

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.770 OF 2018

DISTRICT : NASHIK

Ms. Shabnam Yunus Shaikh.)
Age : 28 Yrs., Occu.: Nil,)
R/o. Flat No.2, Anjali Apartment, Behind Hotel)
Crystal, Ganjmal Marg, Nashik.)...Applicant

Versus

1. The Deputy Executive Engineer.)
Nandur Madmeshwar Project Division,)
Nashik having office at Oppo. to Ved)
Mandira, Trymbak Road, Nashik.)
2. The Superintending Engineer &)
Administer, Command Area Development)
Authority, Ahmadnagar having office at)
Sinchan Bhawan, Fakir Wada,)
Ahmadnagar Aurangabad Road,)
Ahmadnagar-1.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. S. Deshmukh, Advocate for Respondent No.1.

Smt. K.S. Gaikwad, Presenting Officer for Respondents 2 & 3.

CORAM : A.P. KURHEKAR, MEMBER-J

W. S. Deshmukh

DATE : 18.06.2019

JUDGMENT

1. The challenge is to the impugned order dated 10th July, 2018 whereby the application for grant of appointment on compassionate ground stands rejected by Respondent No.1.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is daughter of deceased Unus D. Shaikh, who was working as Store Attendant in the office of Respondent No.1. He died in harness on 18.11.2007 leaving behind him widow viz. Smt. Shaikh Hasina and Applicant. The Applicant made an application on 20.12.2007 for appointment on compassionate ground. Again, she made same request by application dated 30.09.2008 and sent reminders on 27.05.2010 and 19.06.2018. However, it is by order dated 10.07.2018, the Respondent No.1 informed the Applicant that her application for appointment on compassionate ground has been already rejected and the same has been communicated to her by letter dated 29.09.2010. It was informed to the Applicant that her request for grant of appointment on compassionate ground does not fit in the terms of G.R. dated 26.10.1994. She was accordingly informed that she is not entitled to appointment on compassionate ground. The Applicant has challenged the communication dated 10.07.2018 in the present O.A.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. In this behalf, the Respondent contends that the mother of the Applicant viz. Smt. Shaikh Hasina was in the employment of the Bank on sumptuous salary enough for maintenance of family, and therefore, the application was rightly rejected in terms of G.R. dated 26.10.1994. The decision was communicated to the

Applicant by letter dated 29th September, 2010. Thereafter again, the same decision was communicated to her by impugned communication dated 10.07.2018 and the copy of letter dated 29th September, 2010 was also forwarded to the Applicant again for reference. The Applicant has not challenged the communication dated 29th September, 2010 which was communicated to her by Registered Post. The application now filed by the Applicant before this Tribunal is thus not within limitation and prayed to dismiss the O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Shri S. Deshmukh, learned Advocate for Respondent No.1 and Shri S.D. Dole, learned Presenting Officer for Respondent Nos. 2 and 3. The learned P.O. adopted the submission advanced by the learned Advocate Shri Deshmukh for Respondent No.1.

5. Shri A.V. Bandiwadekar sought to assail the impugned order contending that the ground of rejection that the Applicant's mother is in private employment with Bank cannot be the ground for rejection of the Applicant for appointment on compassionate ground. He sought to contend that it is only in case of permanent Government service to one of the heir of the deceased the appointment on compassionate ground to another heir can be refused. For this purpose, he referred Clause No.7 of G.R. dated 26th October, 1994.

6. Per contra, the learned Advocate for Respondent No.1 submitted that the interpretation sought to be made by the learned Advocate for the Applicant is misconceived and the object of the scheme of appointment on compassionate ground is to assist deceased family where there is a death of sole bread winner of the family. According to him, the relief of appointment on compassionate ground can be granted where the family was totally depending upon the deceased. He has pointed out that admittedly, the Applicant's mother Smt. Shaikh Hasina is serving in Nashik Merchant Cooperative Bank and drawing

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sumptuous salary, and therefore, the rejection of the scheme for appointment on compassionate ground cannot be faulted with.

7. The Respondent No.1 has also produced Salary Certificate dated 24.02.2009 which goes to show that the Applicant's mother Smt. Shaikh Hasina is gainfully employed in Nashik Merchant Cooperative Bank, Nashik and drawing total salary of Rs.14,777/- in the month of January, 2009. Material to note that the factum of service of Smt. Shaikh Hasina is not disputed. As such, there is no denying that the Applicant's mother is gainfully employed in Nashik Merchant Cooperative Bank, Nashik.

8. The submission advanced by the learned Advocate for the Applicant that the Respondent can refuse the employment on compassionate ground only in case where one of the member of family is in Government service is misconceived. No such interpretation is permissible from G.R. dated 26.10.1994. Needless to mention that the very object of the scheme of providing compassionate appointment is rehabilitation of the family in distress due to loss of the only bread winner of the family. The appointment on compassionate ground is not the method of recruitment, but its object is to save the bereaved family from sudden financial crises occurring due to the death of the only earning member in the family, so that after his death, his family members should not starve.

9. Herein it would be appropriate to reproduce Clause No.7 (a) and (b) of G.R. dated 27th October, 1994 for reference, which is as follows :

“(अ) अनुकंपा तत्वावर नियुक्तीकरीता मासिक उत्पन्नाची तसेच ठोक रकमेची मर्यादा सापुढे राहणार नाही.

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा, या योजनेच्या मागील भूमिका लक्षात घेवून जो कर्मचारी मत झाला त्याच्या कुटुंबियांना तात्काळ उदभवणा-या आर्थिक पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखादया कुटुंबात मत कर्मचा-याचा नातेवाईक पूर्वीच सेवेत असेल, तथापि तो त्याच्या कुटुंबातील जन्म सदस्याला आधार देत नसेल तर अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती

हलाखीची आहे किंवा कसे हे ठरविताना नियुक्ती अधिका-याने अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करीत नाही या नावाखाली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.”

10. Thus, it is quite clear from the G.R. dated 27th October, 1994 that the appointing authority is under obligation to see as to whether the family of the deceased is really in distress and requires financial assistance in the form of appointment on compassionate ground and also to ensure that the scheme is not misused. True, where one of the family member of the deceased is in service but he is not helping the other members of the family, in that event, after due enquiry about the financial condition of the deceased family, the member of family can be appointed on compassionate ground. As such, where one of the member of the family is in service, then it is incumbent on the part of other member of the family who is seeking appointment on compassionate ground that the member of family who is in service is not taking care of the rest of the members of the family. In the present case, undisputedly, the Applicant's mother is gainfully employed and is drawing sumptuous salary. What is material to note that it is nowhere the case of the Applicant that her mother is not taking care of her from her salary. No such case is pleaded nor made out.

11. During the course of hearing, when the specific query was made about the status of the Applicant, the learned Advocate for the Applicant fairly stated that the Applicant got married on 20.12.2017. As such, at the time of filing of application i.e. on 21.08.2018, the Applicant was married and living with her husband. Whereas, her mother Smt. Shaikh Hasina is living separate and gainfully employed. This being the position, the Applicant cannot be termed dependent of the deceased so as to seek appointment on compassionate ground. True, the marriage itself will not make daughter disentitled for appointment on compassionate ground. Where unmarried daughter is appointed on compassionate ground and subsequent to she got married, her husband is also required to submit Undertaking that she would take care of the family of

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deceased within six months from marriage. Whereas, in case of grant of application of married daughter, she is required to submit Undertaking of her husband along with an application on Affidavit in terms of G.R. dated 26th February, 2013. However, in the present case, there is no such compliance. Indeed, the Applicant's mother Smt. Shaikh Hasina is admittedly gainfully employed.

12. At this juncture, it would be apposite to refer the Judgments of Hon'ble Supreme Court relied by the Advocate for the Applicant, which are as follows :-

(A) In **(2008) 15 SCC 560 (Sail Vs. Madhusudan Das (Page Nos.46 in O.A.770/2018))**, the Hon'ble Supreme Court has observed as under:-

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz. That the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

(B) In **(2008) 8 SCC 475 (General Manager, State Bank of India & Ors. Vs. Anju Jain)**, the Hon'ble Supreme Court has observed as under :-

"It has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates are to be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of

dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment."

(C) In **(2012) 11 SCC 307 (Union of India & Anr. Vs. Shashank Goswami & Anr.)**, the Hon'ble Supreme Court has observed as under :-

"It has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld up the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."

(D) In **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)**, the Hon'ble Supreme Court has observed as under :-

"The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

Thus, the principles enunciated in the aforesaid Judgments are fully applicable to the present situation.

13. Suffice to say, the Applicant now cannot be termed dependent of the deceased and the rejection of the application cannot be faulted with.

14. The totality of aforesaid discussion leads me to sum-up that the O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

16/11/12

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 18.06.2019

Dictation taken by :

S.K. Wamanse.

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