

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.167 OF 2017

DISTRICT : SOLAPUR

Smt. Kavita Sanjay Ghongade.)
Age : 37 Yrs., Occu.: Nil,)
Ex. Jr. Clerk in the office of Deputy)
Conservator of Forest, Solapur and)
residing at Nav Samta Society, Chakote)
Nagar, Shelgi, Solapur.)...**Applicant**

Versus

1. The Conservator of Forest)
(Regional), Pune, having office at)
Van Bhavan, Near Mendhi Farm,)
Gokhale Nagar, Pune – 16.)
2. The Deputy Conservator of Forest,)
Solapur, having office at Van)
Bhavan, Nehru Nagar, Vijapur Road,))
Solapur 413 004.)
3. The State of Maharashtra.)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai - 400 032.)
4. The State of Maharashtra.)
Through Principal Secretary)

(Forest), Revenue & Forest Dept.,)
 Mantralaya, Mumbai - 400 032.)...**Respondents**

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

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

PER : SHRI J.D. KULKARNI (VICE-CHAIRMAN)(J)

DATE : 02.02.2018

J U D G M E N T

1. The Applicant has challenged in this Original Application the impugned order dated 4.02.2016 (Exh. '1') issued by Respondent No.1 and order dated 9.02.2016 (Exh. 'B') issued by Respondent No.2 whereby the Applicant's order of appointment has been cancelled.

2. From the admitted facts on record, it seems that the Government employee Tanubai V. Ghongade was serving as a Peon in the office of Respondent No.2 and she died while in service on 20.09.2008. Tanubai left two sons namely, Applicant's husband Sanjay and one Santosh and one married daughter. Since Santosh was already in service and he was residing separately from Tanubai, the Applicant's husband applied for appointment on

compassionate ground due to death of her mother Tanubai. Admittedly, the name of Applicant's husband Sanjay was taken in the wait list of the persons to be appointed on compassionate ground. Unfortunately, the Applicant's husband Sanjay died on 23.07.2014 leaving behind the Applicant as widow and one daughter by name Shraddha. The Applicant, therefore, applied for replacing her name in the wait list in place of her husband. The Respondents 1 and 2 asked for documents from her and also to comply some formalities. The application for substitution was filed on 26.08.2014 and the same was recommended to the competent authority. Vide order dated 1.01.2016 issued by Respondent No.2, the Applicant was appointed as a Clerk. The said appointment order is at Exb. 'K' (Page 41 of the paper book) and the Applicant was posted in the office of Deputy Director, Social Forest Department, Solapur. She accordingly joined there on 1.01.2016. However, vide communication dated 9.02.2016 issued by Respondent No.2 (Exh. 'A, Pages 22 and 20 respectively), the Applicant's appointment order came to be cancelled. Being aggrieved by the said order, this O.A. is filed.

3. The Respondents 1, 2 and 4 have filed reply affidavit and tried to justify the cancellation of appointment

order of the Applicant. According to Respondents, the Applicant misguided the Respondent No.1 and in fact, she was not eligible for substitution of her name in place of her husband. The sum and substance of the defense is that, Tarabai V. Ghongade was having two sons viz. Sanjay and Santosh and since Santosh was already in the service, Sanjay was not entitled to be appointed on compassionate ground. Since, Santosh and Sanjay were legal heirs of Tarabai, the Applicant being daughter-in-law of Tarabai was not eligible for being considered. The Respondent No.2 obtained the opinion of the Respondent No.1 on that point and as per the communication received from Respondent No.1, the appointment order was cancelled.

4. The learned P.O. has placed reliance on the G.R. dated 23rd August, 1996 which is Exb. 'R-1', the copy of which is placed on record at Page Nos.61 to 64 (both inclusive). Clause 2(ब) of the said G.R. is material, so as to decide the Applicant's application and the same relief clause reads as under :

“(ब) नियम ३ (अ) नुसार अनुकंपा तत्वावर नियुक्तीसाठी पात्र नातेवाईकांमध्ये पुढील नातेवाईकांचा समावेश करण्यात यावा.

(१) मृत शासकीय कर्मचा-याचा/व्यक्तीय करण्यास्तव सेवानिवृत्त होणा-या शासकीय कर्मचा-यांचा मुलगा हयात नसेल व त्याच्या कुटुंबातील पात्र

नातेवाईकांव्यातिरिक्त अन्य कोणीही अनुकंपा तत्वावर नियुक्तीसाठी पात्र नसेल तर त्याची सून.

- (२) केवळ अविवाहीत शासकीय कर्मचा-यांच्या बाबतीत त्यांच्यावर सर्वस्वी अवलंबून असणारा भाऊ किंवा अविवाहीत बहीण.

उपरोक्त योजनेतर्गत नियुक्ती देण्यापूर्वी संबंधितांकडून कुटुंबातील अन्य व्यक्तींचा सांभाळ करण्याबाबत प्रतिज्ञापत्र घेण्यात यावे.”

5. The learned P.O. submits that the aforesaid provision will make it clear that, firstly, the son or any other relative eligible for being considered for compassionate appointment from the family of deceased employee are to be considered for appointment and if there is no son or relatives to the deceased employee, then only the daughter-in-law has to be considered.

6. In the present case, admittedly, Tarabai was having two sons viz. Sanjay and Santosh and a married daughter. Santosh was already in service. Admittedly, the Applicant's husband Sanjay applied for appointment on compassionate ground and his application was accepted in the sense that, his name was taken on wait list. Unfortunately, Sanjay died before getting appointment, and therefore, the Applicant applied in his place.

7. The learned Advocate for the Applicant submits that Santosh, though was the son of Tarabai, he was residing separate and was not looking after the family of Tarabai, and therefore, there was no alternative for the Applicant's husband but to apply for appointment on compassionate ground and accordingly, he applied. The learned Advocate also pointed out the fact that Santosh has given no objection for appointment of the Applicant's husband as well as Applicant on compassionate ground and he has also filed necessary affidavit. The learned Advocate further submits that the Applicant has not cheated or concealed any fact from the Respondent authorities.

8. In this regard, it is necessary to consider the application for substitution of her name in place of her husband filed by the Applicant. The said application is dated 26.08.2014 that is within one month from the date of death of her husband. It is at Exh. 'F' (Page 26). In the said application, the Applicant has mentioned as to how she was entitled to be considered for the appointment on compassionate ground and the reasons for substituting her name in place of her husband.

9. The another application in this regard is filed on 29.10.2014 (Exh. 'G', Pages 28 and 29). In this case, the Applicant has clearly stated that her husband's brother Santosh V. Ghongade was in Government service and that Tarabai was having a daughter, but she was married. She has also mentioned that her husband's brother i.e. Santosh has given consent letter. Thus, it is clear that the Applicant has not concealed the fact that Tarabai was having son by name Santosh and also a daughter. In spite of such specific application, the Respondents have considered the case of Applicant and appointed her on the post.

10. According to the learned P.O, the case of the Applicant was recommended to Respondent No.1 in the sense that guidelines were sought. The letter in this regard is dated 22.09.2015 (Exh. 'I', Page 36). Vide this letter, the Respondent No.2 has requested Respondent No.1 to guide as to whether the Applicant shall be appointed in place of her husband. Even though this letter was before the Respondent No.1, the Respondent No.2 issued the appointment order without waiting for the guidelines. For such a reason, the application cannot be held responsible.

11. The most material fact to be considered is that, before cancelling the appointment order, the Respondent No.2 did not issue any show cause notice to the Applicant, and therefore, no opportunity of being heard was given to the Applicant and all of a sudden, her appointment has been cancelled. Such action on the part of Respondent No.1 is absolutely illegal and against the principles of natural justice.

12. There are number of Circulars in the field giving guidelines as regard the appointment of persons on compassionate ground. Had it been a fact that the Applicant misguided in any manner to the Respondents or had it been a fact that since Tarabai was already having her son by name Santosh already in service, and therefore, there was no need to appoint the Applicant on compassionate ground, the Respondent No.2 should have made an enquiry in this regard as per the guidelines issued in various Circulars. It was expected that such procedure should have been followed prior to issuing appointment order. It is an admitted fact that appointment on compassionate ground is not a right. Such appointments are made under particular schemes for the benefit of family of the deceased employee and the Department has to consider as to whether the

circumstances exists to appoint the person on compassionate ground or not. If according to Respondents, the case of the Applicant is not fit for appointment on compassionate ground, necessary enquiry should have been made and before cancelling the order of appointment, at least a show cause notice should have been issued to the Applicant.

13. In view of the discussion in the foregoing Paragraphs, I am therefore, satisfied that the impugned order dated 4.02.2016 issued by Respondent No.1 (Exh. 'A') so also the order dated 9.02.2016 (Exh. 'B') issued by Respondent No.2 is illegal and hence, the following order.

ORDER

The Original Application is partly allowed.

The impugned order dated 4.02.2016 (Exh. 'A') issued by Respondent No.1 and order dated 9.02.2016 (Exh. 'B') issued by Respondent No.2 stands quashed and set aside.

The Respondents are directed to reinstate the Applicant forthwith in the service, as if her

appointment was not cancelled and shall pay consequential reliefs to the Applicant.

It is, however, made clear that the Respondents will be at liberty to make enquiry as regards the eligibility of the Applicant for the post of Clerk on compassionate ground in place of her mother-in-law Tarabai V. Ghongade. The enquiry in this regard shall be made considering various Circulars in this regard without getting influenced by any of the observations made in this Judgment. Full opportunity shall be given to the Applicant to defend her case. Such enquiry shall be completed within three months from the date of this order and the reinstatement of the Applicant shall be subject to outcome of such enquiry.

No order as to costs.

Sd/-
(J.D. KULKARNI)
Vice-Chairman
02.02.2018

Mumbai

Date : 02.02.2018

Dictation taken by :

S.K. Wamanse.

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