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

WRIT PETITION NO.7106 OF 2018

Vrushali H. Mohite ... Petitioner

Vs

Deputy Taxing Officer and
Collector and Anr. ... Respondents

...

Mr. Ashutosh M. Kulkarni I/by Ms. Akansha A.
Helaskar for the Petitioner.

Mr. Vinod Mahadik for the Respondents.

CORAM : A.S.OKA &

SANDEEP K. SHINDE JJ.

DATE : 28 NOVEMBER, 2018

ORAL JUDGMENT : [Per A.S.Oka, J.]

Heard learned counsel appearing for the
Petitioner.

2 **Rule.** The Respondents waive service. Heard
learned counsel appearing for the Respondents. The Petition
is forthwith taken up for final disposal.

3 The Petitioner's mother was in the employment of the Second Respondent who died on 6th December, 2010. The Petitioner applied for grant of compassionate appointment to the Second Respondent. By the communication dated 25th April, 2018 issued by the First Respondent, the Petitioner was informed that her case for compassionate appointment cannot be considered for two reasons. The first reason is that the Petitioner was married at the time of demise of her mother and secondly, at the time of demise of her mother, the Petitioner's father was in employment.

4 As far as the first ground is concerned, there is no dispute that in view of the law laid down by this Court, the compassionate appointment cannot be denied to a married daughter of the deceased employee if she is otherwise eligible for grant of compassionate appointment.

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As far as the second ground is concerned, the submission of the learned counsel appearing for the Petitioner is that on the date of demise of the Petitioner's mother, there was no policy in force which prevented the Second Respondent from granting compassionate appointment to the Petitioner though the Petitioner's father was in the employment. He would, therefore, submit that second ground for rejection of the application of the petitioner is completely illegal.

5 The learned counsel appearing for the Respondents submits that Petitioner's father was earning sufficient income and after his superannuation, he is drawing pension. However, he is not able to point out any policy on the basis of which the compassionate appointment could have been denied to the Petitioner on that ground. Moreover, decision taken by the Competent Authority is not placed on record so as to enable the Court to ascertain whether there was any application of mind.

6 Under the circumstances, we are of the view that it will be appropriate if the Second Respondent re-considers the prayer made by the Petitioner. We propose to permit the Petitioner to make appropriate representation and direct her to produce before the Corporation all the particulars of income of her father and retirement benefits provided to her father. She may also produce relevant policy decisions/Government Resolutions which are applicable to the facts of the case.

7 Hence, we pass the following order:

(1) The impugned decision communicated by the letter dated 25th April, 2018 (Ex.'I' to the Petition) is hereby quashed and set aside;

(2) We direct Petitioner to file in the office of the First Respondent all documents concerning employment of her father and retirement benefits received by the father. It will also be open for the Petitioner to produce

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copies of the policies/Government Resolutions applicable to her case. The documents shall be produced by the Petitioner along with a representation within a period of one month from the date on which this judgment/order is uploaded;

(3) After considering the documents, if any, produced by the Petitioner, the Second Respondent shall re-consider the prayer made by the Petitioner for grant of compassionate appointment. Appropriate decision in accordance with law shall be taken by the Second Respondent within a period of three months from the date on which this judgment/order is uploaded ;

(4) Though the issue of entitlement of the Petitioner to grant of compassionate appointment is kept open, we make it clear that prayer cannot be rejected on the first ground mentioned in the impugned decision that the Petitioner was married on the relevant date;

(5) Rule is made partly absolute in the above terms.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)