

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 7458 OF 2014**

TASLIM KAUSAR IRFAN KHAN PATHAN @
TASLIM KAUSAR NAZIRKHAN PATHAN. **..PETITIONER.**

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS. **..RESPONDENTS.**

...

Advocate for Petitioners : Mr. Shinde Dhananjay M.
AGP for Respondents/State: Mr. S.K. Tambe.
Advocate for Respondent 5 : Mr.Bhagure Ashok C. (Absent).

...

CORAM : S.S. SHINDE & P.R. BORA, JJ.**Dated: February 22, 2016.****PER COURT :**

1. This petition takes exception to the communication dated 21st July, 2014 (Exh.H - page 40 of the compilation of the Petition) issued by respondent No.4 under Right to Information Act, to the petitioner thereby informing the petitioner that, her application for appointment on compassionate ground has been rejected in the light of provisions of Paragraph 3(A) of Schedule

“A” of the Government Resolution dated 26th October, 1994 (must be 26th November, 1994) issued by Government of Maharashtra in General Administration Department.

2. Learned Counsel appearing for the petitioner invited our attention to the consent letter given by brothers of the petitioner for inclusion of name of the petitioner in the list of desirous candidates for appointment on compassionate ground. He further submits that, divorce was given to the petitioner by her husband in the year, 2007. Thereafter, father of the petitioner has given consent letter for her appointment on the post of peon, stating therein that, after taking voluntary retirement by him in future, petitioner should be appointed on compassionate ground. It is further submitted that, the brother of the petitioner i.e. respondent No.5, whose name has been included in the list of the candidates to be appointed on compassionate ground, is not taking care of other members of the family. It is submitted that, three family members have already given consent in favour of the petitioner. It is submitted that, the respondent authority, relying upon the Government Resolution dated 24th November, 1994 and in particular, clause 3(A) thereof, has rejected the prayer of the petitioner for appointment on compassionate ground. The

learned Counsel for the petitioner invited our attention to the unreported judgment/order dated 6th December, 2013 of the Division Bench of Bombay High Court at Principal Seat in case of **Sou. Swara Sachin Kulkarni vs The Superintending Engineer, Pune Irrigation Project Circle and Anr. (Writ Petition No.11987 of 2012)** and submits that, in the facts of that case, the reason assigned in the impugned communication that, since the petitioner therein is married and not entitled for appointment on compassionate ground was quashed and set aside and name of the petitioner therein was directed to be listed in the waiting list maintained by respondents No.1 and 2 for appointment on compassionate ground. Therefore, according to the learned Counsel for the petitioner, even the reasons assigned in the communication in the present case are same and, therefore, applying the ratio laid down in the case of **Sou. Swara Sachin Kulkarni** (supra), the impugned communication deserves to be set aside and the respondents may be directed to include name of the petitioner in the list of the candidates prepared by the respondents for appointment on compassionate ground.

3. On the other hand, learned AGP, relying upon the averments in the affidavit-in-reply filed by the respondents No.3 and 4 and also clause 3(A) of the said Government Resolution dated 26th November, 1994 and submitted that, at the relevant time, the said Government Resolution was in force and therefore, the authority has rightly placed reliance on Clause 3(A) of the said Government Resolution and rejected the claim of the petitioner for appointment on compassionate ground. It is further submitted that, name of the brother of the petitioner has already been included in the list of such candidates. For inclusion of name of the respondent No.5, already consent is given by mother of the petitioner. Therefore, learned AGP submits that the petition may be rejected.

4. We have given careful consideration to the submissions of the learned Counsel for petitioner and learned AGP appearing of respondents / State. With their able assistance, perused the pleadings in the petition, annexures thereto including the impugned communication and also order of the Division Bench of this Court at Principal Seat in case of **Sou. Swara Sachin Kulkarni** (supra). Admittedly, name of the petitioner's brother has already been included in the list maintained by the

respondents for the appointment on compassionate ground. Said inclusion had happened in pursuance to the application filed by brother of the petitioner on 5th November, 2009 and consent given by mother of the petitioner on 7th November, 2009. Upon careful perusal of the impugned communication, it appears that the petitioner sought information under the provisions of Right to Information Act and it was communicated to the petitioner that, petitioner's application appointment on compassionate ground has been rejected on 21.04.2010. Even in this petition, the decision of rejecting the application of the petitioner for appointment on compassionate ground is not under challenge. It is only the information which is sought under the provisions of Right to Information Act and received from respondent No.4 on 21st July, 2014 has been assailed in this petition. It appears that, the petitioner filed an application on 9.1.2010 and same came to be rejected on 21.04.2010 and present petition has been filed in the year, 2014. Therefore, writ petition also suffers from laches.

5. Upon careful perusal of the alleged consent letter issued by father of the petitioner requesting therein to include petitioner's name in the list of candidates to be given appointment on

compassionate ground, after taking voluntary retirement by the father of the petitioner, in our considered view, could not have carried any weight. Therefore, keeping in view the fact that, already name of the respondent No.5 has been included in the District-wise list wherein, he stands at Sr.No.1, to entertain the present petition which is filed belatedly by the petitioner and granting any relief, would certainly destabilize the position of the respondent No.5, since only one member of the family is entitled to apply for appointment on compassionate ground in view of the Government Resolution dated 26th November, 1994 of which reference is already made herein above. It would not be out of place to mention that, mother of the petitioner has given consent immediately within two days from the date of filing the application by respondent No.5 for appointment on compassionate ground, and said application has been processed and culminated in to inclusion of name of respondent No.5 in the said list.

5. We cannot accept the contention of the learned Counsel for the petitioner that, in view of decision of the Division Bench of this Court in case of **Sou. Swara Sachin Kulkarni** (supra), petitioner's name ought to have been included in the list of

candidates to be appointed on compassionate ground, when already name of the respondent No.5 is included in said list. It is to be noted that, in the facts of that case, the Division Bench considered different fact situation inasmuch as, in that case, the deceased employee was having only daughters. In the present case, as already observed, one of the family members of the deceased i.e. brother of the petitioner – respondent No.5's name has already been included in the waiting list and he stands at Sr.No.1 in the said waiting list maintained at District level. Therefore, even if we accede to the prayer of the petitioner and direct the respondent No.4 to reconsider petitioner's prayer, that would be an exercise in futility and may cause harm to the interest of respondent No.5, and might destabilize his position in the waiting list. Therefore, viewed from any angle, we are unable to persuade ourselves to issue any mandatory direction to respondents and to entertain this petition.

Hence, the petition sans merit, and the same stands dismissed.

(P.R. BORA, J.)

(S.S. SHINDE, J.)