

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

**WRIT PETITION NO.3660/2015**

**Ku. Lata d/o Moreshwar Shivankar**  
**(Now Sau. Lata Loknath Patode)**

**...Versus...**

**State of Maharashtra, through its Secretary, Rural Development and Water**  
**Conservation Department, Mantralaya, Mumbai and others**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Shri A.Z. Jibhkate, Advocate for petitioner  
Ms N.P. Mehta, AGP for respondent nos.1 and 2  
Shri A.Y. Kapgate, Advocate for respondent no.3

**CORAM : SMT. VASANTI A. NAIK AND**  
**A.I.S. CHEEMA, JJ.**

**DATE : 13.10.2015**

By this petition, the petitioner challenges the order of the respondent nos.2 and 3 - Divisional Commissioner, Nagpur and the Chief Executive Officer, Zilla Parishad, Gondia, cancelling the order of the reappointment of the petitioner on a Class-III post.

In view of the death of the father of the petitioner, who was in service of the respondent – Zilla Parishad, the petitioner was appointed on a Class – IV post on compassionate ground on 2.8.1991. Since certain other employees that were appointed on compassionate ground in Class - IV posts were granted reappointment on a Class-III post on the basis of their

qualifications, the petitioner also sought reappointment in a Class-III post. The petitioner was reappointed on a Class-III post on 6.7.2012. The respondent no.2, however, found that the orders of reappointment of the petitioner and some other employees were illegal and hence, the respondent no.2 directed the respondent no.3 to reconsider the matter in respect of reappointments. After an enquiry, the respondent no.3 cancelled the order of reappointment of the petitioner on a Class-III post by the order dated 12.1.2015. The order of the respondent no.3 was challenged by the petitioner before the Divisional Commissioner, Nagpur Division, Nagpur. The Divisional Commissioner, by the impugned order dated 30.5.2015 dismissed the appeal filed by the petitioner. The petitioner has challenged the order of the Divisional Commissioner in the instant petition.

Shri Jibhkate, the learned Counsel for the petitioner submitted that the respondent no.2 could not have dismissed the appeal filed by the petitioner on the basis of the Government Resolution dated 23.8.1996. It is submitted that Clause 5 (b) of the Government Resolution is bad in law and the same needs to be quashed and set aside. It is stated that the petitioner was rightly reappointed on a Class-III post in pursuance of the Government Resolution. It is further stated that certain other employees that were reappointed and in whose cases this Court had directed the respondent – Zilla Parishad and the State Government to make an enquiry in respect of the correctness of their reappointment in W.P. Nos.2657/2012 and 1642/2012, the reappointed employees are still continued in service. It is stated that similar relief needs to be granted in favour of the petitioner

also. It is stated that the Government had permitted some reappointments after the issuance of the Government Resolution.

Shri Kapgate, the learned Counsel for the Zilla Parishad submitted that the Hon'ble Supreme Court has held in the judgment reported in *(1994) 6 SCC 560 (State of Rajasthan ...Versus...Umrao Singh)* that once a compassionate appointment is made and accepted, the right to such appointment stands exhausted and a second consideration for a higher post is not warranted. It is submitted that similar writ petitions came up for consideration before this Court and this Court had by the orders dated 29.11.2013 and 23.12.2013 dismissed Writ Petitions Nos.2657/2012, 1642/2012 and 3053/2013 respectively. It is stated that it is held in the said judgments that the Government Resolution dated 23.8.1996 is prospective in nature. It is stated that since the petitioner was appointed in the year 1991, the petitioner cannot seek the benefit of the Government Resolution also.

On hearing the learned Counsel for the parties and on a perusal of the judgments of the Hon'ble Supreme Court and this Court in the above referred cases, it appears that the relief sought by the petitioner in the instant petition cannot be granted. The petitioner was appointed on compassionate ground on a Class-IV post in the year 1991. In view of the judgment of the Hon'ble Supreme Court as reported in *(1994) 6 SCC 560* once a compassionate appointment is given and accepted, the right to such appointment stands exhausted and the candidate cannot be considered for a higher post on compassion. The said view is reiterated by the Hon'ble Supreme Court in other judgments also.

Once the petitioner was appointed on a Class – IV post on compassionate ground, the petitioner did not have a right to be reappointed on compassionate ground on a higher post. The right to get appointed on compassionate ground stands exhausted in the case of the petitioner in the year 1991 only. Merely because the petitioner was wrongly reappointed in the year 2012, i.e. after a period of more than 20 years from the date of her appointment, the petitioner cannot claim that the cancellation of the reappointment order, on realizing the mistake of granting reappointment, is incorrect. It is held by this Court in the judgment dated 29.11.2013 in W.P. Nos.2657/2012 and 1642/2012 that the Government Resolution dated 23.8.1996 is prospective in nature. The petitioner was admittedly appointed in the year 1991 and the Government Resolution cannot be made applicable to the case of the petitioner. The petitioner would not therefore have any right to challenge a part of the Government Resolution. The petitioner could not have sought reappointment on the basis of the Government Resolution, in the circumstances of the case. We do not find any error whatsoever in the order of the Divisional Commissioner so as to interfere with the same in exercise of the writ jurisdiction. Merely because some other employees are wrongly reappointed, the petitioner cannot be considered for reappointment. Also, certain directions are issued by this Court by the earlier judgments to the Zilla Parishad and the State Government to consider cancelling the orders of reappointment, after enquiry. In the circumstances as stated hereinabove, the petitioner cannot effectively challenge the cancellation of the order of reappointment, which was wrongly

granted to the petitioner after the appointment of the petitioner on compassionate ground more than 20 years earlier.

Since there is no merit in the writ petition, the same is dismissed with no order as to costs.

In the circumstances of the case, the request made by the learned Counsel for the petitioner for staying the order of the Commissioner for a period of three weeks is rejected.

**JUDGE**

**JUDGE**

Wadkar