

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 631 OF 2015

DISTRICT : PUNE

Smt. Suvarna Pramod Malusare)
@ Smt. Suvarna Ganpat Sankpal,)
Age:27 years, Occ: Nil.)
AGe:27, R/at: At post Laveri,)
Tal: Bhor, Dist. Pune.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
The Secretary, Irrigation Department)
Mantralaya, Mumbai.)
2. The Superintending Engineer,)
Zonal Office, Pune Irrigation)
Project Circle, Pune.)....**Respondents**

Shri K.R. Jagdale, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 13.04.2016

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ORDER

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging order dated 31.3.2015 issued by the Respondent No.2 holding that the Applicant is not eligible for compassionate appointment as she is a married daughter and she has no family to support as she is the only child of her parents, both of whom are dead.

3. Learned Counsel for the Applicant argued that the Applicant's father was appointed in a Group 'D' post by the Respondent No.2 as a person belonging to Project Affected Person (P.A.P.) category. The Applicant's father expired on 28.2.1993, while in service and the Applicant's mother was appointed as Peon on 19.10.1993 on compassionate ground. The Applicant's Mother passed away on 3.5.2013, leaving the Applicant as her only heir. The Applicant got married on 17.5.2009. The Applicant applied to the Respondent No.2 on 13.6.2013 and 7.10.2013 for compassionate appointment. However by impugned order dated 31.3.2015, the Applicant was informed that she was not eligible for compassionate appointment, as a married daughter, she had no family from parental side to support. Learned Counsel for the Applicant argued that G.R. dated 26.2.2013 regarding policy of giving

compassionate appointment to married daughters is discriminatory as it discriminates between sons and daughters. A married son even if he has no parents or siblings to support, can be given compassionate appointment, while a married daughter in similar circumstances is held ineligible for such appointment. Under Article 15 of the constitution there can not be any discrimination based on sex.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant got married on 17.5.2009 before her mother expired on 3.5.2013. As per the definition of family given in the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, no dependent member in the family of late Smt. S.G. Sankpal is left. As such under the Applicant is not eligible for compassionate appointment.

5. The Applicant is relying on the G.R. dated which reads:-

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

(emphasis supplied).

It is quite clear that a married daughter is eligible to be appointed on compassionate basis, if she is the only child of a Government Servant. The G.R. does not make any mention that if both parents of such a daughter are already dead, she will not be entitled to compassionate appointment. There is

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no such stipulation for an only child, who is a son that he will give an undertaking that he will look after his parents. The State cannot make any discrimination on the basis of sex under Article 15 of the Constitution. The Applicant has stated in para 7.3 of the O.A. that:-

“7.3 The impugned communication about denial of compassionate appointment to the Applicant is contrary to the safeguard provided by the Article 15 of Constitution of India in which it is categorically provided that the State cannot discriminate on the grounds of sex in the public employment by excluding the married daughter. Thus the Applicant is seeking compassionate appointment on the class III group C post in clerical cadre.

The Respondents in their affidavit in reply dated 8.12.2015 have stated in para 21 as follows:-

“ With reference to para 7.3, it is submitted that the Applicant's claim is not denied on the ground of marriage. The claim is not tenable as per the provisions of GR dated 26.2.2013. The appointment on compassionate ground are to be made for the eligible dependent family members of the deceased employee. It is also submitted that the family details submitted in the application dated 13.6.2013. (Exhibit-E, P.16 submitted by the applicant) by the Applicant are in contravention with the definition of family given in chapter II of rule a (16) of Maharashtra Civil Services (General Condition of Service) Rules, 1981. Smt. Savitri

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Ganpat Sankpal has left no family members, the question of appointment of on compassionate ground to the Applicant does not arise. Hence requested to dismiss the application.”

It is surprising that the Respondents have not replied to the claim of discrimination on the ground of sex, which is prohibited under Article 15 of the constitution. It is not their case, that an only son, if both his parents are dead, will not be eligible for compassionate appointment on the ground that he has no family to support. The Applicant on palin reading of G.R. dated 26.2.2013 is eligible for compassionate appointment. Even otherwise, if an only son, whose parents are dead is eligible for compassionate appointment, the same benefit cannot be denied to married daughter, who is the only child of her parents, who are dead.

6. Having regard to the aforesaid facts and circumstances of the case, the communication dated 31.3.2015 issued by the Respondent No.2 is quashed and set aside. The Respondents are direct to consider the claim of the Applicant for compassionate appointment as per rules. This O.A. is allowed accordingly with no order as to costs.

Sd/-
(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 12.04.2016

Place : Mumbai

Dictation taken by : SBA

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