

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6018 OF 2015

Harshada Bhikanrao Patil,
Age: 34 Yrs., occu. Nil,
R/o Dhule, Tq. And Dist.
Dhule.

- PETITIONER

VERSUS

1) The State of Maharashtra
Through its Principal Secretary
Rural Development Deptt,
Mantralaya, Mumbai.

2) The Chief Executive officer,
Zilla Parishad, Dhule.

- RESPONDENTS

Mr.PD Bachate, Advocate for Petitioner;
Mr.SK Kadam, AGP for Respondent No.1;
Mr.NN Desale, Advocate for Respondent No.2.

**CORAM : S.S.SHINDE &
 P.R.BORA,JJ.**

DATE OF RESERVING JUDGMENT:- 17th December,2015
DATE OF PRONOUNCING JUDGMENT:- 23rd December,2015

JUDGMENT (PER:-P.R.BORA,J.)

1) Heard. Rule. Rule made returnable

forthwith with consent of the learned counsel appearing for the parties.

2) The petitioner has filed the present petition, seeking quashment of letter dated 3rd February, 2015 issued by Respondent No.1 and has also sought further relief to direct Respondent Nos.1 and 2 to consider the seniority of the petitioner for appointment on compassionate ground from the date on which she had initially submitted an application.

3) The petitioner is the daughter of deceased Government employee, viz. Bhikanrao Nago Patil, who died on 5th April, 2004 at the age of 47 years while in employment of Respondent No.2, as a Mistry, Grade-II. After the death of said Bhikanrao Patil, the petitioner, who claims to be the only legal heir of deceased Bhikanrao, filed an application on 9th November, 2004, seeking compassionate appointment in the place of her deceased father. The said application was rejected by Respondent No.2 vide letter dated 12th May, 2005 on the ground that in view of Government Resolution dated 26.10.1994, the petitioner being a married daughter of deceased, was

not entitled to claim such appointment.

4) Vide Government Resolution dated 26th February, 2013, the State Government made the married daughters also entitled for securing compassionate appointment on certain conditions. The petitioner, therefore, preferred an application on 22nd April, 2013 to Respondent No.2 with a request that she be given appointment on compassionate ground in view of the Government Resolution dated 26th February, 2013. Respondent No.2 rejected the said application vide order dated 17th July, 2013 on the ground that the Government policy was introduced on 26.2.2013 whereas father of the petitioner had died in the year 2004 and further that her application was already rejected in the year 2005, vide order dated 12th May, 2005.

5) The petitioner thereafter approached the State Government and the request for compassionate appointment made by the petitioner was placed for consideration before the State Level Committee, which in its meeting dated 26th June, 2014, accepted the said request and accordingly, the Divisional Commissioner, Nasik Division, Nasik, vide

communication dated 13th August, 2014, was directed to include the name of the petitioner in the waiting list prepared for the purpose of making compassionate appointments.

6) In spite of the order/directions by the State Government, since Respondent No.2 did not take any step for including the name of the petitioner in the waiting list prepared for the purpose of making compassionate appointment, the petitioner presented a detailed application to Respondent No.2 on 24th September, 2014.

7) After receiving the aforesaid application, Respondent No.2 sought guidance from Respondent No.1 as to which date should be considered for the purpose of inclusion of the name of the petitioner in the waiting list prepared for the purpose of giving compassionate appointments. Respondent No.1, vide letter dated 3.2.2015 directed the office of Respondent No.2 to consider the date of 13th August, 2014 as a date for inclusion of the name of the petitioner in the said waiting list.

8) The aforesaid decision-cum-direction has been assailed in the present petition. It is the contention of the petitioner that her initial date of making the application, i.e. 9th November, 2004 ought to have been considered for including her name in the waiting list and her seniority in the waiting list must be considered from the said date and not from the date as directed by Respondent No.1, i.e. from 13th August, 2014.

9) Shri Bachate, learned Counsel appearing for the petitioner, submitted that the rejection of the request of the petitioner by Respondent No.2, vide order dated 12.05.2005 itself was erroneous and against the constitutional mandate. Shri Bachate, relied upon the following judgments, to support his contentions.

Sr.No.	Particulars of Citations
1)	U.Arulmozhi Vs. The Director of School Education (Madras High Court) WP No.18916/2004
2)	The State Vs. Medha Parkhe – WP No. 6056/2010.
3)	Aparna Zambre Vs. Assistant S.E. 2011(5) Bom.C.R. 34
4)	Radhabas. Vs. State – 2012 (o) B.C.I. 689
5)	C.V.Muthamma Vs. Union of India AIR 1979 SC 1868

6)	Manisha Chole Vs. State – WP 10843/2014
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10) We have gone through the judgments relied upon by the learned Counsel for the petitioner. It is true that in all the aforesaid judgments, it is a consistent view taken by the High Courts and also by the Hon'ble Supreme Court that a daughter of the deceased Government employee cannot be denied entry into service on compassionate employment on the ground that she is married. The question is whether in premise of the facts of the present case, any direction can be issued to the respondents to consider the date of initial application filed by the petitioner seeking appointment on compassionate ground as a basis for reckoning her seniority in the waiting list prepared for the purpose of giving compassionate appointment. The application filed by the petitioner initially on 9.11.2004 was rejected by Respondent No.2 vide order dated 12th May, 2005. Admittedly, the petitioner did never challenge the said order. It is further not in dispute that at the relevant time, Government Circular dated 26.2.1994 was governing the field on the basis of which the application of the petitioner was rejected. It is

further not in dispute that after the Government Policy was revised, vide Government Resolution dated 26.2.2013, making the married daughters also entitled for securing appointment on compassionate ground that the petitioner filed a fresh application on 22.4.2013.

11) In the circumstances, the right can be said to have accrued in favour of the petitioner from the date of the said application, i.e. 22.4.2013. After passing of the Government Resolution dated 26.2.2013, in fact, there had remained no doubt that the married daughters also can be considered for giving compassionate appointment. The application made by the petitioner was admittedly, made after passing of the said Government Resolution. In no case, the said application could have been rejected on the ground that the Government Resolution dated 26.2.2013 does not contain any direction for considering the appointments on compassionate ground in the cases of the Government servant expired before coming into existence of the said Government Resolution. The ground so stated is fallacious. Fortunately, the mistake was corrected by the higher officers and

ultimately, the order came to be passed making the petitioner eligible for getting compassionate appointment and admittedly, now her name has been included in the waiting list prepared for making such compassionate appointment. However, we do not see any rational into the direction given by Respondent No.1 to include the name of the petitioner in the waiting list and to reckon her seniority in the waiting list from 13.8.2014. When the request of the petitioner has been ultimately accepted and when Respondent No.1/State has held that the petitioner is entitled for appointment on compassionate ground, the right shall be held to have accrued in favour of the petitioner from the date of her application, i.e. 22.4.2013. Her seniority in the waiting list, therefore, has to be reckoned from the said date. To that extent the direction given by Respondent No.1 needs to be modified and the relief deserves to be granted in favour of the petitioner to that extent. Hence following order, -

ORDER

- I) The writ petition is partly allowed;
- ii) The respondents are directed to reckon the seniority of the petitioner in the waiting list

prepared for the purpose of giving compassionate appointment from the date of making her application i.e. 22.4.2013.

III) Rule is made absolute in above terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/