

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

Writ Petition No. 6253 of 2004

* Kavita Subhash Bhalerao,
Age 30 years,
Occupation : Nil,
R/o C/o B.N. Kavare,
Near M.I.D.C. Girad Road,
Pachora, Taluka Pachora,
District Jalgaon. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Power and Energy,
Mantralaya, Mumbai - 32.
- 2) The Chairman,
Maharashtra State Electricity Board,
Prakash Gad Bandra, Mumbai - 51
- 3) The Chief Engineer,
M.S.E.B. Nasik Zone,
Vidyut Bhavan, Nasik.
- 4) The Executive Engineer,
M.S.E.B. Jalgaon, Vidyut Bhavan,
Divisional Office Old M.I.D.C.
area, Ajintha Road, Jalgaon.
- 5) The Executive Engineer,
M.S.E.B. Near Railway Station,
Girad Road, Pachora,
Taluka Pachora,
District Jalgaon. **.. Respondents.**

Shri. V.B. Patil, Advocate, for petitioner.

Shri. S.B. Pulkundwar, Assistant Government Pleader, for respondent No.1.

Shri. P.B. Paithankar, Advocate, for respondents 2 to 5.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date : 3 AUGUST 2017

JUDGMENT: (Per T.V. Nalawade, J.)

1) The petition is filed for relief of giving direction to the respondent - M.S.E.B. to consider the proposal of the petitioner for giving her appointment on compassionate ground and give her such appointment. Both the sides are heard.

2) Mother of the petitioner was in service of respondent on the post of Junior Clerk. She died on 29-6-1999 due to ill health. It is the case of the petitioner that she was totally depending on the deceased for her livelihood and even at the time of the death of her mother she was depending on the deceased. It is her case that she is divorced by her husband and she is required to

maintain two daughters. It is contended that in view of these circumstances she made representation to the respondent on 21-12-1999 to give her appointment on compassionate ground. It is contended that she was called by the respondents for interview and her record was perused but ultimately in the month of August 2001 it was informed by respondents that as she is divorced daughter of the deceased, she cannot be treated as member of the family of the deceased and so appointment cannot be given to her on compassionate ground.

3) It is the case of the petitioner that as per rules framed by the respondent in the year 1980 daughter was included in the family of the employee. It is contended that the rules were amended in the year 1987 and first time condition was laid down that daughter should be un-married. It is contended that such discrimination is not possible and in view of the object behind the rules of giving appointment on compassionate ground, she is entitled to get appointment. Prayer is made to quash and set aside the rule which was amended in the year 1987.

4) Respondent has filed reply affidavit and aforesaid defence is taken by the respondent. The circumstance that mother of the petitioner was in employment is not disputed. The correspondence made with the petitioner by which the result on the representation was informed is also on record.

5) The petitioner is relying on the observations made by this Court in the case reported as **2011(5) Bom.C.R. 34 (Aparna Narendra Zambre v. Assistant Superintending Engineer)**. In that case a married daughter was denied the benefit of such scheme and so she had filed the proceeding. This Court gave direction to the employer to consider the claim though it was held that at the relevant time, in the year 2003, the daughter was unmarried. On this point learned counsel for the petitioner placed reliance on some observations made by the Apex Court in the case reported as **2007 AIRSCW 826 (P.V. George v. State of Kerala)**. Though those observations were in different context with regard to the prospective application of the rules in the cases like present one, the employer is expected to act as per the

spirit of the scheme. If in the past daughter was entitled and due to amendment married daughter was taken out of the scope of the scheme, denying appointment to married daughter or divorced daughter would amount to discrimination against her if she was really depending on the deceased for her livelihood. Aforesaid contentions of the petitioner are not disputed. In view of these circumstances, this Court holds that relief needs to be granted in favour of the petitioner.

6) In the result, the petition is allowed in terms of prayer clause (D). The respondents to decide the claim within two months from today. Rule made absolute in those terms.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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