

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

WRIT PETITION NO.10843 OF 2014

Manisha Namdevrao Chole,
Age 26 Years, Occ. Nil,
R/o. At Post Dhamangaon,
Ta. Jalkot, District Latur

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary
Rural Development Department,
Mantralaya, Mumbai
- 2] The Zilla Parishad, Latur,
Through its Chief Executive Officer
- 3] The District Selection Committee,
Latur, through President,
District Collector, Latur
- 4] The District Selection Committee /
District Health Officer,
Through its Member Secretary
Zilla Parishad, Latur
- 5] Deputy Collector [Rehabilitation],
Latur, Tal. and Dist. Latur
[Amended as per Court's Order
dtd.13.07.2015]

RESPONDENTS

...

Mr. Anand V. Patil Indrale, Advocate for the Petitioner
Mr. V.H.Dighe, AGP for Respondent / State
Mr. D.S.Mali, Advocate for the Respondent Nos.2 & 4

...
**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 13.10.2015
Pronounced on: 19.10.2015

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.
- 2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.
- 3] This Petition is filed with following prayer:
 - B] By issuing a writ of mandamus or any other appropriate writ, order or directions the respondents No.2 to 4 be directed to consider the claim of petitioner for appointment on the post of Arogya Sevak [women] from OBC as well as Project Affected Category, in accordance with law and consequently, the petitioner be issued such appointment order and for that purpose necessary directions be issued.
 - B-1] By issuing writ of mandamus or any other appropriate writ, order or directions, the respondent No.2 to 4 be directed to include the name of petitioner in the final selection list (at Annexure-'E') for the post of Arogya Sevak (Women) from OBC and Project Affected Category and she be issued appointment order accordingly and for that purpose necessary directions be issued.

B-2] By issuing appropriate writ, order or directions, it be held and declared that, the clause 3-C of Government Resolution dated 21/01/1980 issued by State of Maharashtra, through General Administration Department thereby laying down that, married daughters of project affected persons, as not qualified for appointment in government employment, as unconstitutional and ultra vires and for that purpose necessary directions be issued.

4] It is the case of the petitioner that, the petitioner had applied for the post of Arogya Sevak [Women], in pursuant to the requisition made by respondent Nos.2 to 4, *vide* advertisement dated 22nd August, 2014. By the said Advertisement, it was informed that, for the post of Arogya Sevak [Women] along with other posts, there were total 10 vacancies. It is further the case of the petitioner that, the petitioner, belongs to OBC as well as Project Affected category, applied for the post of Arogya Sevak [Women].

5] It is further the case of the petitioner that, in the written examination the petitioner secured 92 marks out of 200 marks, as such, the petitioner was successful candidate as per the condition prescribed in the advertisement. According to her knowledge, she was the only candidate, who had applied for the post of Arogya Sevak [Women] from OBC as well as Project Affected Category.

6] It is further the case of the petitioner that, on 12th November, 2014, the petitioner was called for verification and submission of documents along with the other candidates. Accordingly, on 12th November, 2014, the petitioner appeared before the Selection Committee, and submitted her documents. Initially, the petitioner was not having a Project Affected Nomination Certificate, but as soon as she received the same, on 17th November, 2014 it was submitted with permission of Committee. The said certificate, submitted by the petitioner along with application, was accepted by the Member of District Selection Committee on 17th November, 2014, and the petitioner was informed that, she would be considered for appointment.

7] It is further the case of the petitioner that, surprisingly, the petitioner got knowledge that, the selection list of candidates, to whom appointment orders are to be issued, is displayed wherein the name of the petitioner is not appearing. Therefore, the petitioner made an inquiry about status of her appointment order, at that time the petitioner was orally informed that, selection of petitioner for the post of Arogya Sevak [Women] from OBC and Project Affected Category has been cancelled, since the petitioner cannot be nominated as a candidate for appointment from Project Affected Category by her father in view of the fact that, the petitioner, who is married and having children, cannot be said as member of her father's family. Hence this Writ Petition.

8] The learned counsel appearing for the petitioner submits that, the reason given by the respondents for non consideration of claim of the petitioner for appointment that, the petitioner cannot be said to be member of family of her father in view of her marriage, is absolutely illegal and improper. The petitioner has successfully cleared the written examination, and therefore, she is entitled to be appointed on the post of Arogya Sevak [women] from OBC and Project Affected Category on the basis of nomination made by her father and the respondents cannot deny the claim of petitioner on the non existing ground that, the petitioner cannot be said as member of her father's family. The said reason is against the law and well settled legal position. It is further submitted that, in view of the Judgment in the case of *Aparna Narendra Zambre & another Vs. Assistant Superintendent Engineer & others*¹ even married daughter is also entitled for the appointment on compassionate ground. In that case, the High Court held that, the employment cannot be denied on the ground that the daughter is married, as such discrimination would be unconstitutional. It is further submitted that, the act of respondent Nos.2 and 4 thereby denying the claim of petitioner for appointment from project affected category, she being married daughter of his father cannot be accepted, same being discriminatory in the light of provisions of Constitution of India. Therefore, the learned counsel submits that, the impugned action of respondent Nos. 2 and 3 deserves to be quashed and set aside.

1 2011 [5] BCR 34

9] On the other hand, the learned counsel appearing for the respondent Nos.2 to 4 relying upon the affidavit-in-reply submits that, the petitioner has applied for the post of Arogya Sevak [Female] from the category of Project Affected person, and subsequently, she qualified in the examination held by Selection Committee on 8th November, 2014, and also her name is included in the select list. The petitioner was called by the Selection Committee for verification and scrutiny of the documents on 12.11.2014. At the time of scrutiny of documents, it was noticed that, the petitioner has claimed reservation from project affected category on the post of Arogya Sevak, and she did not produce copy of certificate that she belongs to project affected category, but produced receipt showing that, her application, for seeking certificate of the project affected category, is pending before the concerned Authority. It is submitted that, on the date of declaration of final selection list, the petitioner submitted her certificate of project affected category to the Selection Committee. The Selection Committee noticed that, though the petitioner is from project affected person, she is married. It is further submitted that, at the time of declaration of the selection list, the Selection Committee came to the conclusion that, since the petitioner is married daughter from Chole Family and certificate transferred in her name after her marriage, she can not claim appointment on the post of Arogya Sevak from the project affected category. It is submitted that, the Government Resolution also says that, married daughters are not entitled for appointment from the project affected category, and only unmarried daughters or the certificate

possessed by daughter before her marriage only those are eligible and liable to get the benefit of project affected category. In the present case, the petitioner has got certificate after her marriage, and therefore, her claim was not considered.

10] One Mr. Dr. Pradeep Vishwambhar Marwale, working as Deputy Collector [Rehabilitation], Latur, has also filed affidavit-in-reply. In the said affidavit-in-reply, it is stated that, one Shri Namdeo Shivram Chole had obtained a Project Affected Certificate on 17.05.2003, by nominating his son naming Nivrutti Namdeo Chole from the office of the Deputy Collector [Rehabilitation], Latur. In the said affidavit-in-reply, it is further stated that, Shri Namdeo Chole had on 30.08.2014, made an application to his office, requesting to change the nomination of his son Nivrutti N. Chole and nominate the petitioner as his daughter. An enquiry in this regard was made through Tahsildar, Ahmedpur so as to verify whether the petitioner's brother has utilized the certificate issued on 17.05.2003 and whether the petitioner is dependent on Namdeo Shivram Chole. A new certificate in this regard nominating the petitioner has been issued by the office of the Deputy Collector [Rehabilitation], Latur vide No.2014/190 dated 17.11.2014, after due enquiry.

11] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned AGP appearing for the respondent Nos.1 and 5, and the learned counsel appearing for the

respondent Nos.2 and 4. With their able assistance, perused the pleadings in the Petition, grounds taken therein, annexure thereto, all other documents placed on record, and affidavit-in-reply filed by the respondents. Whether the married daughter is entitled for appointment on compassionate ground, fell for consideration before the Bombay High Court in the case of *Aparna Narendra Zambre & another Vs. Assistant Superintendent Engineer & others [cited supra]*. The Division Bench relying upon the Judgment of the learned Single Judge of the Bombay High Court in Writ Petition No.6056/2011 in the case of [State of Maharashtra & Ors. Vs. Medha Prashant Parkhe], decided on October 26, 2010, and also relying upon the exposition of the Calcutta High Court in the case of [Smt. Usha Singh Vs. State of West Bengal & Ors.]², in the case of Manjula Vs. State of Karnataka by its Secretary, Department of Cooperation Bangalore & anr.³, in the case of R.Jaymma Vs. Karnataka Electricity Board & anr.⁴, in the case of U. Arulmozhi Vs. The Director of School Education⁵, in the case of Savita Samvedi & Anr. Vs. Union of India & Ors.⁶ and in the case of Dr.Mrs.Vijaya Manohar Arbat Vs. Kashirao Rajaram Savai & Anr.⁷ taken a view that, appointment on compassionate ground cannot be denied to the daughter merely because she is married. The Supreme Court in the case of C.B.Muthamma Vs. Union of India⁸, while considering Rule 8 [2] of the Indian Foreign Service

2 2003 [2] L.L.N. 554

3 2005 [104] F.L.R. 271

4 1993 [I] L.L.J. 587

5 [2006] 2 L.W.324 [Mad.]

6 [1996] 2 SCC 380

7 [1987] 2 SCC 278

8 1979 [4] SCC 260

[Conduct & Discipline] Rules, 1961, in para 4 to 7 held thus:

4. *What is more manifest as misogynist in the Foreign Service is the persistence of two rules which have been extracted in the petition. Rule 8 (2) of the Indian Foreign Service [Conduct & Discipline] Rules, 1961, unblushingly reads:*

“Rule 8 (2) : In cases where sub-rule (1) does not apply, a woman member of the service shall obtain the permission of the Government in writing before her marriage is solemnised. At any time after the marriage, a woman member of the Service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service”.

5. *Discrimination against women, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries, the same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the Service are likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, inter-continental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species. Rule 18 of the*

Indian Foreign Service [Recruitment, Cadre, Seniority and Promotion] Rules, 1961, run in the same prejudicial strain:

- (1)*
- (2)*
- (3)*
- (4) No married woman shall be entitled as of right to be appointed to the service.*

6. At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of die-hard allergy to gender parity is inevitable.

7. We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular

employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter-affidavit, it is stated that Rule 18 (4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8 (2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules.

12] In the facts of the present case, the respondent No. 5 has filed affidavit-in-reply and stated that, father of petitioner namely Shri Namdeo Chole had on 30.08.2014 made an application to the office of respondent No.5, requesting to change the nomination of his son Nivrutti N. Chole and nominated the petitioner as his daughter. In that regard, an inquiry was made through Tahsildar, Ahmedpur so as to verify whether the petitioner's brother has utilized the certificate issued on 17.05.2003 and whether the petitioner is dependent on Namdeo Shivram Chole, and thereafter, decision is taken by the respondent No.5 to issue new certificate nominating petitioner. It is also mentioned in the affidavit-in-reply filed by the respondent Nos.2 to 4 that, on 17.11.2014, the petitioner did submit her certificate showing that, she belongs to Project Affected

Category and the Selection Committee noticed that, the petitioner is a married woman, and therefore, denied the appointment on the post of Arogya Sevak [female]. The learned counsel appearing for the respondent Nos.2 to 4 submitted that, in view of the Government Resolution dated 21st January, 1980, which is referred in para 6 of the affidavit-in-reply, clause 2 (c) of the said Government Resolution, lays down that, only unmarried daughters or the certificate possessed by daughter before her marriage only those are eligible and liable to get the benefit of project affected category. In that respect, it would be apt to reproduce herein below the definition of affected person in sub-section [2] of Section 2 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, which reads thus:

2. *In this Act, unless the context requires otherwise, -*

(1) *... ..*

(2) *“affected persons” means -*

(a) *an occupant whose land in the affected zone (including land in the gaathan) is acquired under section 14 for the purposes of a project:*

Explanation. - For the purpose of this sub-clause, where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a Karta or Manager of a Hindu Joint Family, then every brother (or son or sons of any deceased brother all together as one unit) who has a share in the lands, whether his name is recorded in such village record or not, shall be treated as affected person:

(b) *a person who is a tenant in actual possession*

of land under the relevant tenancy law in the affected zone at the time of acquisition of land;

(c) an occupant whose land in the benefited zone is acquired for construction, extension, improvement or development of canals and their banks under irrigation project or for establishment of a new gaathan within or outside the benefited zone for rehabilitation of persons from affected zone, and whose -

(i) residual cultivable holding is reduced to less than one hectare after acquisition; or

(ii) residual holding stands divided into fragments which are rendered unprofitable for cultivation; or

(iii) residual holding is rendered uncultivable.

Explanation- For the purposes of this sub-clause, the expression "occupant" includes a tenant in actual possession of land under the relevant tenancy law in the benefited zone at the time of acquisition of land;

(d) a person who is an agricultural labourer;

(e) a person, not being an occupant or a person referred to in sub-clauses (a), (b), (c) and (d), who for a continuous period of not less than five years immediately before the date of publication of the notification under section 4 of the Land Acquisition Act, 1894, has been ordinarily residing or carrying on any trade, occupation or calling or working for gain in a gaathan in the affected zone;

It is not in dispute that, petitioner's father is a affected person, whose land was acquired.

13] The provisions of Section 6 of the Act lays down the duty of the Project Authority to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector. Section 6

(b) and (c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, which reads thus:

6. *It shall be the duty of the project authority, -*

(a) ...

(b) to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector;

(c) subject to any reservations validly made and subject to availability of posts, to give highest priority in Class III and Class IV category of service on the project establishment, to one member of the affected family nominated by the affected persons, if such member is eligible for such employment according to the recruitment rules for such posts;

Provided that, while recruiting a member of the affected family, against such quota, the project authority shall, as far as possible, employ not less than fifty per cent, of such nominees who are affected by the project under execution, as may be prescribed;

Explanation – For the purpose, of this clause the expression “family” means the spouse, son married or unmarried daughter or brother or sister or daughter-in-law or grandson, or grand-daughter (which includes son or daughter of the daughter also) of the affected persons, or adopted son or daughter who is residing with and is dependent on such affected person.

14] Upon careful perusal of the explanation reproduced herein above in Section 6, for the purpose of clause-c, the expression “family” means the spouse, son married or unmarried daughter. Upon careful perusal of the provisions of Section 6 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, there is no any prohibition

for appointment of a married daughter, subject to the availability of the post.

15] In the light of the discussion in the foregoing paragraphs, we are of the considered view that, the District Selection Committee was not right and justified in denying the appointment to the petitioner, on the post of Arogya Sevak on the ground that, she is married daughter of her father namely Namdevrao Shivram Chole.

16] In that view of the matter, we direct the respondent Nos.2 to 4 to reconsider the claim of the petitioner for being appointed on the post of 'Arogya Sevak' against suitable vacancy; and appoint her, if she is found eligible in all other respects, including no other senior person to her from the category of the project affected, is kept waiting to be appointed against suitable vacancy in the establishment of the respondent No.2.

17] Writ Petition is allowed in above extent. Rule is made absolute accordingly.

Sd/-

[A.M.BADAR]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE