The State of Maharashtra,
 Through Secretary,
 General Administration Department,
 Mantralaya, Mumbai.
 (Copy to be served on C.P.O.)

(2) The Director General of Police,
 Training and Special Units,
 Maharashtra State, Mumbai,
 Tq. And Dist. Mumbai.

(3) The Superintendent of Police,
 Dhule, Tq. And Dist. Dhule.

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RESPONDENTS

APPEARANCE : Shri R.J. Godbole, learned Counsel for the
 Applicants.
 : Smt. Priya R. Bharaswadkar, learned
 Presenting Officer for the Respondents.

CORAM : Hon'Ble Shri J.D. Kulkarni, Member (J)

JUDGEMENT

{Delivered on 29th August, 2016}

1. The applicant Asha d/o Somnath Masole @ Asha w/o Santosh Patil has claimed that the communication issued by res. No. 3 dated 20.6.2014 as per the direction of res. No. 1's letter dated 7.6.2014 be quashed and set aside and the respondents be directed to appoint her on compassionate ground. The applicant is also claiming a direction to res. Nos. 1 to 3 to appoint her on compassionate ground in the light of judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **APARNA NARENDRA ZAMBRE nee - APARNA MOHAN KULKARNI & ORS. VS. ASSISTANT SUPERINTENDENT ENGINEER, KRISHNA KOYNA UPSA SINCHAN PROJECT BOARD & ORS.** in **writ petition No. 1284/2011** as referred by Hon'ble High Court in the writ petition no. 9612/2012 dated 20.3.2016 filed by the applicant against the order of dismissal passed by this Tribunal in M.A.no. 347/2011 with O.A. St. no. 1181/2011.

2. The applicant is a daughter of deceased employee Shri Somath Masole. He was serving as a Police Havaldar in respondents' department and was serving at Akkalkuwa Police

Station. While on duty, he met with an accident and succumbed to the injury and died. The applicant is the only daughter of deceased.

3. The applicant applied for the compassionate appointment mentioning that she is unmarried daughter of deceased, but subsequently she tied the nuptial knot on 15.4.2006 and her application for compassionate appointment was under process. On 16.2.2010 the respondents informed her that only unmarried daughters are eligible for compassionate appointment in view of G.R. dated 26.10.1994.

4. Being aggrieved by the said communication the applicant filed O.A. St. 1181/2011 along with M.A. No. 347/2011 for condonation of delay in filing O.A. Her application was, however, dismissed and the delay was not condoned by the Tribunal. However, aggrieved by the decision of dismissal of O.A. St. 1181/2011 and M.A. No. 347/2011, the applicant preferred writ petition no. 9612/2012 before Hon'ble Bombay High Court, Bench at Aurangabad. The said writ petition was allowed. Hon'ble High Court observed that married daughters are entitled for compassionate appointment and directed the respondents to consider her representation as per the ratio laid down by Hon'ble

High Court in **APARNA NARENDRA ZAMBRE nee – APARNA MOHAN KULKARNI & ORS.** (supra). The res. No. 1, however, vide communication dated 20.6.2014 rejected the applicant's claim mentioning that G.R. dated 26.2.2013 is not applicable to the case of married daughters prior to the issuance of said G.R. and, therefore, the applicant has filed this O.A.

5. The Res. No. 3 - the Superintendent of Police, Dhule - and the res. No. 2 – the Director General of Police, Mumbai – filed their separate affidavits in replies. It is stated that the G.R. dated 26.2.2013 is not retrospective and benefit of that G.R. can be given from the date of issuance of the said G.R. It is further stated that the name of the applicant's mother was included in the waitlist of the candidates to be appointed on compassionate ground. The applicant, however, submitted attestation form on 28.9.2008 and claimed that she is unmarried though her marriage was performed on 15.4.2006. The applicant thus submitted false information and, therefore, respondents vide communication dated 15.6.2014 directed the S.P., Dhule regarding registration of criminal case against the applicant for providing false information.

6. The respondents have also given reference of judgment of Hon'ble Apex Court in the case of **SANTOSH KUMAR DUBEY VS. THE STATE OF U.P.**, wherein it is observed that the request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crises occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service."

7. Heard Shri Shri R.J. Godbole, learned Counsel for the Applicants and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents. I have also gone through the affidavit, affidavits in replies filed by the respondents, rejoinder filed by the applicant and also various documents placed on record.

8. According to the learned Counsel for the applicant the impugned order of rejection of claim of the applicant shows that the respondents have not taken into consideration the directions

of Hon'ble High Court and, therefore, the impugned communication is illegal.

9. The material point to be considered in this case is whether the married daughter is entitled to claim compassionate appointment and whether the G.R. dated 26.2.2013 is to be applicable from the date of G.R. or otherwise ?

10. The learned Counsel for the applicant has invited my attention to the judgment dated 20.3.2014 delivered by Hon'ble High Court in writ petition no. 9612/2012. This petition was filed by the applicant being aggrieved by the dismissal of her misc. application No. 347/2011 for condonation of delay and O.A. St. No. 1181/2011. In this case, Hon'ble High Court has quashed and set aside the order passed by this Tribunal and also the communication dated 16.2.2010. Hon'ble High Court has observed as under :-

“7. In the light of above, the judgment and order of the Maharashtra Administrative Tribunal is quashed and set aside. The communication dated 16th February, 2010 at Exh. E page 39 of the compilation of the petition is also quashed and set aside. Office of the Superintendent of Police, Dhule is directed to re-consider the claim of the petitioner for appointment on compassionate ground in the light

of decision of this Court in the case of **Aparna Narendra Zambre** (supra).

It will be open for the parties to put forth their contentions before the concerned authority. We directed the concerned authority to consider the claim of the petitioner afresh, as expeditiously as possible, preferably within four months from today. Petition stands disposed of, accordingly.

Rule is made absolute in above terms with no order as to costs.”

11. The Hon’ble High Court has also observed that in view of the judgment in **APARNA NARENDRA ZAMBRE’S** case, if the daughter got married during her claim for compassionate appointment, it is not an impediment to consider the claim for compassionate appointment. In the said case it was also held that married daughter is entitled to claim appointment on compassionate ground.

12. It seems that the earlier application of the application was rejected vide communication dated 16.2.2010 only on the ground that the applicant was a married daughter and as per the existing G.R., only unmarried daughter was entitled to claim compassionate appointment.

13. The point as to whether the married daughter is entitled to claim compassionate appointment has been settled and it has been observed that the discrimination between married and unmarried daughter for their entitlement is arbitrary and now married or unmarried daughters are entitled to claim compassionate appointment.

14. The learned counsel for the applicant has placed reliance on judgment delivered by the Hon'ble Bombay High Court in Writ Petition No. 1284/2011 in the case of Aparna Narendra Zambre nee- Aparna Mohan Kulkarni & Ors. Vs. Assistant Superintendent Engineer, Krishna-Koyna Ursa Sinchan Project Board & Ors, in which the Hon'ble High Court has observed that the eligibility of the unmarried daughter should be reckoned with reference to the date when she became eligible for consideration and subsequent circumstances of her marriage, cannot be the basis to deny the appointment.

15. As already stated that Hon'ble Bombay High Court in the case of State of Maharashtra & Ors. Vs. Medha Prashant Parkhe in W.P. No. 6056 of 2010 delivered on 26.10.2010 has held that the eligibility criteria for daughter that she should be nominated for being considered for employment on

compassionate ground is discriminatory and arbitrary. It is therefore, clear that the daughter's claim cannot be denied merely because she has married or subsequently she got married.

16. In the judgment of **APARNA NARENDRA ZAMBRE nee - APARNA MOHAN KULKARNI & ORS.** (supra) it has been clearly observed by Hon'ble High Court that eligibility of married daughter refers to the date of making application and not refers to the date of selection.

17. It seems that the Govt. of Maharashtra has issued G.R. dated 26.2.2013 and has taken following decision :-

प्रश्न निर्णय-

दिवंगत राज्य शासकीय कर्मचा-याच्या कुटुंबामध्ये फक्त विवाहित मुलगी हे एकमेव आपत्य असल्यास किंवा त्यांचे कुटुंब फक्त विवाहीत मुलीवर अवलंबून असेल अशा प्रकरणी दिवंगत शासकीय कर्मचा-याची विवाहित मुलगी ही अनुकंपा नियुक्तीसाठी पात्र राहिल.

२) अनुकंपा तत्वावर नियुक्ती देताना त्या उमेदवाराकडून (विवाहित मुलीच्या बाबतीत तिच्यासह तिच्या पतिकडूनही) दिवंगत शासकीय कर्मचा-याच्या कुटुंबीयांचा तो/ती सांभाळ करील असे प्रतिज्ञापत्र सादर करणे आवश्यक राहिल. मात्र अनुकंपा तत्वावर एकदा नियुक्ती मिळाल्यानंतर तो/ती (उमेदवार) कुटुंबीयांचा सांभाळ करीत नसल्याचे आढळल्यास त्याची/तीची शासन सेवा तात्काळ समाप्त करण्यात यावी. तरी संदर्भात आवश्यक हमीपत्र

(undertaking) नियुक्तीपूर्वी यापुढे उमेदवारांकडून स्टॅप पेपरवर घेण्यात यावे.

अविवाहित मुलीला अनुकंपा नियुक्ती मिळाल्यानंतर तिचा विवाह झाल्यास विवाहाच्या दिनांकापासून सहा महिन्यांच्या आत तिच्या पतिकडूनही तसे हमीपत्र घेण्यात यावे.+

Plain reading of the aforesaid decision clearly shows that in case the deceased employee or his widow survives only with his daughter and family of the deceased employee is dependent on the said daughter, such daughter shall be eligible for being considered for appointment on compassionate ground. It is therefore, clear that the married daughter is held eligible for appointment on compassionate ground subject to certain conditions. The eligible married daughter and her husband has to file affidavit/undertaking that she will maintain the family of the deceased employee. If, after getting appointment said married daughter refuses to maintain the family of the deceased employee, her services can be terminated immediately.

18. From the aforesaid circumstances, it is thus crystal clear that the married daughter is eligible for being considered for appointment on compassionate ground.

19. Vide impugned communication dated 20.6.2014, the respondents seems to have tried to interpret the G.R. dated

26.2.2014 and tried to give go-by to the directions of Hon'ble High Court in writ petition no. 9612/2012. Since the clause in the earlier G.R. that only unmarried daughters are entitled to claim compassionate appointment was held ultra vires, arbitrary and discriminatory, the fact remains that the married daughters are also entitled to claim compassionate appointment provided they are eligible.

20. The learned P.O. submits that, earlier the applicant's mother has filed application for compassionate appointment and that the applicant has given false information that she was unmarried. Now the fact that whether the applicant was married or unmarried on the date of submission of her application has lost its effect as it is held by Hon'ble High Court that the married daughters are entitled to claim compassionate appointment. In view thereof rejection of applicant's claim only on the ground that, she is married daughter of the deceased or that the G.R. dated 26.2.2013 is not applicable to the earlier cases, is not legal.

21. The learned Presenting Officer submits that as per G.R. dated 26.10.1994 and the Rules framed in view of the said G.R. regarding appointment on compassionate ground is to be given,

only in case financial condition of the family of the deceased employee is weak. He has referred to paragraph no. 7 of the said Rules, which reads as under:-

%66) (अ) अनुकंपा तत्वावर नियुक्तीकरिता, मासिक उत्पन्नाची तसेच ठोक रकमेची मर्यादा यापुढे राहणार नाही.

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासनसेवेतील रोजगारावर असलेली मर्यादा, या योजनेच्या मागील भूमिका लक्षात घेउन जो कर्मचारी मृत झाला त्याच्या कुटुंबीयांना तात्काळ उद्भवणा-या आर्थिक पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखादया कुटुंबात मृत कर्मचा-याचा नातेवाईक पूर्वीच सेवेत असतील, तथापी, तो त्याच्या कुटुंबातील अन्य सदस्यांना आधार देत नसेल तर अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हलाखीची आहे किंवा कसे? हे ठरवितांना नियुक्ती अधिका-याने अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करीत नाही या नावाखाली अनुकंपा तत्वावर नियुक्तीचा दुरुपयोग केला जाणार नाही.

या संदर्भात नियुक्ती अधिका-याचे मिळणा-या निवृत्तीदेयाची रक्कम, कुटुंबातील व्यक्तींची सुख्या, त्याची मालमत्ता, दायित्व, गंभीर आजारांमुळे किंवा अपघातांमुळे मृत झाला असल्यास त्यासाठी करण्यात आलेला वैद्यकीय खर्च कुटुंबातील मिळवत्या व्यक्ती इत्यादी बाबी विचारात घेणे अपेक्षित आहे.+

22. The learned P.O. submits that Hon'ble the Supreme Court has held in the case of **SANTOSH KUMAR DEBEY VS. THE STATE OF U.P.** (supra) that compassionate appointment is not a bonanza. She further submits that as per the G.R. dated 26.2.2013 it is necessary that heir must be only daughter in the

family and she must undertake to take care of the family. In my opinion while considering the applications of the applicant on merits, the respondents will be at liberty to consider all the facts and circumstances of the case and will have to consider as to whether the case of the applicant is a fit case for consideration for compassionate appointment. Even Hon'ble High Court has observed in the judgment in W.P. no. 9612/2012 that it will be open for the parties to put forth their contentions before the concerned authority. Hence, it is necessary for the respondents to consider the claim of the applicant for compassionate appointment instead of rejecting her case by stating that G.R. dated 26.2.2013 is not applicable to the earlier cases.

23. In view of the discussion in foregoing paragraphs, I pass following order :-

ORDER

- (i) The original application stands partly allowed.
- (ii) The impugned communication dated 20.6.2014 issued by the res. No. 3 as per the letter of res. No. 1 dated 7.6.2014 is quashed and set aside.

- (iii) The respondents are directed to consider the applicant's claim as per the existing G.Rs. in the field as regards compassionate appointments. The said claim of the applicant shall be considered on merits of the case and the decision in this regard be taken within a period of 3 months from the date of this order and shall be communicated to the applicant in writing by R.P.A.D.

There shall be no order as to costs.

MEMBER (J)