

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1863 OF 2014

Pravin s/o. Dattatrya Nimbalkar,
Age: 25 years, Occ: Nil,
R/o: Anandnagar, Osmanabad,
Dist. Osmanabad.

... PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary General
Administration Department,
Mantralaya, Mumbai-32.
- 2) The Superintendent of Police,
Osmanabad, Dist. Osmanabad.
- 3) Vimalbai w/o. Dattatraya Nimbalkar,
Age: 50 years, Occ: Household,
R/o: Shaikh Nivas, Bank Colony,
Osmanabad, Dist. Osmanabad.
- 4) Ashlesha d/o. Dattatraya Nimbalkar,
Age: 15 years, Minor under
Guardianship of mother
Vimalbai Dattatraya Nimbalkar,
Resp. No.3.

... RESPONDENTS

WITH

CIVIL APPLICATION NO. OF 2015
IN
WRIT PETITION NO. 1863 OF 2014

1. Vimalbai w/o. Dattatraya Nimbalkar,
Age: 46 years, Occ: Nil.

2. Ashalesha d/o. Dattatraya Nimbalkar,
Age: 16 years, occ. Education,
Minor through U/G real mother
Viz Vimalbai Dattatraya Nimbalkar,
Both r/o Shaikh Niwas, Bank Colony,
Osmanabad, Dist. Osmanabad.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra,
Through Secretary,
General Administration Department,
Mantralaya, Mumbai.
2. The Superintendent of Police,
Osmanabad, Dist. Osmanabad.
3. Pravin s/o. Dattatraya Nimbalkar,
Age: 25 years, Occ: Nil,
R/o: Anandnagar, Osmanabad,
Dist. Osmanabad.

... **RESPONDENTS**

Mr. V.D.Salunke, Advocate for the Petitioner.
Mr.G.K.Thigale, AGP for Respondent Nos.1 and 2, in writ petition.
Mr. Sudhir Chavan, Advocate for Respondent Nos.3 and 4, in writ petition.

CORAM : **S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ.**

RESERVED ON: 04th February, 2015.

PRONOUNCED ON: 13th March, 2015.

ORAL JUDGMENT: (Per V. L. Achliya, J.)

1 Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final disposal at admission stage.

2 Petitioner has filed this writ petition seeking relief of mandamus as against Respondent No.2 with a direction to issue letter of appointment in favour of Petitioner on compassionate ground without insisting Petitioner to submit no objection from Respondent Nos.3 and 4.

3 We have heard Mr.Salunke, learned counsel representing the Petitioner, learned Additional Government Pleader representing Respondent Nos.1 and 2 and Mr.Chavan, learned counsel representing Respondent Nos.3 and 4.

4 The Petitioner has approached with a case that his deceased father Dattatraya, who was serving as a Police Constable died on 12.12.2005 while on duty. Petitioner claims that beside his mother Chandanbai and younger brother Prassan Dattatraya Nimbalkar, are the legal heirs of deceased Dattatraya. At the time of death of his father, his brother Prassan was minor. Since the Petitioner was major in age and completed higher secondary board examination, he was only eligible to claim employment on compassionate ground. It is the say of Petitioner that although his father Dattatraya had taken divorce from his mother on 30.07.1996, and thereafter married with Respondent No.3 still she is not eligible for appointment on compassionate ground as she being uneducated and so also age bar. Respondent No.4, the daughter of Respondent No.3, being minor, she

is not eligible to claim appointment on compassionate ground.

5 Since all the monetary retiral benefits were withdrawn by Respondent No.3 and refused to provide share in the amount withdrawn, he filed Special Civil Suit No.61 of 2007, seeking declaration that he is eligible to seek an appointment on compassionate ground being a son of deceased Dattatraya. The suit was decreed in his favour and the Court has declared that he alone is entitled for appointment on compassionate ground and directed Respondent Nos.1 and 2 to appoint Petitioner on compassionate ground. The judgment and decree passed in favour of Petitioner attained finality as it was not challenged by Respondent Nos.3 and 4. Since the decree was not complied, the Petitioner filed execution proceedings vide Execution Petition No.86 of 2012. In said proceedings, the Court has passed the order directing Respondent Nos.1 and 2 to appoint Petitioner without insisting for consent from Respondent Nos.3 and 4. The order passed in execution proceedings, was challenged by Respondent No.3 before this Court in Writ Petition No.10510 of 2012. Although this Court has set aside said order passed in execution proceedings in favour of Petitioner, but directed Respondent Nos.1 and 2 to decide the claim of Petitioner for appointment on compassionate ground in accordance with rules, regulations and provisions of law, expeditiously, and preferably within a period of one month from the date of the order. However, the

Respondent No.2, issued letter dated 21.11.2013, to Petitioner and asked him to submit no objection of all the family members. Being aggrieved by said communication dated 21.11.2013, Petitioner has preferred this petition.

6 On the other hand, it is the say of Respondent Nos.1 and 2 that as per the Government Resolution bearing No. Compassionate – 1059/Pra.Kra.34-A/3115, dated 23.08.1996 and subsequent Government Resolution bearing No. Compassionate-1006/Pra.Kra.174/06, dated 10.07.2007, if the deceased Government employee has more than one wife alive at the time of his death then in that case, the no objection / consent of all the family members of the deceased is necessary for claiming appointment on compassionate ground. Accordingly, the Petitioner was called upon to submit no objection / consent from all other family members.

7 Respondent Nos.3 and 4 have resisted the claim of Petitioner with contention that Petitioner has filed present petition in gross suppression of true and correct facts. It is the say of Petitioner that appointment on compassionate ground cannot be claimed as a matter of right. The very object of such appointment is to enable the family to tide over the sudden crisis due to loss of sole bread earner in the family. It is the say of Respondent Nos.3 and 4 that Petitioner is not at all eligible to be appointed on compassionate ground. The marriage

between the mother of Petitioner and deceased Dattatraya was dissolved by decree of divorce dated 30.07.1996, passed by the Court of competent jurisdiction. The mother of Petitioner has accepted the custody of Petitioner and specifically agreed not to claim any amount. It is the say of Respondent Nos.3 and 4 that in the petition for divorce and the decree passed therein, it is specifically mentioned that mother of Petitioner is serving as nurse. So also it is apparent from the face of record that the brother of Petitioner namely Prassan born on 13.12.2000 i.e. four years after passing of decree of divorce. Considering this aspect, the learned Joint Civil Judge (Senior Division), Osmanabad has refused to grant any relief in favour of the brother of Petitioner. The mother of Petitioner is serving as nurse in Government Hospital and therefore, there is no question of Petitioner being in dire need of employment to maintain himself and his family. As per Government Resolution dated 26.10.1994, which lay down the guidelines for appointment on compassionate ground, the factor of earning of the family, is one of the important criteria to be taken into consideration by the competent authority while entertaining and deciding the claim on account of compassionate ground. Since the mother of Petitioner is serving as a nurse and other brother of Petitioner being not borne during the subsistence of marriage between the mother of Petitioner and deceased Dattatraya, he cannot be treated as family member of

Petitioner.

8 It is the say of Respondent Nos.3 and 4 that they are alone entitle to claim appointment on compassionate ground, being the family members and legal heirs of deceased Dattatraya. It is further say of Respondent Nos.3 and 4 that they have no source of income other than meager amount of pension, which Respondent No.3 is receiving after the death of Dattatraya. They are really in need of employment on compassionate ground as their financial condition is precarious. Respondent No.4 is claimed to be 16 years of age and studying in 10th standard. Respondent No.3 has lodged her claim in respect of Respondent No.4 for appointment on compassionate ground with Respondent Nos.1 and 2 and her name is recorded at serial No.21 in the list of the persons claiming appointment on compassionate ground. The fact to this effect has been recorded in letter addressed to Respondent No.3 by Respondent No.2. It is the say of Respondent No.3 that since Respondent No.4 is on the verge of attaining age of majority and she being the only eligible and competent person to claim appointment on compassionate ground, the petition of the Petitioner be dismissed.

9 We have carefully considered the submissions advanced by the learned counsel representing the parties and the learned Additional Government Pleader for the State, in light of the pleadings

and the documentary evidence placed on record by both the sides.

10 On appreciation of rival pleadings and the documents placed on record, the admitted position emerges that the mother of Petitioner has lawfully taken divorce from deceased Dattatraya and the decree in H.M.P. Case No.116 of 1996, was passed on 30.07.1996, dissolving their marriage. Therefore, the mother of Petitioner cannot be termed as a 'wife' of Dattatraya alive at the time of his death on 12.12.2005, through whom the Petitioner has claimed appointment on compassionate ground. Thus, on the date of death of Dattatraya i.e. 12.12.2005, the Respondent No.3 alone entitle to claim herself as wife of deceased Dattatraya. In view of this, there is no question of survival of more than one wife, arose in the matter.

11 It appears that Respondent Nos.1 and 2 have wrongly interpreted the directives contained in Government Resolution bearing No. Compassionate – 1059/Pra.Kra.34-A/3115, dated 23.08.1996, under the bonafide impression that the instant case, relates to existence of more than one wife of deceased at the time of his death and there is a dispute between two wives of deceased. On perusal of para No.3 of said Government Resolution, it appears that the Government has issued those directives to be applicable in a case wherein there is no prohibition operate by law to perform more than one marriage and such person is found to have more than one wife alive at the time of his

death. To overcome such eventuality, the guidelines have been laid down to obtain no objection from other surviving deceased wife of such Government employee. Since at the time of death of deceased, Respondent No.3 was sole surviving wife of the deceased, the question of obtaining no objection from her at all not attracted in the matter on the part of Respondent Nos.1 and 2.

12 In fact, Respondent Nos.1 and 2 should have examined the case of the Petitioner as well as Respondent Nos.3 and 4 solely on the basis of detailed guidelines laid down by the Government as per the Government Resolution dated 26.10.1994 and such other Government Resolution issued thereafter. It was expected on the part of Respondent Nos.1 and 2 to have considered whether the Petitioner is legally entitled to claim the employment on account of compassionate ground of deceased Dattatraya. The right to receive the appointment on compassionate ground is not a statutory right nor same can be claimed by way of succession. In fact, if we consider the object behind the scheme, then the purpose of the scheme framed by Government is to provide employment on compassionate ground, is an exception to the rule in general that all appointments in Government services to be made in accordance with the procedure laid down for such recruitment. The appointment on compassionate ground is an exception to the rule in general, which is recognized under the law on the ground of necessity.

The very object of compassionate appointment is to enable the family of deceased employee to tide over the sudden situation crop up due to loss of sole bread earner in the family and not as if to provide employment. So also, mere death of an employee does not entitle for his family members to claim appointment on compassionate ground. While entertaining such request, the authority concern, has to consider as to whether the family of deceased employee is unable to meet the financial crisis resulting from the employee's death. In this context, it is useful to refer observations by Apex Court made in para Nos.2 and 3, by the Apex Court, in the case of **Umesh Kumar Nagpal Vs. State of Haryana and others**, reported in, **[(1994) 4 Supreme Court Cases 138]**, which read as under:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception

is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to

be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3] Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.”

13 In view of the discussion made in the forgoing paras, we are inclined to accept the contentions of the learned counsel for Petitioner that the application of Government Resolution dated 23.08.1996 i.e. obtaining of consent from other wife of the deceased is not attracted in the present case for the sole reason that the question survival of more than one wife of the deceased, Government employee, at the time of his death at all not involved in the instant case. Respondent No.3 alone can claim as wife of deceased Government servant alive at the time of his death.

14 The learned counsel for the Petitioner has strenuously contended that the Court of competent jurisdiction has passed the decree in favour of Petitioner and declared him as sole person entitled to secure appointment on compassionate ground on account of deceased Dattatraya. In order to appreciate this submission, we have perused the copy of the plaint and the decree passed in Special Civil Suit No.61 of 2007. The suit appears to be filed by Petitioner seeking decree of Rs.3,45,278/- with future interest at the rate of 12% per annum towards the retiral monetary benefits withdrawn by Respondent No.3, after the death of Dattatraya. The suit has been valued for the purpose of claim in suit for Court fees at Rs.3,45,278/- i.e. to the extent of monetary relief claimed in suit. It appears that neither any declaration was sought nor any Court fees was paid to claim such specific declaration. The reliefs claim in the suit read as under:

“That, the suit of plaintiff be kindly decreed as under:

(A) That, the plaintiff be held entitled to get benefits on compassionate ground being son of deceased Dattatrya.

(B) That, the plaintiffs be held entitled to get amount of Rs. 3,45,278/- from defendants with interest at the rate 12% per annum from the date of death of Dattatrya i.e. from 12.12.2005 till realization of whole amount and defendants be order to pay amount as claimed with interest.

(C) That, the plaintiffs be granted cost of the suit moreover that be granted any other relief for which they are legally and equitably entitled.”

It appears from the record that the suit is decreed as under:-

“Order

Suit is partly decreed with proportionate costs as under:

1. It is hereby declared that Plaintiff No.1 Pravin Dattatraya Nimbalkar being a legitimate son of deceased Dattatraya Bhagwan Nimbalkar (Police Head Constable B. No. 655) **is entitled to ask for service on compassionate ground in accordance with the relevant rules and the provisions of law. Plaintiff No. 1 has already moved defendant No. 2 for the service on compassionate ground. Hence defendant no. 2 shall take appropriate decision thereon at the earliest preferably within a month from today.**

2. Plaintiff No. 1 – Pravin is also entitled to get a sum of Rs. 1,15,092/- (Rs. One lakh fifteen thousand and ninety two) being the 1/3rd amount of Rs.3,45,278/- towards his 1/3rd share from defendant No. 3. Since defendant No. 3 has withdrawn the entire amount of Rs.3,45,278/- from the office of defendant no. 2 she shall pay the said 1/3rd amount Rs.1,15,092/- to plaintiff No. 1 with interest thereon @ 6% per annum from the date of suit till realization of that amount.

3. Plaintiffs are not entitled to any amount in the monthly family pension granted to defendant no. 3 as she is legally wedded wife of deceased Dattatraya Nimbalkar.
4. Suit against defendant no. 1 and 2 for recovery of amount is hereby dismissed.
5. No relief is granted to plaintiff no.2.”

Thus, if we consider the order/decreed passed in the matter, then it cannot be said that the Court has held that Petitioner is alone entitled to claim appointment on compassionate ground on account of death of deceased Dattatraya. The Court has only directed Respondent No.2 to take appropriate decision in respect of application already submitted by Petitioner (original Plaintiff in suit) for seeking employment on compassionate ground in accordance with the relevant rules and provisions of law. Since the judgment and order passed in the matter has not been challenged, we refrain ourselves to make any comment in respect of the suit filed and the order passed therein.

15 It appears from the record that Petitioner has filed an execution proceeding to enforce the decree passed in his favour. The learned Civil Judge by order passed on 27.11.2012, directed the Respondent Nos.1 and 2 to obtain the consent of Respondent No.3, and in case, consent is not given by Respondent No.3, issue appointment order in favour of Petitioner i.e. Decree Holder.

Respondent No.3 being aggrieved by said order, preferred Writ Petition No.10510 of 2012, before this Court, which was allowed by order dated 18.06.2013. While setting aside said order, this Court has specifically observed that the order impugned passed in the execution proceedings directing Respondent Nos.1 and 2 to issue letter of appointment by the end of the year, is not sustainable as it amounts to transgressing the decree passed in the matter. After setting aside the order impugned, this Court directed Respondent Nos.1 and 2 (original Judgment Debtor Nos.1 and 2) to take decision in respect of appointment on compassionate ground after considering the relevant rules and provisions. In para Nos.5, 6 and 7 of the order, the Court has observed as under:

“5. From perusal of the decree, it is manifest that the Court had declared the right of the decree holder to ask for appointment on compassionate ground and had left it to the defendant No. 2 to take appropriate decision on the same. The decree nowhere contemplated directing the defendant No. 2 to give appointment order. It was for the defendant No. 2 to take decision regarding the appointment on compassionate ground considering the relevant rules and the provisions.

6. In light of the above, the impugned order directing the J.D. Nos. 1 and 2 to issue letter of appointment by the end of the year would be transgressing the decree. The impugned order as such is set aside.

7. The J.D. Nos. 1 and 2 shall, after considering the relevant rules and the provisions as stated in the decree, decide about the appointment on compassionate ground expeditiously and preferably within one (1) month from today.”

16 Thus, if we consider the decree passed in the matter by the learned Joint Civil Judge (Senior Division), Osmanabad, as well as the order passed by this Court in Writ Petition No.10510 of 2012, then it was expected on the part of Respondent No. 2 to take appropriate decision on due consideration of relevant rules and regulations relating to grant appointment on compassionate ground. Neither the learned Joint Civil Judge (Senior Division), Osmanabad has declared the Petitioner alone entitled to be appointed on compassionate ground nor any direction was given to Respondent Nos.1 and 2 to issue letter of appointment in favour of Petitioner. As apparent from the decree passed in the matter referred above, Respondent No.2 has been directed to take appropriate decision in respect of the application already submitted by the Petitioner seeking employment on compassionate ground. On the same line, by virtue of order passed by this Court on 18.06.2013 in Writ Petition No.10510 of 2012, the Respondent No.1 and 2 were directed to take appropriate decision in respect of claim of Petitioner for appointment on compassionate ground on due consideration of relevant rules, regulations and provisions of

law.

17 Thus, it was entirely left with the wisdom of Respondent No.2 to take appropriate decision on due consideration of relevant rules, regulations and provisions as applicable in the matter. In none of the orders passed, the powers of Respondent No.2 to take appropriate decision in accordance with law has been curtailed. It was expected on the part of Respondent No.2 to have taken appropriate decision in respect of claim on account of compassionate ground made by Petitioner by looking into the relevant rules, regulations, provisions and the Government Resolutions, as applicable in the matter. We have already observed in forgoing paras that the directives contained in para No.3 of the Government Resolution dated 23.08.1996, are not attracted in the matter as no case of survival of more than one wife of the deceased employee falls for consideration of Respondent No.2 in view of the fact that the mother of Petitioner had taken divorce in the year 1996. In this context, it is not out of place to observe that the guideline laid down in Government Resolution dated 26.10.1994, are elaborate enough to take appropriate decision by Respondent No.2. The Respondent No.2 is expected to consider the case in the light of those guidelines laid down in said Government Resolution and subsequent further guidelines, if any, made subsequent thereto. Since Respondent No.3, was the sole surviving wife of deceased Government employee

at the time of his death and Respondent No.4 is the daughter of Respondent No.3, begotten from the marriage with the deceased Government employee, the claim of Respondent Nos.3 and 4 also required to be taken into consideration by Respondent No.2 alongwith the claim made by Petitioner. The Respondent No.3 has already lodged claim to seek employment on compassionate ground immediately after the death of the deceased, as recorded in letter dated 01.02.2008, sent by Respondent No.2 to Respondent No.3. Since Respondent No.4 was minor at the time of death of her deceased father i.e. Government employee, she is also entitled to stake her claim on attaining the age of majority within the stipulated period. It is, therefore, incumbent upon Respondent No.2 to take appropriate decision in the matter in accordance with relevant rules, regulations, guidelines and the provisions of law as applicable in the matter but without insisting for no objection from Respondent No.3.

18 In view of the discussion made in the forgoing paras, we are of the view that no direction as claimed by Petitioner can be issued as against Respondent Nos.1 and 2. However, the Respondent Nos.1 and 2 need to be directed to take decision in the matter by considering all the relevant rules, regulations and provisions of law including the Government Resolutions and instructions contained therein in respect of the appointment on compassionate ground and to pass appropriate

order of appointment of eligible person without insisting Petitioner to produce no objection from Respondent No.3. In the result, we pass the following order :

- I. Writ petition is partly allowed to the extent of quashing the communication dated 21.11.2013, issued by Respondent No.2 to Petitioner to submit no objection from Respondent No.3 to seek appointment on compassionate ground.
- II. The Respondent No.2 is directed to take appropriate decision in the matter in respect of the application/claim received from Petitioner as well Respondent No.3 seeking appointment on compassionate ground, in accordance with relevant rules, regulations, administrative instructions and provisions of law, as applicable, after giving an opportunity of hearing to Petitioner as well as Respondent No.3, without insisting no objection from Respondent No.3.
- III. The decision in the matter be taken, as expeditiously as possible, and preferably within a period of three months from the date of passing of this judgment.

IV. Rule, disposed of in above terms. No order as to costs.

V. In view of disposal of writ petition, pending civil application stands disposed of.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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