

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

WRIT PETITION NO. 2862 OF 2015

Smita Rudrappa Jamadar ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Samir A. Kumbhakoni for the Petitioner.
Mr. B.V. Samant, A.G.P. for Respondent No.1-State.
Mr. L.M. Lokesh i/b Mr. G.S. Hegde for Respondent No.2.

**CORAM : R.M. SAVANT &
K.K. SONAWANE, JJ.**
DATE : 4th SEPTEMBER, 2018.

P.C. :

1 1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The above Writ Petition has been filed seeking a direction that the Petitioner be appointed on the post of Clerk/Typist on compassionate ground. The Petitioner's father one Rudrappa Jamadar was working with Respondent No.2 i.e. Maharashtra State Road Transport Corporation, as a driver. The Petitioner's father expired on 22.08.2010 during the course of his employment. On the death of the father, the Petitioner, her mother and

two brothers were the heirs who were surviving on the death of the said Rudrappa. The Petitioner is a graduate and, therefore, applied to Respondent No.2 for being appointed on compassionate ground as a Clerk/Typist. The mother of the Petitioner also applied to the Respondent No.2 for the appointment of the Petitioner. The Petitioner in support of her application submitted the relevant documents i.e. School Leaving Certificate as also her Graduation Certificate. In spite of repeated follow ups, there was no progress insofar as the consideration of the Petitioner's application is concerned and ultimately by communication dated 15.05.2014, the mother of the Petitioner was informed by the Divisional Controller, Solapur, that in terms of the regulations, the Petitioner being a married daughter, could not be appointed on compassionate ground. As indicated above, the said communication has resulted in the filing of the above Writ Petition for seeking a direction that the Petitioner be appointed in the post of Clerk/Typist on compassionate ground by the Respondent No.2.

3 Insofar as the issue whether the married daughters are entitled to be considered for appointment on compassionate ground on account of the death of their father or mother who was in employment is concerned, the said issue is no more res-integra and is covered by the judgment of a Division

Bench of this Court dated 06.12.2013 in Writ Petition No.11987 of 2012. The Division Bench held that the disentitling a married daughter from compassionate appointment would create discrimination only on the ground of gender. The Division Bench further observed that it did not see any rationale for the said classification and discrimination being made in matters of compassionate appointment and particularly when the employment is against the State. The Division Bench further observed that the State is obliged to bear in mind the constitutional mandate and also directive principles of State Policy. The Division Bench relied upon the judgment of another Division Bench of this Court in Writ Petition No.1284 of 2011 decided on 01.08.2011 as also the judgment of a learned Single Judge of this Court in Writ Petition No.6056 of 2010 decided on 26.10.2010. The Division Bench accordingly set aside the order in the said case rejecting the application of the Petitioner therein and restored the name of the Petitioner in the wait list.

4 It is required to be noted that the State Government also by Resolution dated 17.11.2016 has now provided for the married daughters to be considered for appointment on compassionate ground provided they satisfy the other conditions mentioned in the said Government Resolution.

By issuing the said Government Resolution dated 17.11.2016, the State Government has done away with its earlier policy as was reflected in the Government Resolution dated 26.02.2013. In our view, therefore, the decision dated 15.05.2014 as communicated to the mother of the Petitioner, would not come in the way of the Petitioner from being considered for appointment on compassionate ground. It is required to be noted that pursuant to the directions issued, the Petitioner has filed affidavits of her two brothers i.e. Gangadhar and Satish. As indicted above, the mother had already filed an application seeking the appointment of the Petitioner on compassionate ground. We, therefore, direct Respondent No.2 to consider the case of the Petitioner for compassionate appointment to the post of Clerk/Typist in terms of the observations made herein above. The said consideration to be done latest by 31.12.2018 and the decision to be communicated to the Petitioner.

5 Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

Waishali
Sushil
Waghmare

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Sushil
Waghmare
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(K.K. SONAWANE, J.)

(R.M. SAVANT, J.)