

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.860 OF 2015

DISTRICT : KOLHAPUR

Kum. Madhuri Maruti Vidhate.)
(Since after marriage Smt. Madhuri)
Santosh Koli), Aged 31 Yrs, Occu.: Nil,)
R/o. Plot No.856, Sainath Colony,)
Line Bazaar, Kolhapur.)...**Applicant**

Versus

1. The Superintending Engineer.)
Sangli Irrigation Circle, Sangli,)
Having Office at Vishram Baug,)
Sangli.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

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

Mr. A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

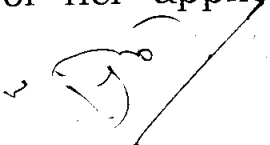
DATE : 24.03.2017



JUDGMENT

1. This Original Application (OA) is made by the second married daughter of the late Smt. Lata Maruti Vidhate who was a Group 'D' employee and who died in harness on 28.3.2006. The appointment on compassionate ground is being sought. The earlier move of the elder married sister of the Applicant Mrs. Sangita M. Thonge failed when the Respondents rejected her claim vide their communication of 18.8.2011 (Exh. 'B', Page 14 of the Paper Book (PB)) on the ground that married daughter was not eligible to being appointed on compassionate ground.

2. The Applicant and Smt. Sangita are the only two heirs to the said deceased. Their father late Shri Maruti Vidhate is also no more and it seems that it was after his demise that his wife – late Smt. Lata came to be appointed on compassionate ground. But she also passed away in harness on 28.3.2006. It is now not necessary to consider the case of the sister of the Applicant, and therefore, I shall now concentrate only on the case of the Applicant such as it is. The Applicant was born on 2.4.1984. The claim of her sister was negatived, and thereafter, the Applicant moved for getting the compassionate appointment. A copy of her application was received in the office of the 1st



Respondent – Superintending Engineer, Sangli Irrigation Circle, Sangli on 12.3.2013. The 2nd Respondent hereto is the State of Maharashtra in Water Resources Department. The application just referred to of the Applicant is at Exh. 'D' (Page 19 of the PB). The office of the 1st Respondent by its reply of 24.3.2013 to the communication of the Applicant informed as follows in Marathi (Exh. 'A', Page 13 of the PB).

“प्रति,
सौ. माधुरी संतोष कोळी,
वारणा कॉलनी, नागाळा पार्क,
कोल्हापूर.

विषय:- अनुकंपा तत्वावर नोकरी मिळणेबाबत.

सौ. माधुरी संतोष कोळी, वारणा कॉलनी नागाळा पार्क, कोल्हापूर.

संदर्भ:- आपला अनुकंपा तत्वावर नोकरी मिळणेबाबतचा बिन तारखेचा अर्ज.

उपरोक्त विषयास अनुसरून आपला अनुकंपा तत्वावर नोकरी मिळणेबाबतचा बिन तारखेचा अर्ज प्राप्त झालेला आहे. सदर अर्जास अनुसरून आपणास कळविणेत येते की,

संदर्भित शासन निर्णयामध्ये “दिवंगत राज्य शासकीय कर्मचा-यांच्या कुटुंबामध्ये फक्त विवाहित मुलगी हे एकमेव आपत्य असल्यास किंवा त्यांचे कुटुंब फक्त विवाहित मुलीवर अवलंबून असेल अशा प्रकरणी दिवंगत शासकीय कर्मचा-यांची विवाहित मुलगी ही अनुकंपा नियुक्तीसाठी पात्र राहिल.” असे शासन निर्णयात नमुद आहे. तथापि आपण संबंधित कै. विधाते, शिपाई यांचे दुसरे आपत्य असलेमुळे आपले अर्जाचा विचार करता येत नाही.

स्थळ प्रत अ.अ. यांना मान्य

सही/-

सहा. अधिक्षक अभियंता
सांगली पाटबंधारे मंडळ,
सांगली”

3. It will become very clear from the above quoted communication that the compassionate appointment could be given to a married daughter only if she was the only child of the deceased and his family was fully dependent on her. It quite clearly appears that the only reason why the claim of the Applicant was disallowed was that she was not the only child and that the family of the aid deceased did not depend on her. A question which quite smoothly flows from the reasoning of the above communication is, as to whether, even a single child does not constitute the family of his or her parents. The completely baseless thought process that underlies this communication will be exposed by this simple question. But there is more to it as would become clear as the discussion progresses. It is not clearly mentioned therein, but it seems that GAD's GR dated 26th February, 2013 must have been the driving force. I shall presently discuss it to the extent it is warranted hereby, but then, it is this communication of 23rd April, 2013 which is the subject matter hereof.

4. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

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5. It must have become quite clear from the above discussion and the record also clearly bears out that the only undoing of the Applicant was that she was not the only child and further her father's family, according to the Respondents, did not depend on her. Mr. A.J. Chougule, the learned Presenting Officer (PO) told me repeatedly that the family of the said deceased has practically become extinct with both the daughters getting married. How I wish, such instructions which apparently are based on archaic notion of the place of a girl in her father's family were not given to the learned PO. It is very clear that it discriminates between son and daughter and it envisages a fact situation where in the absence of a brother, the event of the marriage of a daughter leads to extinction of her parents family. I am more than a little surprised that such submission should be made at this juncture of the social, legal and family evolution. Subject to the final decision hereof, I reject this contention of the learned PO and proceed further.

6. One aspect of the matter, however, is quite clear that except for the hitch that manifests itself in Exh. 'A', there was otherwise no problem in the matter of enlisting the Applicant as a candidate for compassionate appointment. Had it been so, the said Exh. 'A' would

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clearly have stated the same thing. Going by the law laid down by the Hon'ble Supreme Court in **Mohinder Singh Gill Vs. Chief Election Commissioner : AIR 1978 SC 851**, the validity of the action challenged herein would have to be considered only in accordance with the reasons manifested by Exh. 'A', and therefore, I do not think academic considerations should weigh with me.

7. In Para 8 of the Affidavit-in-reply filed by Shri Shashank M. Sinde on behalf of the Respondents, there is a reference to the GAD GR of 26th February, 2013. At this stage, I think, I must turn to a Judgment of the 2nd Division Bench of this Tribunal here in Mumbai which spoke through me in **OA 155/2012 (Kum. Sujata D. Nevase Vs. The Divisional Joint Director (Agriculture), Pune, dated 21.7.2016**. That Judgment has in fact been annexed to this OA at Exh. 'E' (Page 20 of the PB). The facts therein were such that although the deceased had three children, but ultimately, the claim for compassionate appointment that survived the judicial determination was of a daughter who got married after making an application for being appointed on compassionate ground. The 2nd Bench extensively considered an earlier G.R. dated 26th October, 1994. The position such as it obtained thereunder vide Rule 3(a) was that a married daughter



could not be a claimant of a deceased father in so far as compassionate appointment was concerned. The 2nd Bench used strong language to denounce such a provision which formalized gender inequality. Thereafter, in Para 6, the 2nd Bench relied upon **Writ Petition No.1284/2011 (Aparna M. Zambre and one another Vs. Assistant Superintending Engineer and 2 others, dated 1.8.2011.** That was a Judgment of the Division Bench of the Hon'ble Bombay High Court in which an earlier Judgment of a Single Bench in **Writ Petition No.6056/2010 (State of Maharashtra and others Vs. Medha P. Parkhe)** was referred to, along with a number of other Judgments. In **Aparna Zambre** (supra), the deceased employee left behind his widow and two daughters. Only one of the two applied for being appointed on compassionate ground and the other heirs had no objection. Her name was included in the wait-list, which was the state of affairs also in **Sujata Nevase's** case. Her claim came to be rejected because in the meanwhile, she got married just like the Applicant in **Sujata Nevase**. It was ultimately held by the Division Bench in **Aparna Zambre** (supra) that the impugned condition in the said GR was discriminatory. In Para 10 thereafter, the 2nd Bench in **Sujata Nevase** turned its attention to the G.R. of 26.2.2013. Para 10 thereof, needs



to be reproduced because that is what the said G.R. was like.

“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-१०९३/२३३५/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 मृत्यूपूर्वी कायदेशीररीत्या दत्तक घेतलेली मुलगा/ अविवाहित मुलगी, दिवंगत शासकीय कर्मचा-याचा मुलगा हयात 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 अधीक्षक 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 राहील.

- 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 राहील. मात्र अनुकंपा तत्वावर एकदा नियुक्ती मिळाल्यानंतर तो/ती (उमेदवार) कुटुंबीयांचा सांभाळ करीत नसल्याचे आढळल्यास त्याची/तीची शासन सेवा तात्काळ समाप्त करण्यात यावी. तरी यासंदर्भात आवश्यक हमीपत्र (undertaking) नियुक्तीपुर्वी 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 डिजिटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”



8. Paras 14, 16 and 17 from **Sujata Nevase** also need to be reproduced so as to have a clear picture before us.

“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.



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 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.”

9. It seems that the State carried the matter by way of **Writ Petition No.1131/2016 (The State of Maharashtra Vs. Smt. Sujata D. Nevase)**. By an order dated 10th October, 2016, the Division Bench of the Hon'ble Bombay High Court was pleased to reproduce the above quoted Paras 14 and 17 from **Sujata Nevase** (supra) and then formulated three issues in Para 3 which were inter-alia as to whether the said G.R. of 26.2.2013 was issued contrary to the Judgment in **Aparna Zambre** (supra). Further, as to whether a married daughter could be deprived of appointment under the compassionate scheme, in case the family of the deceased was survived by another male or female child and lastly, as to whether in our State, the married daughter of a deceased employee was being denied appointment on the ground of there being other surviving brother or sister of the Applicant. The copy of the order was directed to be forwarded to the Principal Secretary, GAD and Law and Judiciary.

10. However, it is equally clear that the GAD issued another G.R. dated 17th November, 2016 regarding the



issue of compassionate appointment. A reference was made to Sujata Nevase's OA and the fact that the G.R. of 26.2.2013 had been struck down and the State took into consideration the issues formulated in the Writ Petition by the Hon'ble High Court and modified the scheme doing away with the discrimination between boy and girl and categorically including married as well as unmarried daughter of the said deceased and why even legally adopted boy or girl, married or unmarried also came to be included.

11. It is, therefore, quite clear that the latest G.R. in the field furnishes a complete answer to the objection raised by the Respondents and consequently, the impugned order cannot sustain.

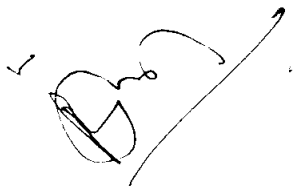
12. The learned PO Mr. Chougule relied upon **Dhalla Ram Vs. Union of India & Ors. : AIR 1997 SC 564.** There, the move of the Applicant for compassionate appointment came to be rejected by the Hon'ble Supreme Court because while his claim was rejected on 14th July, 1988, he filed the OA quite belatedly on 12.7.1993 and in that context, it was held that compassionate appointment was not a method of recruitment and implicit is the mandate that such claimants should move with due



dispatch. It is, however, equally true that, if as is the case in this OA, the Respondents in a recalcitrant attitude block and continue to block the move of the heirs of the deceased employee on entirely unsustainable grounds and when G.R. of 2016 by itself knocks the bottom out of the objection of the Respondents, then very obviously, the principles in **Dhalla Ram** (supra) cannot be applied hereto. That was on an entirely different set of facts and the delay was the undoing of the claimant in that matter.

13. Mr. Chougule, the learned PO then relied upon **OA 646/2015 (Shri Jitendra S. Rane Vs. Deputy Conservator of Forest and 2 others, dated 16.9.2016)** rendered by the Hon'ble Vice-Chairman. From Para 7 thereof, it would become clear that the decision thereof turned on the ground that the compassionate appointment was offered to the widow of the said deceased which offer she declined to accept. Such is the state of affairs herein.

14. The upshot, therefore, is that the impugned order will have to be and is hereby quashed and set aside. The Respondent No.1 is hereby directed to enlist the name of the Applicant in the list of compassionate appointees w.e.f.02.04.2013 and consider her case in accordance with law and rules expeditiously and preferably within six



months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik) 24.03.17

Member-J

24.03.2017

Mumbai

Date : 24.03.2017

Dictation taken by :

S.K. Wamanse.

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