

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7488 OF 2015

Jaishri S/o Namdev Rapatwar

PETITIONER

VERSUS

The State of Maharashtra and others

RESPONDENTS

Mr.S.N.Janakwade, Advocate for the petitioner.

Mr.A.G.Magre, AGP for respondent No.1/State.

(CORAM : S.S. SHINDE AND
RAVINDRA V. GHUGE, JJ.)

DATE : 20/01/2016

PER COURT : (Per Ravindra V.Ghuge, J.)

1. The petitioner in this petition seeks appointment on compassionate basis in place of her mother, who was in service of respondent No.2 MSRTC and had passed away while being in service.

2. The petitioner has put forth her prayers which read as under :-

"A. This writ petition may kindly be allowed.

B. By issuing writ of certiorari or any other writ, order or directions, this Hon'ble Court may be pleased to quashed and set aside the impugned communication letter dated 09/04/2015 issued by the respondent No.2 Divisional Controller, Maharashtra State Road Transportation Corporation Division at Nanded.

C. By issuing writ of mandamus or any other writ, order or

directions, this Hon'ble Court may be pleased to direct the respondent No.2 to consider the representations (Exhibit E) given by petitioner and also direct to give appointment on compassionate ground as peon or any other post which petitioner is entitled as per qualification in the office of respondent no.2 Divisional Controller, Maharashtra State Road Transportation Corporation Division at Nanded as per government resolution dated 26/02/2013.

D. Pending hearing and final disposal of this writ petition, this Hon'ble Court may be pleased to stay to effect, implementation and operation of impugned communication letter dated 09/04/2015 issued by respondent No.2 Divisional Controller, Maharashtra State Road Transportation Corporation division at Nanded.

E. Any other appropriate relief may kindly be granted in favour of the petitioner in the interest of justice."

3. It is not in dispute that the mother of the petitioner namely Pushpalata Namdevrao Rapatwar was working as a "Peon" with respondent No.2 and has passed away on 17/09/2011 while being in the employment of respondent No.2. It is un-controverted that the petitioner is the only daughter of the deceased Pushpalata.

4. The petitioner filed an application dated 03/02/2015 praying for appointment on compassionate basis in the light of the

Government Resolution dated 26/02/2013. The said application has been turned down by the impugned order.

5. Grievance of the petitioner is that despite the applicability of the Government Resolution dated 26/02/2013, the case of the petitioner has not been considered for appointment on compassionate basis and her application dated 03/02/2015 has been rejected by the impugned communication dated 09/04/2015 only on the ground that her case is prior to 01/01/2014.

6. The petitioner places reliance upon the judgment delivered by the Division Bench of this Court dated 12/01/2015 in the case of Surekha Yuvraj Borase Vs. State of Maharashtra and another, Writ petition No.6182/2014. Contention is that the petitioner stands on similar set of facts which are set out in the said judgment.

7. Respondent No.2 MSRTC has entered an affidavit in reply dated 15/10/2015. In paragraph No.8, which we find to be relevant, it has been contended that the respondent MSRTC has introduced a circular dated 24/11/2014 thereby granting benefit of compassionate appointment even to the married daughter of the deceased. It is set out in the said paragraph that the petitioner's case is prior to the

issuance of the instructions dated 24/11/2014 in the light of the date of demise of her mother. It is purely on this ground alone that the application of the petitioner has been rejected.

8. We find that the petitioner is the only daughter of the deceased and is presently married. The Government Resolution entitles her for appointment on compassionate basis. The circular issued by the MSRTC dated 24/11/2014 also entitles a married daughter to claim the benefit of compassionate appointment. In these circumstances, respondent No.2 could not have casually rejected the application filed by the petitioner dated 03/02/2015.

9. This Court has observed in paragraph Nos. 3,4 and 5 in its order dated 12/01/2015 in the matter of Surekha Yuvraj (supra) as under :-

“3. It is not disputed that the name of the petitioner was included in the wait list in respect of the persons to be considered for giving appointment on compassionate ground. The name of the petitioner has been deleted vide order dated 23rd March, 2014 only on the ground that the petitioner is a married daughter and will not be entitled for getting the benefit of compassionate appointment.

4. The petitioner, if gives undertaking alongwith her husband

that the petitioner would maintain the mother then in that case the petitioner can be considered for appointment on compassionate ground. The petitioner does not have any brother. Moreover, the name of the petitioner was also included in the wait list on 13th July, 2007, for being considered for giving appointment on compassionate ground. The name of the petitioner could not have been deleted only on the ground that the petitioner is a married daughter.

5. In light of the above, the impugned order dated 23rd June, 2014, is quashed and set aside. The name of the petitioner shall not be deleted from the wait list only on the ground that the petitioner is the married daughter. Of course, the petitioner will be required to satisfy all other legal requirements."

10. In the light of the above, we are of the view that the application of the petitioner dated 03/02/2015 could have been considered by respondent No.2 pursuant to its circular dated 24/11/2014 with reference to the date on which the application was filed. We make it clear that we have arrived at this conclusion since none of the learned Advocates for the respondents have pointed out any limitation for making an application for appointment on compassionate basis which could be said to be applicable to the MSRTC. Had such a rule been pointed out, we could have considered the same from the point of view of limitation, if any.

11. As such, this petition is partly allowed. The impugned order dated 09/04/2015 is quashed and set aside. Respondent No.2 is directed to decide the application of the petitioner dated 03/02/2015 on its own merit and subject to the fulfillment of the requirements as are set out in the Government Resolution dated 26/02/2013 and the circular issued by respondent No.2 dated 24/11/2014.

12. In the event, there is no other legal impediment, the petitioner's application can be considered and she could be listed in the list of the candidates eligible for appointment on compassionate basis, from the date of the decision of the respondents, which shall be taken within 8 (eight) weeks from today.

13. It is made clear that we have not expressed any opinion with regard to merits of the petitioner's application.

(RAVINDRA V. GHUGE, J.)

(S.S. SHINDE, J.)