

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.155 OF 2012

DISTRICT : PUNE

Kum. Sujata Dinkar Nevase.)
(After marriage : Smt. Sujata Dhananjay)
Girme), Age : Adult, Occu.: Nil,)
(Seeking appointment in the Government)
Service on compassionate grounds).)
Address for service of notice :)
Shri A.V. Bandiwadekar, Advocate,)
9, "Ramkripa", Dilip Gupte Marg,)
Mahim (W), Mumbai 400 016.)...**Applicant**

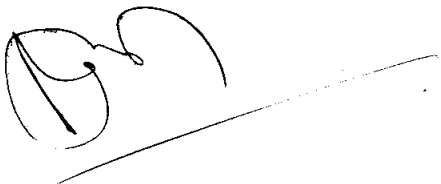
Versus

The Divisional Joint Director (Agriculture))
Pune Division, Pune.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohau, Presenting Officer for Respondent.

**CORAM : SHRI RAJIV AGARWAL (ACTING CHAIRMAN)
SHRI R.B. MALIK (MEMBER-J)**



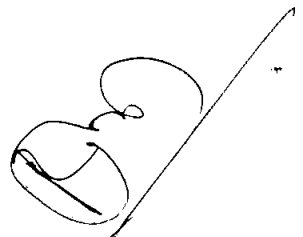
DATE : 21.07.2014

PER : SHRI R.B. MALIK (MEMBER-J)

JUDGMENT

1. The Applicant unsuccessfully sought an employment on compassionate ground after the death of her father. By a communication dated 5.10.2011, the Respondent in effect rejected the request mainly on the ground that the Applicant had become disentitled to the said relief, because she got married in the interregnum. She has impugned herein the said communication and sought employment on compassionate ground.

2. The father of the Applicant late Shri Dinkar Nevase was in the clerical cadre working under the Respondent. He died in harness on 4.11.2000 (though a certain Affidavit of Applicant's mother dated 10.5.2003 on page 23 of the paper book shows that date as 4.11.1999). But the fact remains that he died in harness. He left behind his widow, two daughters and one son. The Applicant laid the claim to the job on compassionate ground after attaining majority. She was born in 1986. Her request was kept pending for all these years and in

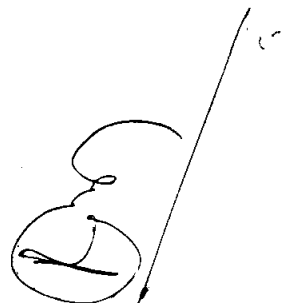


the meanwhile, she got married to Mr. Dhananjay Girme on 23rd May, 2006. It appears that she kept on sending reminders and she apparently relied upon the judgments of Hon'ble High Court in support of her claim. By a communication of 5.10.2011 which is at Exh.'A' hereto, she was informed that her request could not be favourably considered and by a laconic expression, it was mentioned that the judgments of Hon'ble High Court were not applicable in her case. It is clearly indisputable position based on the Affidavits and addresses that no other legal descendent of the said deceased is interested in laying a claim like of which is made by the Applicant. Very pertinently thereafter vide communication dated 8.9.2004, the Respondent-Divisional Jt. Director (Agri.), Pune recommended to the Collector, the case of the Applicant. The said communication is at Exh.'C' page 18 of the paper book. For removal of doubts, it is hereby recorded that the Applicant is the only heir and legal representative of the said deceased whose case can be considered for appointment on compassionate ground. No other member of the family of the said deceased would lay any claim thereto and none shall be entertained by the Respondents.

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3. It appears from the Affidavit-in-reply filed by Mr. Shivaji B. Waghmode, Assistant Administrative Officer in the office of the Respondent with particular reference to para 6.5 on page 75 of the paper book that the case of the Applicant was considered and her "seniority" in the list was at Serial No.37. However, "The Respondent has found that the petitioners was not unmarried, on the contrary petitioners is already married on dated 23-5-2006. Therefore, the respondent has not issued order of appointment." As far as other facts relevant hereto are concerned, there is not much dispute.

4. Two facts become clear. Firstly, the claim of the Applicant was entertained, but she was held disentitled. Her serial number in the list was what has been described as seniority was 37. Secondly, the reason why she was held disentitled or disqualified was that she was a married daughter of the deceased. The proverbial red tappism and official procedures are what they are. But life keeps on moving. The time does not stand still. When the Applicant applied, she had just gone on the wrong side of teens and she made application also, when she was unmarried. But with the passage of time, she got married and the Respondents stoutly contend that

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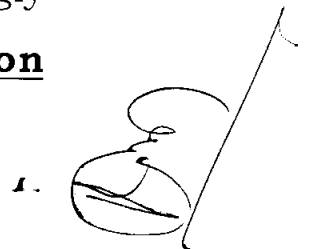
her marriage is her undoing in the matter of getting employment on compassionate ground. The issue, therefore, gets narrowed down to whether such a stand is legally sustainable. We would scrupulously avoid meandering into the inapplicable academics of the matter.

5. By Government Resolution No. अकंपा.१०९३/२३३५/प्र.क्र.१०/९३/आठ, मंत्रालय, मुंबई.४०० ०९२, dated 26th October, 1994, the issue of providing employment to the family members of the class of employees therein mentioned was sought to be streamlined. The first in the four broad classes is the one herein relevant and it applied to the family members of a deceased employee who died in harness. It was made very clear therein that only one such family member would be entitled to the benediction thereof. The claim would not be entertained five years after the death of the ascendant of the claimant. But under Rule 3(a), it was equally clearly mentioned in effect that a daughter to be able to lay a claim under this category should be unmarried. Digressing slightly 1994 was apparently the year when a decisive blow for gender equality was dealt with in Maharashtra by effectively treating the daughters as equal to the sons in every



respect and in fact, expressed simply, even in the matter of inheritance, the son and the daughter were to be on equal pedestal. By an amendment to the Hindu Law in the year 2004, this position in law was made applicable all over India. In fact for all intent and purpose, now she is as good a member of coparcenary as her brother (males). It is an irony therefore that such a condition which almost formalized gender inequality was enforced by the G.R. under discussion. There are certain other provisions in the said G.R. which apparently take care to ensure that what according to the State was a beneficial provision was not misused or abused.

6. With the evolution of the society such as it is the change in thought process and growing clamour for gender equality could not have allowed such a discriminatory provision to survive unchallenged. A challenge was made to the same before a Division Bench of Hon'ble High Court in **Writ Petition No.1284 of 2011 (Aparna N. Zambre and one another vs. Assistant Superintendent Engineer and 2 others, the judgment dated 1st August, 2011)** wherein the earlier judgment of Single Bench of Hon'ble High Court was approvingly referred to, which was in the matter of **Writ Petition**



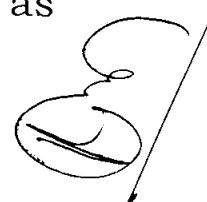
No.6056 of 2010 (The State of Maharashtra & Ors. vs. Medha Prashant Parkhe, the judgment dated 26th October, 2010). Their Lordships were pleased to refer to a number of judgments in the field and so also a number of judgments in the field came to be considered in **Medha Parkhe's case** (supra). The copies of the two judgments are there on the record of this Original Application from pages 36 to 68. The judgment of Hon'ble High Court in **Aparna Zambre's case** (supra) will have to be read closely. But before we did that we should mention that subject to our finding on the issue of the impediment brought in by the marriage of a daughter otherwise qualified and eligible to get the job on compassionate ground, it is clear that the 1994 G.R. is by far the basic document to resolve the issue such as this one. It prescribes conditions regarding the relations of the deceased, based on their proximity, the fact that only one and not more than one would be entitled to lay such a claim. It lays down that there would not be any stipulation about the quantum of monthly income or any consolidated amount with the family (टोक रक्कम). The object will be to tide over the sudden calamity arising out of the death of the sole bread winner. There is no other scheme as such to govern such a contingency. The Applicant is



the only claimant. She acted promptly and the delay has not been caused by her. But then, there is a G.R. No.अकंपा.१०१३/प्र.क्र.८/आठ, हुतात्मा राजगुरु चौक, मादाम कामा रोड, मंत्रालय, मुंबई. ४०० ०१२, dated 26th February, 2013 which expressly mentions that the said G.R. was necessitated and occasioned by the judgment of Hon'ble High Court in Aparna's case (supra). We may have to make comments to the extent warranted on this G.R. as well. But as far as Respondents are concerned, they are apparently of the view that this particular G.R. conforms to the mandate of the Division Bench of Hon'ble High Court in the **Aparna Zambre's case** (supra). We may now turn to the case of **Aparna Zambre** (supra).

7. In **Aparna Zambre's case** (supra), the deceased employee left behind his widow and two daughters. The Petitioner before the Hon'ble High Court, however, was the only one that applied for appointment on compassionate ground. The other heirs and Lrs had no objection just as the case herein. The name of the said Petitioner was included in the wait list that the Office of the Collector therein had prepared. As already noted herein above, the name of the present Applicant is similarly included in what has been described as

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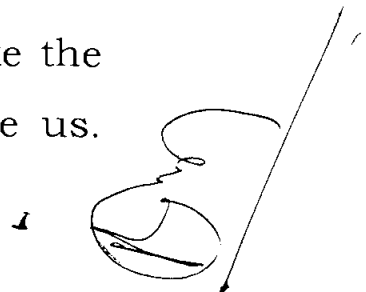
seniority list. Here she is at Serial No.37 and she could not be given employment actually because she is married daughter of the said deceased.

8. Further, in **Aparna Zambre's case** (supra), the undertakings, etc. which were considered necessary came to be furnished. The situation here is no different and in that, we have already referred to an Affidavit filed way back in 2003 by the Applicant's mother, based on which the Respondent recommended Applicant's case. In **Aparna Zambre's case** (supra) also, the Petitioner of the Hon'ble High Court got married, pending consideration of her claim which is just like the case on hand. Her claim came to be rejected on two grounds, viz. that her mother was getting family pension and because she herself was a married daughter. In para 7, Their Lordships made it very clear that the fact that the family pension was being received by the eligible family member of the deceased could be no ground to deny to the deserving family member the appointment on compassionate ground. It has been held that "that concession is in addition to the relief of family pension which was essentially intended to meet the immediate financial hardship to the family as a result of the bereavement. It needs to be recalled that we are governed by the 1994 G.R. where under the fact of

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other retiral benefits having been given to the dependents of the deceased employee, does not even affect her claim for compassionate appointment much less is it fatal to it (Clause 7 of the said G.R.) It was observed on page 8 that the very object of appointment of the dependent of the deceased employee who died in harness was to relieve immediate hardship and distress caused to the family by the sudden demise of the earning member of the family. Family pension may lessen the financial hardship, but not completely relieved the family members of the deceased employee of financial hardship and distress, because due to the sudden bereavement resulting in loss of his regular salary, which the entire family depended on. We must, therefore, remember that the matters such as this one will have to be distinguished from those arising out of the cases under some other Rules and schemes which make the receipt of other retiral benefits, a relevant ground to weaken the claim for compassionate appointment.

9. Their Lordships in **Aparna Zambre's case** (supra), then dealt with the issue of the date which was relevant to consider the eligibility of a candidate like the Petitioner there and naturally, the Applicant before us.

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The second question was as to whether the expression “unmarried daughter” in Clause 3(a) of the 1994 G.R. could be held to be just and fair when it excluded the married daughter from being appointed on compassionate ground. In para 10, it was held with the help of authorities of the Hon’ble Supreme Court therein mentioned that the required qualification of the said candidate should be examined with reference to the date of making application and not with reference to the date of selection. It must, therefore, follow that if the Applicant just like the Petitioner before the Hon’ble High Court was not married when she made the application, then her marriage which was an event subsequent thereto, could not be held to be a stumbling block. Thereafter, Their Lordships dealt with **Medha Parkhe’s case** cited (supra) and some other authorities in the field. Their Lordships approved of the observations of the Hon’ble High Court of Karnataka that exclusion of married daughter for consideration was manifestly, discriminatory and arbitrarily and in that light, the prefix “unmarried” might have to be struck down as unconstitutional resulting in the position that a married daughter would be eligible for consideration as is the position herein. We have taken guidance from the other



authorities that have been discussed in **Aparna Zambre's case** (supra). However, one particular authority which has been discussed in para 19 thereof in the matter of **Dr. Mrs. Vijaya M. Arbat vs. Kashirao Ranarao and another (1987) 2 SCC 278** will become relevant when we discuss the latest G.R. in the field.

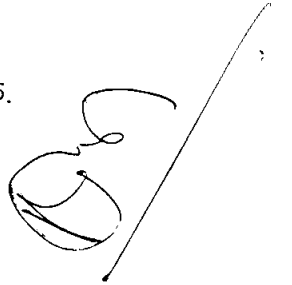
10. We may now turn to the 2013 G.R. which has already figured above. According to the Government was necessitated and issued in deference to the Rule of **Aparna Zambre** (supra). It will be most appropriate in our view to reproduce the said G.R. in its entirety.

अनुकंपा नियुक्ती धोरणातील
तरतूदीमध्ये सुधारणा-विवाहित
मुलीस अनुकंपा नियुक्तीस
पात्र ठरविणेबाबत

महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन निर्णय क्रमांक: अकंपा १०१३/प्र.क्र.८/आठ
हुतात्मा राजगुरु चौक, मादाक कामा रोड, मंत्रालय, मुंबई ४०० ०३२.
तारीख : २६ फेब्रुवारी, २०१३.

वाचा-

१) शासन निर्णय क्रमांक: सामान्य प्रशासन विभाग, क्र.अकंपा-१०१३/२३३५/प्र.क्र.
९०/९३/आठ, दिनांक २६/१०/१९९४



२) शासन निर्णय क्रमांक: सामान्य प्रशासन विभाग, क्र.अकंपा-१०९५/प्र.क्र.३४ अ/आठ, दिनांक २३/८/१९९६

३) शासन निर्णय क्रमांक: सामान्य प्रशासन विभाग, क्र.अकंपा-१००६/प्र.क्र. १७४/०६/आठ, दिनांक १७/७/२००७

प्रस्तावना-

संदर्भाधिन क्र. १ च्या शासन निर्णयान्वये अनुकंपा नियुक्तीची सुधारित योजना अंमलात आली. अनुकंपा नियुक्तीसाठी पात्र कुटुंबीयांमध्ये दिवंगत राज्य शासकीय कर्मचा-याची पती/पत्नी, मुलगा किंवा अविवाहित मुलगी अथवा मृत्युपूर्वी कायदेशीररीत्या दत्तक घेतलेली मुलगा/ अविवाहित मुलगी, दिवंगत शासकीय कर्मचा-याचा मुलगा ह्यात नसेल व त्याच्या कुटुंबातील पात्र नातेवाईका व्यतीरिक्त अन्य कोणीही अनुकंपा नियुक्तीसाठी पात्र नसेल तर त्याची सून, केवळ अविवाहित शासकीय कर्मचा-यांच्या बाबतीत त्यांच्यावर सर्वस्वी अवलंबून असणारा भाऊ किंवा अविवाहित बहीण, घटस्फोटीत/परित्यक्ता/विधवा मुलगी/ बहीण ही नियमानुसार नेमणुकीस पात्र नातेवाईक मानण्यात येतात. यानुसार कर्मचा-याची विवाहित मुलगी ही अनुकंपा नियुक्तीसाठी अपात्र समजण्यात येत होती. या संदर्भात श्रीमती अपर्णा झांबरे विरुद्ध सहायक अधिक्षक अभियंता, कृष्णा कोयना उपसा सिंचन प्रकल्प मंडळ व इतर प्रकरणी मा. उच्च न्यायालय, मुंबई/ मा. सर्वोच्च न्यायालयाने दिलेल्या निर्णयाच्या पार्श्वभूमीवर अनुकंपा नियुक्तीसाठी विवाहित मुलीला पात्र ठरविण्याची बाब शासनाच्या विचाराधीन होती. या अनुषंगाने शासनाने पुढीलप्रमाणे निर्णय घेतला आहे.

शासन निर्णय-

दिवंगत राज्य शासकीय कर्मचा-याच्या कुटुंबामध्ये फक्त विवाहित मुलगी हे एकमेव आपत्य असल्यास किंवा त्यांचे कुटुंब फक्त विवाहित 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 करित नसल्याचे आढळल्यास त्याची/तीची शासन सेवा तात्काळ समाप्त करण्यात यावी. तरी यासंदर्भात 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.

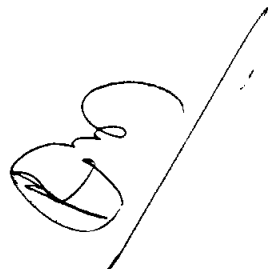


सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१३०२२६१६३३०६५३०७ असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”

11. The above G.R. is self-explanatory. It is not possible for us to fathom as to wherefrom the maker of the said G.R. got from **Aparna Zambre** (supra), the condition that the deceased employee should have left only one married daughter or that the whole family should have been dependent on the married daughter. We must make it very clear that on one particular plane, issuance of G.R. may be within the powers of the State Government. However, if it is made clear that the G.R. became necessary to be issued in deference to and in order to effectuate the mandate of the Hon'ble High Court, then nobody including the mightfull State has the power to add or substract thereto and therefrom.

11. Pertinently in **Aparna Zambre's case** itself, there were two daughters including the claimant and also the widow. There was absolutely nothing to indicate that the family in the sense one would understand the said word in the context of **Aparna Zambre** as well as present



one, only depended upon the claimant. Therefore, in the name of effectuating the directions of Their Lordships, the maker of the G.R. in our view has done something, which cannot survive the test of propriety and legality.

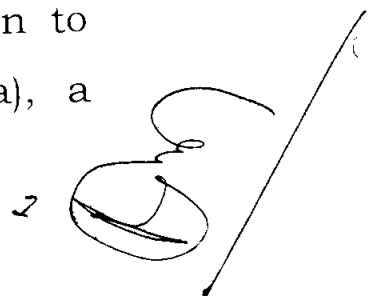
12. Further, there are authorities in this field which lay down cautious approach to be made in appointing one of the dependents of the deceased employee on compassionate ground, because in that case, those that patiently wait in the queue in competition for public office are most likely to get frustrated and in that connection, the constitutional provisions including those of Articles 14 and 16 are invoked. The need to have a transparent appointment process with nobody getting undue preference is emphasized. The appointment on compassionate ground, therefore, carves out an exception and a corresponding need to be cautious and careful, *inter-alia* to obviate the possibility of somebody playing a foul game or short-circuiting the matter to sneak in. Having said that, it must also be remembered that after all appointment on compassionate ground is a known phenomenon. There are Rules and Schemes in various set of employers including the State Governments and State held Companies, etc. to govern this aspect. Such

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is the state of affairs, even in the private sector. Wherever there are such Rules, they have to be observed in letter and spirit, as per the known cannons of interpretation. We have discussed hereinabove the G.R. of 1994 which would *inter-alia* also show that apart from only one family member being able to secure a job in this category, there was an outer time limit of 5 years from the date of the death of the said deceased within which time, such a claim should be laid, meaning thereby that after that period, the claim would not be entertainable (Clause 5(a) of 1994 G.R.).

13. Now, with this being the state of affairs, in our view, it is difficult to comprehend as to the relevance necessity, propriety or even legality of Clause 2 of 2013 G.R. which requires the undertakings to be given by the married daughter and her husband that they would continue to look after the family of the said deceased and should it be found that they defaulted in that behalf, then the compassionate appointment was liable to be terminated forthwith. One can understand that in order to guard against the unscrupulous elements trying to exploit the benediction to their advantage, but then to read in the judgment of Aparna Zambre (supra), a

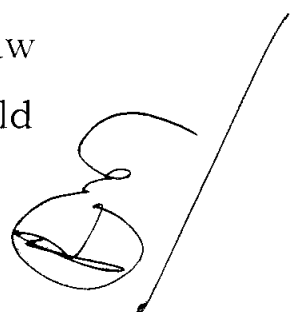


direction to terminate the service on the ground suggested in Clause 2 of 2013 G.R. is an absolute far cry. We would reiterate that one would not just be careful, but almost zealous to make sure that the mandate of the constitutional Court is not unnecessarily distorted. In actual practice, it always happens and so was the case in **Aparna Zambre** (supra) as well as the present one that the undertakings are taken to make sure inter-alia to secure the prohibition of any other family member laying the claim. But then to envisage an undertaking in the light of the power to terminate the services is not in our view in consonance with the mandate of the Hon'ble High Court.

14. It is pertinent to note that in **Dr. Mrs. Vijaya Arbat's case** (supra), it has been held that the liability of the married daughter to maintain her parents in a proceeding under Section 125 of the Court of Criminal Procedure is very much there. A longish discussion on that particular provision would be out of place. What is however, significant to note is that there are provisions in law, which make sure that the aged and infirm parents as well as the other family members, if eligible and entitled can invoke any of the several provisions of law to



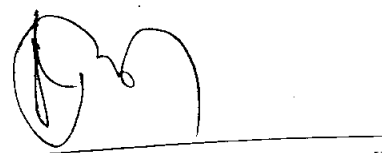
get maintenance, and therefore, to link an employee having initially secured the job on compassionate ground with the liability forever to maintain the family of the deceased and in the event of failure to do so, lose the job itself is absolutely unfair, without any authority of law and unreasonable and is liable to be struck down. The compassionate appointee is as much entitled to the constitutional and legal protection post employment with regard to security of tenure and entitlement to be treated in accordance with law. By a G.R, a new liability to lose the job not provided for in the mother of all laws, any other law, Rules and Conduct Rules, cannot be created. For, to do so would tantamount to creating an artificial group of employees with a liability sans any valid source. In our view, therefore, that particular provision in the 2013 G.R. also cannot survive the test of judicial scrutiny. In what way and under what authority can the husband of the married daughter within six months of the marriage be compelled to give an undertaking in effect to maintain the family of the said deceased is also beyond our comprehension. We would, therefore, conclude in this behalf that within the time limit to be stipulated by us, the State Government should withdraw the 2013 G.R. under reference, failing which it would



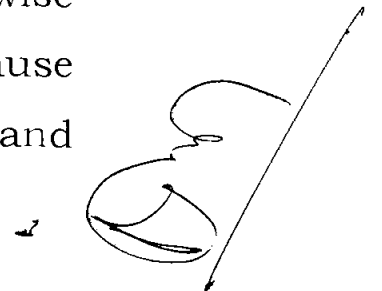
stand quashed and invalidated. The State Government is, however, at a liberty, if so advised and if so desirous, to bring any other G.R. in the matter in consonance with the mandate of **Aparna Zambre** (supra) or even to provide for any other contingency.

15. We may make it very clear that the question of whether this G.R. was specifically challenged for being quashed or not, need not detain us at all. In fact, it has not been specifically challenged and almost at the fag end of the argument, it seems that the G.R. was submitted on record. However, as we just mentioned this G.R. is in purported compliances of the order of Division Bench of the Hon'ble Bombay High Court, and therefore, if the said G.R. imports so heavily of its own as to distort the ratio of **Aparna Zambre** (supra), then it will not just be within the jurisdiction of a judicial or quasi-judicial forum to deal effectively therewith, but the said forum will be constitutionally and legally duty bound to do so and for that even if the procedural and technical requirements are to be glossed over, so be it.

16. The crux of the matter, therefore, is that governed as we are by the G.R. of 1994, which now has to be read down as per the mandate of **Aparna Zambre** (supra) and the judgment of the Single Bench in the



matter of **Medha Parkhe** (supra), we must hold that in the set of circumstances such as they are, the disability so envisaged by the Respondent to disentitle the Applicant from being appointed on compassionate ground is quite simply unacceptable legally. We must mention it quite clearly that we are not on any academic exercise on facts such as they are. The Respondent quite clearly found the Applicant eligible and capable of being appointed which is why they included her name at Serial No.37 in what has been described as seniority list though it is select list actually and that being the state of affairs, if we hold guided by the mandate of the Hon'ble High Court that the objection raised by the Respondent is untenable, then the net result is to give a clear direction to the Respondent to give the appointment to the Applicant. This course of action can safely be adopted in this particular matter though otherwise going by the mandate of **Aparna Zambre** (supra), in paragraph 20, it has to be made clear that the claimant like the present Applicant would have to be appointed, bearing in mind all the norms and criteria applicable to the post in question. It so happens that the question of existence or otherwise of vacancy is not involved there in this matter, because her name was already included in the seniority list and

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there was no other hitch. We would, therefore, quash and annul the impugned communication and give necessary directions to the Respondent.

17. The communication at Exh.'A' page 14 of the paper book bearing No.जा.क्र.आस्था/अ-४/अनुकंपा/नेवसे/२८६३/२०११, dated 5.10.2011 stands hereby quashed and annulled. The Respondent is directed to act in accordance with the directions hereinabove in the matter of giving appointment to the Applicant on compassionate ground for the post she had applied for. This compliance be made within six weeks from today. The Respondents do comply with the directions herein above given regarding शासन निर्णय क्रमांक: अकंपा १०१३/प्र.क्र.८/आठ, तारीख २६ फेब्रुवारी, २०१३ in paragraph 14 herein above within eight weeks failing which after the said period of time, the same will stand quashed. The Original Application is accordingly allowed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
21.07.2014

Sd/-

(Rajiv Agarwal)
Vice-Chairman
21.07.2014

Mumbai

Date : 21.07.2014

Dictation taken by :

S.K. Wamanse.

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