

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.475 OF 2018
(Subject:-Compassionate Appointment)**

DISTRICT: - BEED

Shivkanya wd./o Santosh Bharti)
Age:- 37 years, Occu: Nil,)
At Post Shir sala, Tq. Parli)
Dist. Beed.)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through: Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 32.)
2. The Superintending Engineer,)
Mechanical Circle,)
Water Resource Department,)
(Irrigation Department), Nanded.)
3. The Executive Engineer,)
Mechanical Division,)
Water Resource Department,)
(Irrigation Department),)
Osmanabad.)...**RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde learned Advocate
for the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **02.12.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order dated 31.03.2018 (Annex. 'A-11') issued by the respondent No.2 i.e. the Superintending Engineer, Mechanical Circle, Water Resource Department (Irrigation Department), Nanded, thereby rejecting the claim of the applicant for compassionate appointment on the ground that 3rd child being begotten to the applicant after cut-off date of 31.12.2001 pursuant to G.R. dated 28.03.2001, which was issued in respect of the small family of the Government servant.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The father in law of the applicant namely Ganpat Shankar Gosavi was working in the respondent department who died during the course of his employment. Thereafter, his son i.e. the husband of the applicant namely Santosh Ganpat Gosavi came to be appointed on compassionate ground as per appointment letter dated 30.08.2008 bearing office order No.756/2008 (Annex. 'A-1') on certain terms and

conditions, one of which (No.19) was that he shall submit within two years certificate of passing of typing examination of Marathi 30 WPM and English 40 WPM. Meanwhile, the husband of the applicant applied for change in his surname from Gosavi to Bharti and the surname was changed to that of Bharti in accordance with law.

(ii) It is submitted that the husband of the applicant could not obtain typing proficiency certificate within two years of stipulated period for continuation of his employment on the post of Clerk Cum Typist in Class-III cadre. In view of that, his services were terminated as per order dated 30.10.2010 (Annex. 'A-2') bearing office order No.1007/2010 issued by the respondent No.2.

(iii) It is further submitted that in fact when the husband of the applicant could not fulfill the condition of production of requisite typing certificate within two years of his employment as per G.R. of 1996, he ought to have been reverted to Class-IV post. The husband of the applicant, therefore, filed applications dated 06.07.2011 and 10.01.2012 (Annex. 'A-3' collectively) seeking appointment on Class-IV post. In the identical situation, the Hon'ble High Court Bench at Aurangabad in Writ Petition No.4422/2003 was pleased to

allow the prayer of the petitioner therein for reinstatement in service by quashing and setting aside his termination from Class-III employment. The copy of order in the said Writ Petition is produced at Annex. 'A-5', wherein there is reference to G.R. dated 23.08.1996. The applicant would have been entitled for such relief of continuation of Government service in Class-IV cadre. However, the husband of the applicant all of a sudden died on 21.11.2014, which fact is reflected in death certificate produced at Annex. 'A-4'.

(iv) In the circumstances as above, the applicant was compelled to apply for appointment on compassionate ground and accordingly she submitted application (Annex. 'A-6'). The applicant is a widow of Government servant. She has studied up to 10th standard as per school leaving certificate (Annex. 'A-7'). She is eligible and entitled for appointment to be appointed in Class-IV cadre on compassionate ground treating the services of her husband as continued in Class-IV cadre as per 1996 G.R. The family of the applicant consists of her two daughters named Snehal and Shweta and a son named Shivam as reflected in heirship certificate (Annex. 'A-8').

(v) In view of above, the applicant previously filed Original Application No.486/2016 seeking appointment on compassionate ground. The said Original Application was disposed of by this Tribunal by order dated 12.07.2017 by giving direction to take decision on the application filed by the applicant on 10.05.2016 seeking appointment on compassionate ground. Thereafter, the applicant filed application dated 14.11.2017 (Annex. 'A-10') for implementation of the order of this Tribunal dated 12.07.2017 passed in O.A.No.486/2016 (Annex. 'A-9'). The respondent No.2, however, by impugned order dated 31.03.2018 (Annex. 'A-11') denied the claim of the applicant of compassionate appointment on the ground that there is no provision for substitution of name of heirs of her deceased father in law as well as on the ground that three children are begotten to the applicant from her marriage with the deceased husband out of which two children namely daughter Shweta and son Shivam were born after cut-off date of 31.12.2001 mentioned in the G.R. dated 28.03.2001 on 04.06.2004.06.2003 and 03.08.2004 respectively.

(vi) It is the contention of the applicant that the deceased husband of the applicant got employment on compassionate

ground after the death of his father i.e. father in law of the applicant who was in Government service, but her husband died on or about 2014 leaving behind the applicant and three children. The deceased husband of the applicant was entitled to be appointed in Government services as Class-IV employee after his termination of service in Class-III employment on account of non-compliance of terms and conditions laid down in the appointment letter to the post of Clerk cum Typist. In view of the same, the applicant is facing hardship in maintaining her children. The applicant initially challenged the G.R. in question but the said prayer is deleted and confined to the claim of entitlement of compassionate appointment. In order to fortify her claim, the applicant placed reliance on the judgment of Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **Writ Petition No.4410/1997** (Annex. 'A-12') in which case the Hon'ble High Court was pleased to direct the respondents therein namely Superintendent of Police, Nanded to consider the case of the applicant who was widow and a rustic lady and had applied for compassionate appointment after lapse of about five years of death of her husband. Hence, this application.

3. The respondents resisted the application by filing affidavit in reply by one Yogesh Subhash Biradar working as Deputy Engineer, Mechanical Sub-Division, Latur, District Latur, thereby he denied the adverse contentions raised in the application.

(i) It is specifically contended that the deceased husband of the applicant got compassionate appointment after the death of his father who was Government servant. However, his services were terminated after non compliance of condition of production of requisite typing certificates. After termination of his services, his name was in the waiting list for absorption/reversion in Class-IV cadre. But he was not in fact absorbed or reverted. Mere presence of his name in the waiting list cannot give any substantive right to the applicant to claim substitution or compassionate appointment. The disentitlement of the applicant for compassionate appointment is in view of G.R. dated 28.03.2001, whereby it is provided that the benefit of compassionate appointment will not be available if the deceased Government servant has begotten 3rd child after cut-off date of 31.12.2001. The applicant is having 3rd child, who is born after cut-off date of 31.12.2001. In view of the same, the impugned order of

rejection of her claim on that ground as well as on the ground of want of provision of substitution of name of legal heir is absolutely legal and proper. Consequently the application is devoid of merits and is liable to be quashed and set aside.

4. I have heard at length the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer representing the respondents on other hand.

5. After having considered the facts and documents on record, it is evident that admittedly the deceased husband of the applicant got compassionate appointment as per appointment order dated 30.08.2008 (Annex. 'A-1') on the post of Clerk cum Typist in Class-IV cadre after the death of his father namely Ganpat Shankar Gosavi who was in Government services. Amongst other terms and conditions of the said appointment order dated 30.08.2008, the condition No.19 which was relevant is as under:-

“ १९. संदर्भिय (२) शासन आदेशाप्रमाणे त्यांनी टंकलेखनाचे विहित वेगमर्यादेचे (मराठी ३० व इंग्रजी ४० श. प्र. मि.) शासकीय वाणिज्य प्रमाणपत्र आदेशाच्या दिनांकापासून दोन वर्षांच्या आत सादर करावे लागेल, अन्यथा त्यांनी नियुक्ती संपुष्टात आणण्यात येईल.”

6. Admittedly, the deceased husband of the applicant failed to pass and obtain the requisite typing certificate of Marathi 30 WPM and English 40 WPM within two years of the date of employment. In view of that, his services were terminated as per order dated 30.10.2010 (Annex. 'A-2'). Thereafter, the husband of the applicant died on 21.11.2014 as reflected in death certificate (Annex. 'A-4').

7. The applicant's claims that in terms of G.R. dated 23.08.1996 as reflected in the order of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition No.4422/2003 (Annex. 'A-5'), the deceased husband of the applicant was entitled for his reversion in Class-IV cadre. In the said citation case, the petitioner therein was appointed on compassionate basis to the post of Clerk cum Typist. One of the requirements was to produce typing certificate as is the fact in the present case. In view of failure to produce such certificate, the services of the petitioner came to be terminated on 17.06.2000. Aggrieved by that order, the petitioner therein filed Original Application No. 1096/2000 before Maharashtra Administrative Tribunal. By order dated 08.03.2001, the Maharashtra Administrative Tribunal considered the G.R. dated 23.08.1996, which provided that,

in the event when the services of a compassionate appointees have been brought to an end on the ground of failure in getting the certificate of typing with requisite speed, such a compassionate appointees should be given fresh appointment on his acquiring such certificate. The case squarely covered under G.R. dated 23.08.1996. The application was allowed and the respondents were directed to give fresh appointment to the applicant under the scheme of compassionate appointment.

8. Being aggrieved by the said order, the respondents therein challenged the said order by preferring Writ Petition No.2701/2001. The Hon'ble Division Bench of the Hon'ble Bombay High Court by order dated 02.09.2002 was pleased to hold that Maharashtra Administrative Tribunal would have no Jurisdiction in the matter as the petitioner was appointed to the post in the Krishna Valley Development Corporation and accordingly, Writ Petition was allowed. Thereafter, the petitioner filed Writ Petition No.4422/2003 on 30.11.2002. It was brought on record that the petitioner had obtained requisite typing certificate and computer diploma. In the said case said case it was also a fact that before services of the petitioner was terminated by order 17.06.2000, the petitioner

had already appeared for the examination on 27.05.2000. In such circumstances, if the result had been declared before 16.06.2000, the respondents would not have issued the order of termination. Moreover, the petitioner therein was appointed on compassionate ground to relieve the hardship which the family was faced on account of death of bread earner in the family. In view of such circumstances, the petitioner was ordered to be reappointed but without giving back wages.

9. In the affidavit in reply the respondents as regards reversion of the deceased husband of the applicant to the post of Class-IV, it is submitted that his name was in the waiting list of absorption/reversion in Class-IV cadre but mere presence of his name in the waiting list cannot be given any substantial right to the applicant to claim substitution or compassionate appointment.

10. So far as disentitlement of the applicant on account of 3rd child in view of G.R. dated 28.03.2001 is concerned, learned Advocate for the applicant has placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay dated 03.07.2019 in **W.P. No. 7742/2014** in the matter of **Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad,**

Nashik and Ors. In the said citation case, claim was rejected by the Zilla Parishad, Nashik by referring to the G.R. dated 23.03.2001, which deals with policy of the State Government prohibiting the person, who has begotten 3rd child after cut-off date of 31.12.2001. In para Nos. 7 and 8, it is observed as under :-

“7. Notwithstanding there being no prayer to quash the said 3 17 WP 7742-2014.doc condition as unconstitutional, we declare the same to be unconstitutional. For the reason in a given set of facts, as in the instant case, the Petitioner who has only one child would suffer the brunt of public employment being denied on the reasoning that her deceased husband was blessed with two children from the previous marriage. The intention behind the policy is to control the exploding population and not to prohibit remarriages. The Petitioner was the second wife of the deceased employee of Zilla Parishad and as far as she was concerned, she bore only one child.

8. Declaring the Petitioner to be eligible to be considered for grant of appointment on compassionate basis, we direct the Respondents to consider her entitlement as

per policy, meaning thereby, the Respondents would consider whether the Petitioner is in such state of penury that she needs an appointment on compassionate basis so that she and her family can survive.”

11. Learned P.O. appearing for the respondents opposed the submissions raised on behalf of the applicant and contended that impugned communication is legal and proper in view of G.R. dated 28.03.2001 regarding small family.

12. After having considered the peculiar facts and circumstances on record of this matter, it is evident that the husband of the applicant was appointed on compassionate ground on the post of Clerk –cum- Typist in Class-IV cadre. After his services were terminated by order dated 30.10.2010 (Annex. ‘A-2’) as discussed above, his name seems to have been taken in the waiting list for absorption/reversion in Class-IV cadre. Had he been alive, he would have been absorbed/ reverted in Class-IV cadre. No details in that regard are produced on behalf of the respondents to disprove the claim of the applicant. The applicant who is seeking compassionate appointment is definitely facing hardships as

she is having three children. Hurdle of 3rd child being begotten after 31.12.2001 is not there in view of declaring the requisite G.R. dated 28.03.2001 being unconstitutional by Hon'ble High Court.

13. This is a fit case to adopt the liberal approach. The deceased husband of the applicant did not get full-fledged fruits of his compassionate appointment. His entitlement of employment in Class-IV cadre was obvious. In such circumstances, the impugned communication issued by the respondent No.2 dated 31.03.2018 (Annex. 'A-11') is not legal and proper and is liable to be quashed and set aside and consequently the applicant shall be entitled for compassionate appointment in Class-IV cadre. I therefore, proceed to pass the following order:-

ORDER

The Original Application No. 475/2018 is allowed in following terms:-

- (A) The impugned communication / order dated 31.03.2018 (Annexure 'A-11') issued by the respondent No.2 is hereby quashed and set aside.

- (B) The respondents are directed to consider the claim of the applicant for compassionate appointment as per the seniority in accordance with law keeping aside the G.R. dated 28.03.2001.
- (C) There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 02.12.2022
SAS O.A.475/2018