

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 7797 OF 2014

- 1 Swapanali Shekhar Kalbhor, aged 23 years]
presently residing near Khandoba Mandir,]
Rahatani Gaon, Pimpri, Pune.]
- 2 Gulabbai Kailash Sathe, aged about 48]
years, presently residing at Venunath]
Apartment, Kharade Patil Bldg., Flat]
No.16-B, Pimple Nilak, Aundh Camp, Pune] ... Petitioners

Versus

- 1 State of Maharashtra, through the Office]
of Govt. Pleader, High Court, A.S. Mumbai]
- 2 Pimpri-Chinchwad Municipal Corporation]
through its Commissioner,]
Mumbai-Pune Road, Pimpri, Pune.]
- 3 The Asst. Commissioner (Admn.)]
Pimpri-Chinchwad Municipal Corporation]
Mumbai-Pune Road, Pimpri, Pune,] ... Respondents

Mr. Vijayprakash Yadav for the Petitioners.

Mr. B.V. Samant, AGP, for the Respondent No.1-State.

Mr. G.H. Keluskar for the Respondent Nos.2 and 3.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

WEDNESDAY, 11TH OCTOBER, 2017

ORAL JUDGMENT. : [Per S.C. Dharmadhikari, J.]

1 By this petition under Article 226 of the Constitution of India, the petitioners are seeking the following reliefs :

“(b) *For a writ or an order in the nature of writ of this Hon'ble Court giving a declaration that the policy of the Respondents as reflected in Government Resolution dated 26.2.2013 is violative of Articles 14, 15 and 16 of the Constitution of India with particular reference to the arbitrary discrimination being made against married sister of the deceased upon whom the other legal heirs of the deceased are fully dependent.*

(c) *For a writ or an order in the nature of a writ of this Hon'ble Court directing the Respondents to immediately and forthwith rectify and incorporate eligibility of married sister of the deceased upon whom the legal heirs of the deceased are fully dependent as eligible for compassionate appointment.”*

2 Based on the above declarations and requests, the next prayer is to quash and set aside the decision dated 22nd November, 2013, of the third respondent and taken for and on behalf of the respondent No.2.

3 The petitioners then seek a writ of mandamus or any other writ, order or direction directing the respondents to forthwith consider appointing the petitioner No.1 in place of her deceased brother Sachin Kailash Sathe.

4 On the earlier occasion and after hearing both sides, this Court passed the following Order :

“1 After having heard both sides and particularly perusing the impugned communication, we are satisfied that on 26th February, 2013, the Government of Maharashtra issued a Resolution on the subject of compassionate appointment. If that is the policy enunciated by the State and the current one fully applicable even to Municipal services, then, we see no justification for the Municipal Corporation departing from this laudable policy framed by the State.

2 In the event, as in this case, the deceased has only a married sister and mother and none else in the family, then, the sister, though married, having assured the Court that if granted an opportunity to serve the Pimpri-Chinchwad Municipal Corporation, the income derived from the salary would be exclusively spent on looking after the mother of the

deceased. She will be taken care of fully, including her medical needs.

3 *In the circumstances, we do not see any reason why the Municipal Commissioner / Assistant Municipal Commissioner (Administration) of that Corporation should deny an opportunity to the petitioner No.1 to serve the Municipal Corporation if she is otherwise eligible.*

4 *We grant Mr. Keluskar time till 11th October, 2017, to take appropriate instructions. Stand over to 11th October, 2017 for Passing Orders.*

5 *We are passing this order, mindful of the fact that there is a subsequent Government Resolution dated 17th November, 2016, copy of which is placed on record by Mr. Samant, learned Assistant Government Pleader. Secondly, this order is passed because there is no denial of the factual statement made in the petition that it is both the petitioners who were dependent on the income of the deceased. That was the only source from which they were sustaining themselves."*

5 Since both Mr. Samant and Mr. Keluskar stated that the current policy is contained in the Government Resolution dated 21st September, 2017, copy of which is handed over and taken on

record, and marked “X” for identification, it is imperative that we decide the matter on merits.

6 Hence, Rule.

7 Respondents waive service. By consent, Rule is made returnable forthwith.

8 The short point that is involved in this petition is whether the petitioners before this Court, who are claiming to be dependents of the deceased Sachin Kailash Sathe (for short “the deceased”) can apply for being appointed in the services of the Pimpri-Chinchwad Municipal Corporation. They were seeking appointment because of the policy of the State as also the Municipal Corporation to appoint, the dependents of the deceased employee who dies in service, on compassionate basis. Thus, the claim for compassionate appointment being denied to the petitioner No.1 on the basis that she is a married sister and a married sister does not find any place in the scheme of compassionate appointment or policy framed in that behalf by the State that we are required to assign elaborate reasons.

9 As is clear from the cause title, the petitioner No.1 is the married daughter of the petitioner No.2. The petitioner No.2 is fully dependent upon the only legal heir, namely, petitioner No.1. The first respondent-State has been impleaded as party-respondent because through the General Administration Department of the State, the policy of compassionate appointment has been set out. That policy is adopted by the second respondent Pimpri-Chinchwad Municipal Corporation (for short "PCMC"). The third respondent is the Administrative Officer who has issued the impugned order dated 22nd November, 2013.

10 The petitioners state that one Kailash Baburao Sathe was employed with the second respondent. While in service, he expired on 11th January, 2001. Upon his demise, the said Sachin / deceased was appointed on compassionate basis.

11 On 8th September, 2012, Sachin expired while in employment of the respondent No.2. Upon his demise, the surviving legal heirs are the petitioner No.1, his married sister,

and the petitioner No.2, the mother.

12 On 26th February, 2013, a Government Resolution was issued setting out a scheme of compassionate appointment on sympathetic grounds. That is to enable the dependents of a deceased employee who dies while in service, to tide over the immediate financial crisis and in the event the old, aged and infirm parents are dependent upon such an employee, then, they as well as the family of the deceased, including his widow and children are able to sustain themselves. There was certain improvement in this policy and which we shall refer to in some details hereafter. What the petitioners have pointed out is that the second petitioner received a communication from the PCMC. The said communication, copy of which is at Annexure-A, was in response to an application dated 29th January, 2013, which was forwarded by the petitioner No.2. By that application, the petitioner No.2 requested that the married sister of the deceased, namely, petitioner No.1 be appointed on compassionate grounds. The petitioner No.2 made reference to the Government Resolution of 26th October, 1994 and 26th February, 2013, enunciating a welfare and benevolent measure. It was pointed

out there is no prohibition nor is there any bar against employing and appointing a married daughter or married sister of the deceased employee provided the family has no other eligible member or the deceased leaves behind only female heirs. It is stated that though the petitioner No.1 is married, she has the consent of her in-laws and her husband so as to provide for the maintenance of the petitioner No.2 from the income earned as salary pursuant to such compassionate appointment. Therefore, the mother of the deceased requested that in the event the petitioner No.1 is appointed, she will not suffer in her old age.

13 It is that request which has been denied, but with reference to the very same Government Resolutions.

14 On 26th February, 2013, a revised scheme of compassionate employment so as to employ a married daughter of the deceased came to be framed and duly published. That Government Resolution dated 26th February, 2013, refers to the earliest policy of 26th October, 1994/Government Resolution, the subsequent Government Resolution dated 23rd August, 1996 and thereafter another Government Resolution of 17th July, 2007, on

the same subject.

15 The preamble to this Government Resolution of 26th February, 2013, copy of which is at Annexure-B to the petition, in clearest terms states that the Government Resolution of 26th October, 1994, which was itself a revised policy, and subsequent policies are in force. However, at times the deceased employee serving the State has been found to be survived by an unmarried son or an unmarried daughter or an adopted son or adopted unmarried daughter. If the son of the deceased employee is not alive and if none other in the family are eligible for appointment, then, his daughter-in-law or any other person who is dependent upon the unmarried deceased employee or his unmarried sister or brother or his divorced or widowed daughter or sister can be considered as eligible for being appointed. This policy was then brought into effect and a reference was made therein to an order passed by this Court. Our attention has been invited to the decision of the State and which is contained in paragraph 2 of this Government Resolution. It is submitted that on 6th December, 2013, a Division Bench of this Court to which one of us (S.C. Dharmadhikari, J,) was a party, decided Writ Petition No.11987

of 2012 filed by one Swara Sachin Kulkarni vs. The Superintending Engineer, Pune Irrigation Project Circle & Anr. The argument therein was that the deceased Ashok Kulkarni working as a wireman with the Superintending Engineer's Office expired while in service on 10th September, 2003. His daughter applied for appointment on compassionate ground on 23rd December, 2003. After her application was accepted, it was processed and a list of employees who were claiming compassionate appointment was prepared, the name of Swara was entered at Sr. No.107 in that Waiting List. Thereafter there being no vacancies an appointment order could not be issued. The Wait List moved ahead further and eventually Swara's name appeared at Sr. No.10. The Government Resolution of 22nd August, 2005, was issued by the State and the petitioner Swara was expecting an appointment order being issued. However, relying upon the Government Resolution dated 26th October, 1994, Swara's name was deleted. That was on the ground that if the candidate seeking employment on compassionate grounds is more than forty years of age or married, then, his/her name or claim cannot be considered.

16 It is the later controversy which was dealt with by this Court and in dealing with the same, the following observations, according to the learned counsel appearing for the petitioners before us, are pertinent :

“2 The petitioner claim that her name has been deleted only because she is married. A married daughter could not have laid a claim for compassionate employment, because in the perception of the respondent nos.1 and 2, she is no longer a part of the family of the deceased. It is this stand, which is questioned before us, in this writ petition. Mr.Kulkarni, appearing on behalf of the petitioner submitted that the facts in this case are peculiar. The deceased only had daughters. Both daughters are married. The second daughter is not interested in the job. The petitioner is interested in the job because she is supporting her widowed mother. The mother has nobody to look forward to except the petitioner – daughter. The petitioner has asserted that even after her marriage she is looking after her mother in her old age. In such circumstances, the deletion of her name from the list is violative of the constitutional mandate of Article 14 and 16 of the Constitution of India.

3 It is on this point that we have heard the

Counsel and after perusing the writ petition and all the annexures thereto, so also the affidavit placed on record, we are of the opinion that the petitioner's name could not have been deleted from the list. The compassionate employment is to enable the family to get or tide over a financial crisis. As the petitioner is the only member who can earn and support the mother in her old age, so also the emoluments including the pension of the deceased are inadequate that she was interested in pursuing her claim. The name of the petitioner was therefore duly reflected in a list initially and thereafter a recruitment or appointment exercise was undertaken. The petitioner therefore was wait listed at Serial No.10. Thus, initially her number was 1070 and which advanced to Serial No.10. We find that the respondents insisted on the petitioner submitting a certificate that she is unmarried, that is by a communication dated 21st May, 2011. The petitioner pointed out that such an insistence is impermissible in law. A letter dated 27th February, 2009 was issued communicating to her that her name has been deleted from the wait list owing to her marriage. If the petitioner's name is to be deleted from the list because of her marriage then insistence on production of a certificate about her marital status in the year 2011 was clearly an exercise visited by non-application of mind. The deletion by letter dated 27th February, 2009 itself is violative of constitutional mandate. We cannot expect a Welfare State to take a

stand that a married daughter is in-eligible to apply for compassionate appointment simply because she becomes a member of her husband's family. She cannot be treated as not belonging to her father's family. The deceased was her father. In this case, the deceased has only daughters. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought to be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized from the income and the terminal benefits of the deceased. In such circumstances if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is dis-entitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under

the State. The State is obliged to bear in mind the constitutional mandate and also directive principles of the State Policy. The point raised in this case is covered by the Judgment of a Division Bench in Writ Petition No.1284 of 2011 decided on 1.8.2011 and a Judgment of a learned Single Judge in W.P. No.6056 of 2010 decided on 26th October, 2010, all of this Court.

4 In such circumstances, the communication dated 27th February, 2009, copy of which is annexed at page 30 of the paper book cannot be sustained. The writ petition is allowed. This communication is quashed and set aside and equally the further communications in pursuance thereof. The petitioner's name shall stand restored to the wait list maintained by respondent nos.1 and 2 for appointment on compassionate basis. However, we clarify that we have not issued any direction to appoint the petitioner. Let her case be considered in terms of the applicable policy of Compassionate Appointment or Employment together with others. Her name should not be deleted or omitted only because she is married and that is why we have restored her name in the wait list. Beyond that we have not issued any direction."

17 The counsel would argue that if this is a clear case of discrimination only because of the marital status, then, based on

the reasoning of the Division Bench, there seems to be no justification for above classification in matters of compassionate appointments. Eventually the object and purpose of such appointments should not be lost sight of when the claims of the dependents of the deceased are considered. We are in the age of nuclear families. That will have to be borne in mind because none has any control over it. If the deceased is not survived by a male heir, then, merely because there are daughters in the family and they are married does not mean that the widow or wife or the mother of the deceased employee or his parents, wholly dependent on his income, should be left without any sustenance. The whole object is that in their old age or in tragic circumstances, when they are entirely dependent on the income of the deceased, they should be able to tide over the immediate financial crisis. Such a crisis continues because there is no earning member left in the family. The argument is that if this is the object and purpose sought to be achieved, then, it is wholly defeated and frustrated by the interpretation placed on the present policies by the respondents.

18 Mr. Samant and Mr. Keluskar would submit that the

Government Resolutions which were pointed out, namely, 17th November, 2016 as also 21st September, 2017, follow the earlier Government Resolution of 26th February, 2013. Though the preamble to both these Government Resolutions refer to several judgments and decisions of this Court, what has been found is that if the Government Resolution dated 26th February, 2013, stands cancelled, then, some direction had to be issued and provided so as to guide the State as also such entities and authorities who are either discharging Governmental duties or performing such functions as are performed by the Government or the State itself. Therefore, Municipal Corporations like PCMC / public bodies / local authorities, enterprises and units of the State would have to be guided and that is why the order in which the compassionate appointment claims can be considered has been indicated in this Government Resolution. In the event the deceased leaves behind husband/wife, son/daughter either married or unmarried, then, if the deceased had a son but who had also expired or he is survived but is not eligible for employment, then, his daughter-in-law, his divorced daughter or sister, a daughter who has unfortunately been rendered destitute or homeless or his widowed daughter or sister can be considered.

Finally, if the deceased employee was unmarried, then, only those wholly dependent upon him, namely his brother and sister would be eligible for compassionate employment.

19 The other stipulations in this Government Resolution need not be referred to. This is a Government Resolution followed by another Government Resolution dated 21st September, 2017. This Government Resolution seeks to subsume all prior Government Resolutions and decisions on the subject into a single policy. This Government Resolution has an Annexure. The Government Resolution refers to earlier Government Resolutions and in the Annexure or Schedule-A thereto, the clause 4 once again reiterates the scheme and sets out those eligible for compassionate appointment on the death of the deceased employee in service.

20 We have perused all these Government Resolutions and we would not like to place such an interpretation thereon which would completely frustrate the object and purpose of compassionate employment. As is held by the Hon'ble Supreme Court in several decisions that compassionate appointment

provides an opportunity to those surviving the deceased employee and wholly dependent on his income to sustain themselves. It is a scheme which assists them. It is a scheme which also takes care of old, aged, infirm parents, widow and the immediate family of the deceased. In most of these cases, it was noticed by the State as also by the Hon'ble Supreme Court that the employees in Government employment join it at a fairly young age and post their marriage or immediately prior thereto and thereafter upon his or her income, his wife and children and on most occasions, his parents are dependent. If there is only one earning son in the family, then, ordinarily and normally he takes care of all the family members. He is responsible and, therefore, has to arrange for the education and marriage of his younger brothers and sisters. He also has to provide for the parents in their old age. All these are normal expectations and from an earning member of the family. If because of modern day tensions, stress, he himself becomes a victim of a disease which is life-threatening or succumbs thereto, then, his family has none to look up to for their sustenance. It is towards that end that the scheme has been directed. It is, therefore, a comprehensive measure which fulfills the mandate of Articles 14 and 16 of the

Constitution of India so also the guiding principles, namely, Articles 39, 40, 41 and 43 of the Directive Principles of State Policy enunciated in the Constitution. If such is the benevolent and beneficial purpose sought to be achieved, then, an interpretation consistent therewith has to be placed on the clauses or paragraphs of the Government Resolution. Merely because the Government Resolutions do not specifically mention against the name of the sister, 'married' or 'unmarried', does not mean that the sister of the deceased surviving him is not fulfilling the family responsibility. If, as in this case, the deceased was survived by his old mother and married sister and has no other surviving legal heir who can be accommodated under this policy, then, we do not see how the policy prohibits the respondents from considering the request of the petitioner No.2 - mother of the deceased. It is her request to appoint the petitioner No.1. Though the petitioner No.1 is the married sister of the deceased, she has undertaken to look after her mother from the income that she can generate by way of salary in the event she is appointed on compassionate basis and in place of her deceased brother. There is nobody else other than this sister. Thus, the father of the deceased had only one son, the deceased, and only one daughter,

the petitioner No.1. The unfortunate part in this case is that even the father of the deceased son died while in service. Then, the deceased was appointed in his place. Unfortunately, even the son expired while in service. Now the aged mother requests the employer, namely, a public body like PCMC to assist her in her old age for she was entirely dependent on the income of the deceased son and after his sad demise, if there is a married sister of the deceased and only daughter of the petitioner No.2, then, there is no prohibition in considering her claim for compassionate appointment. All the more when she has assured the Court through her counsel that her husband and her in-laws have no objection to the salary income being completely handed over or utilised for looking after the petitioner No.2. In such circumstances and there being no claimant other than the petitioner No.1, we do not see any impediment for the PCMC to consider the claim of the petitioners herein.

21 On a perusal of the Government Resolutions, we do not find that paragraphs or clauses thereof have to be read in such a manner so as to rule out completely the claim of a party or person like the petitioner No.1. If that is held to be completely

ruled out or excluded from the policy, then, we hasten to add that the same is not consistent with the constitutional mandate and enshrined in Articles 14 and 16 and the above Directive Principles of the State Policy. There is thus no rationale or nexus for this classification which can safely be termed as a discrimination. If a classification has to have a reasonable basis, the nexus of the same with the purpose or object sought to be achieved ought to be clearly established. We do not see how the exclusion as is suggested by the PCMC of a claimant like the petitioner No.2 can be held to be in tune with the constitutional scheme. It does not befit a employer like the State to reject such claims and by indulging in hair-splitting or taking a hyper technical view of the matter.

22 Pertinently, the GR's have not been challenged on the ground that they are violative of the constitutional mandate enshrined in Article 16(2) of the Constitution. That Article reads as under :

***“16 Equality of opportunity in matters of
public employment.-***

(1)

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

23 Mr. Samant and Mr. Keluskar would submit that the policy is likely to be misused to accommodate each and every member of the family irrespective of the dependency test or the authority satisfying itself about the factual aspects, namely, whether such claimant-member was indeed residing with the deceased, the composition of the family etc. Their apprehension is it would be used as a permit or licence to fill up vacant public posts by a backdoor method. Firstly, such is not the case before us as the facts are undisputed. Secondly, there is a binding principle in the very decision of the Hon'ble Supreme Court in the case of *Auditor General of India & Ors. vs. Anantha Rajeshwar* reported in *AIR 1994 SC 1521*. The Hon'ble Supreme Court held as under :

“2 The only question that arises for decision is whether the Memorandum is violative of Article 16(2) of the Constitution ? Article 14 genus provides equality of opportunity and equal protection of the

laws and it prohibits discrimination. Article 16(2) species prohibits discrimination, thus :

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

The High Court held that the appointment of son/daughter/near relative (widow) of the erstwhile employee of the Government would tantamount to appointment on descent and therefore is violative of Article 16(2). It is contended for the State that the Memorandum envisages appointments purely on compassionate grounds in the circumstances enumerated in Office Memorandum No. 14014/1/77-Estt.(D), Government of India, dated November 25, 1978. It provides that Secretaries or Joint Secretaries in the Ministries/Departments are competent to appoint, in relaxation of the procedure of recruitment through the Staff Selection Commission or Employment Exchange, but subject to the other requirements set out therein, the son/daughter or near relative of the government servant (it is stated by the learned counsel that widow of the deceased is near relative), who died in harness leaving his family in immediate need of assistance, in the event of there being no other earning member in the family, to a Group 'C' post or

Group 'D' post. After the proposal for such appointment has been approved by the Joint Secretary incharge of the Administration or Secretary in the Ministry or Department concerned, it would be made. The Memorandum also provides for the fulfilment of the qualifications prescribed for the post. So it is not violative of Article 16(2). We find no force to accept in toto.

3 In paragraph 5, it is stated that in deserving cases even where there is an earning member in the family, a son/daughter/near relative of a government servant who dies in harness leaving his family in indigent circumstances, may be considered for appointment to the post. All such appointments are, however, to be made with the prior approval of the Secretary of the Ministry/Department concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number of dependents left by the deceased government servant, the assets and liabilities left by him, the income of the earning member as also his liabilities, whether the earning member is residing with the family of the deceased government servant and whether he should not be a source of support to other members of the family.

4 In paragraph 6, it is stated that in exceptional cases when a Department is satisfied that the condition of the family is indigent and in great

distress, the benefit of compassionate appointment may be extended to the son/daughter or near relative of government servant retired on medical grounds under Rule 36 of the Central Civil Service (Pension) Rules, 1972 or corresponding provisions in the Central Civil Regulations. Para 7 dealt with the ban on recruitment in Group 'C' posts and direction was given to make appointments to group 'D' posts and paragraph 8 relates to the certain clarifications and para 9 relates to the imposition of the conditions or the condition to be accepted by the person appointed to the post. Para 11 (a) provides that the appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications required for the post consistent with requirement of the maintenance of efficiency of administration. Para 11 (b) provides that these instructions do not restrict employment of sons/daughters or near relatives of deceased Group 'D' employee to a Group 'D' post alone. As such a son/daughter or near relative of a deceased employee can be appointed to a Group 'C' post for which he is educationally qualified, provided a vacancy in Group 'C' exists and para 11 (c) provides that the appointments have to be cleared at the Head of Department level, and as all the vacancies are to be pooled for compassionate appointment, it may be ensured that subordinate and field offices got an equitable share in the compassionate appointments.

5 A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the

persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted.”

24 Pertinently, this decision has been explained in the later decision by the Hon'ble Supreme Court reported in the case of *V. Sivamurthy & Ors. vs. State of Andhra Pradesh & Ors. 2008 AIR Supreme Court Weekly 6114*. The Hon'ble Supreme Court held as under :

“7 Article 16 of the Constitution bars discrimination in employment on the ground only of descent. If the service rules or any scheme of government provides that whenever a government servant retires from service, one of his dependants should be given employment in his place, or provides that children of government servants will have

preference in employment, that would squarely fly in the face of prohibition on the ground of descent. Employment should not be hereditary or by succession. But where the policy provides for compassionate appointment in the case of an employee who dies in harness or an employee who is medically invalidated, such a provision is based on a classification which is not only on the ground of descent. The classification is based on another condition in addition to descent : that is death of the employee in harness, or medical invalidation of the employee while in service.

8 *This Court had occasion to consider the difference between conferment of a preferential right to appointment to a family member of a government servant, merely on the ground that he happens to be a family member, and schemes relating to compassionate appointment of dependant family members of government servants who die while in service or who are incapacitated while in service.*

... ..

15 *When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of*

medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible.

... ..

*17 The learned counsel for appellants submitted that rational classification is not prohibited by either Article 15 and 16 and that unless someone is aggrieved by a classification, and challenges it on the ground of hostile discrimination or denial of equal opportunity, there is no occasion for a court to suo motu consider whether a policy relating to an affirmative action is valid or not. Reliance was placed on observations of this Court in *M. Punandara v. Mahadesh S.* [2005 (6) SCC 791] and *Som Mittal v. State of Karnataka* [2008 (2) Scale 717]. In *Purandara*, this Court observed that where an issue was not before the court and none had raised the question, adjudication on such issue is not proper;*

and that issues in question alone, and not matters at large, could be considered. In Som Mittal, this Court observed that while rendering judgments, courts should only deal with the subject matter of the case and the issues involved therein, and courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject matter of the case.”

25 The High Court of Karnataka in the case of *R. Jayamma vs. Karnataka Electricity Board & Anr.* in Writ Petition No. 20872 of 1991 decided on 29th July, 1992, considered a case of discrimination in refusing compassionate appointment only on the ground of marriage of the petitioner. That is violative of the constitutional guarantee, according to the learned single Judge. We have no hesitation in agreeing with this view.

26 Then, in the case of *V. Sunithakumari vs. Karnataka State Electricity Board & Ors.*, Original Petition No. 12415 of 1991 decided on 30th June, 1992, as well, the learned single Judge of the Kerala High Court held that the object of the scheme is not to provide employment to the unemployed among the dependents / relatives of the employee who died in harness, but

to enable on the dependents to get some employment so as to eke out a livelihood for the members of the family of the deceased. The intention of the scheme can only be to provide immediate relief to the family of the deceased employee for their sustenance. Hence, the learned single Judge held that the classification has to have a nexus with the object, particularly when the intention is not to give employment to one of the heirs of the deceased, but only to one of the dependents. This view also, therefore, is in accord with what is held by us.

27 Finally we find that throughout the emphasis is that there should not be discrimination having no nexus with the object sought to be achieved. Therefore, married daughters found a place in the scheme of compassionate appointment, other things being satisfied [See *Manjula and State of Karnataka by its Secretary, Department of Cooperation, Bangalore & Anr.*, Writ Petition No. 19058 of 2008 decided on October 11, 2004 by the Karnataka High Court].

28 We are of the opinion that the issue and controversy dealt with by the Hon'ble Supreme Court is not the subject matter

before us nor have we considered it. In the least, we should not be understood as perpetuating any problem or regime. All that we have noticed is once the Government makes a policy of compassionate employment we should not depart from it unless the clear language or stipulation therein demands a correct interpretation. If the policy itself is found to be discriminatory or unfair, unreasonable and unjust, then, surely we can interfere in consistent with the mandate of Articles 14 and 16 of the Constitution of India. Further, if the understanding and interpretation of the policy defeats its laudable object, then as well we can interfere in our writ jurisdiction so as to ensure that there is no discrimination on the ground of gender or marital status. This is all that we have done in the instant case.

29 As a result of the above discussion, the writ petition succeeds. We do not strike down the policy as prayed by the petitioners and we would not have hesitated to do so provided a fair and reasonable reading it does not lead to the result as indicated above. We are of the firm opinion that the policy need not be struck down for it is possible to give it a reasonable, fair and just interpretation by holding that it does not exclude or rule

out the claim of a party like the petitioner No.1, namely, the married sister of the deceased employee provided the deceased was unmarried or not survived by such family member who is eligible for being considered for employment or has none except a married sister. Therefore, a married sister in the present family cannot be held to be excluded from the scheme of compassionate employment as the deceased is not married or survived by other eligible heir. Once we hold accordingly, then, we should not be striking down an otherwise fair and reasonable policy of the State. The rule is, therefore, made absolute in terms of prayer clause (c), but with a modification that is ordinarily done in law that we do not appoint somebody. We direct consideration of the claim and if the petitioner No.1 is otherwise eligible, she should be appointed in place of the deceased employee of the Pimpri-Chinchwad Municipal Corporation and the requisite decision be taken as expeditiously as possible and within a period of four weeks from the date of receipt of a copy of this order.

30 A hyper-technical view and rather unfair reading of the policy and refusing to implement it so as to assist such dependents of the deceased as are brought before us has resulted

in wastage of precious judicial time. We had to waste valuable and precious man hours and which could have been devoted for other matters and particularly concerning the life and liberty of citizens. It is only because officers like respondent No.3 do not take decisions or are not bold enough to assist parties like petitioner No.2, that we are tempted to impose heavy costs on the State and PCMC and to be paid by such officers. We were to direct payment of costs and personally by the Municipal Commissioner or the Assistant Municipal Commissioner of Pimpri-Chinchwad Municipal Corporation, but Mr. Keluskar requested us not to take such a harsh view. He says that he would convey the feelings of this Court and hereafter the Municipal Commissioner would take the necessary corrective steps and avoid any such directions. It is only because of the persuasion of Mr. Keluskar that we do not impose costs.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.