

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2237 OF 2017

Ratnamala Maruti Tupe	.. <u>Petitioner</u>
Versus	
The State of Maharashtra and others	.. <u>Respondents</u>

Shri Rahul A. Tambe, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 to 3.

Respondent No. 4 served.

Shri Ashwin V. Hon, Advocate for Respondent Nos. 5 to 7.

(Absent)

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 11th April, 2018

PER COURT :

1. Mr. Tambe, learned counsel for the petitioner submits that the petitioner had applied seeking appointment on compassionate ground on account of the death of her husband while in service with respondent. Initially application was rejected on the ground that N.O.C. is not obtained. Thereafter, the petitioner had again persisted with the respondents – authorities. In the meantime, on 9th August, 2016, under the registered Adoption Deed the petitioner had given her third child

in adoption to Ashok Dattatray Kshrisagar and Sou. Urmila Ashok Kshirsagar. The bar that a person would be disentitled for appointment on compassionate ground would not apply. The authorities have on erroneous presumption that the adoption deed is with an ulterior motive has rejected the application of the petitioner. The same is illegal. The adoption deed is a registered adoption deed. Even the clause in the Government Resolution disentitling a person having third child for seeking appointment on compassionate ground is illegal and violative of Article 14 of the Constitution of India.

2. We have heard the learned Assistant Government Pleader.

3. The petitioner is seeking benefit of the Government Resolution dated 28th March, 2001, seeking appointment on compassionate ground. The appointments on compassionate ground are governed as per the executive instructions and not under the statute. The claim for compassionate appointment is not as of right but is governed by the conditions enumerated in the executive instructions issued from time to time and governing their appointments.

4. The details have to be given as to whether the deceased had third child after 31st December, 2001. The petitioner as on the date when had applied was ineligible to be considered for appointment on compassionate ground. The subsequent adoption would not enure to the benefit of the petitioner. Even the statute debars the person seeking appointment if has a third child after the cut-off date prescribed. The petitioner cannot approbate and reprobate.

5. Considering the above, no case for interference is made out. The writ petition stands dismissed. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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