

employed as Police Constable with the respondents. He passed away while on duty. The petitioner therefore made an application to respondent No.2 for being appointed as Junior Clerk on compassionate ground. On 8/8/2007, respondent No.2 appointed the petitioner in the said post in the pay scale of Rs.3050-4590 on compassionate ground making it clear that she would be required to pass English and Marathi typing examination and computer examination within a period of two years of her appointment. The petitioner passed English and Marathi typing examination on 31/1/2011.

3. As the petitioner did not pass examination within two years of her appointment, respondent No.2 terminated the services of the petitioner on 23/12/2010. The petitioner, therefore, filed O.A.No. 234 of 2011 before the Tribunal. The Tribunal was pleased to direct the respondents to give appointment to the petitioner in an available Group 'D' post in view of the protection provided in G.R. dated 8/9/1997. Her prayer for reinstatement as Junior Clerk was rejected.

4. G.R. dated 8/9/1997 provides that if a clerk-typist appointed on compassionate ground is not able to pass required typing test in the stipulated time, he/she may be given appointment in Group 'D' post in an available vacancy. The petitioner filed representation on 4/5/2013 for appointing her in Group 'D' post which was without prejudice to her right to challenge the decision of the Tribunal before this Court.

5. On 8/5/2013, she was informed that there was no vacancy in Group 'D' as a peon, but there was a vacancy of sweeper and therefore, respondent No.2 called upon the petitioner to convey her willingness, if she is ready to accept the said post. The petitioner pointed out that on 25/6/2013 that one post of office peon was available with respondent No.2 at the time when O.A. was decided by the Tribunal. The said post was hurriedly filled up in order to avoid the same being offered to the petitioner. The petitioner made repeated representations for appointment for the post of office peon. She expressed her unwillingness to work as a sweeper.

6. We have heard learned Counsel. The petitioner was appointed on compassionate ground on 8/8/2007 as Junior Clerk. As per terms of the appointment order, she was required to pass English and Marathi typing examination and computer examination within a period of two years of her appointment. Her services came to be terminated on 23/12/2010. Admittedly, she has passed the requisite examination on 31/1/2011. Learned AGP also does not dispute that as of 31/1/2011 the petitioner passed all the requisite examinations. The said examination was conducted in the month of November, 2010. The period of two years during which she had to pass the examination expired in August, 2009. The petitioner was nevertheless continued and in the meantime, she did appear for the examination in November, 2010.

7. Our attention is invited to the judgment of this Court in the case of **Sachin s/o Vitthalrao Kshirsagar Vs. The State of Maharashtra & ors.** in W.P.No. 4872 of 2012. In the case of **Sachin s/o Vitthalrao Kshirsagar Vs. The State of**

Maharashtra & ors., the petitioners therein did not pass the typing test within two years from the date of joining. They were given show cause why their services should not be terminated. The petitioners therein informed the respondents that they had appeared for typing test and therefore, their services may not be terminated. However, their services came to be terminated. The results of the typing test were declared on 31/1/2012 and both the petitioners were declared to have passed the typing test in English as well as Marathi. This Court having regard to the fact that the petitioners therein were appointed on compassionate ground and also having regard to the fact that the petitioners have already appeared for the typing test in November 2011 and both the petitioners were declared to have passed the test, held the termination was not justified. In the peculiar facts and circumstances of the case, this Court was of the view that since they had passed typing test which was conducted prior to termination of their services and accordingly directions were issued to continue the petitioners in service on the post of clerk-cum-typist.

8. In the present case, the petitioner's deceased husband was working as Police Constable. He died while on duty. The petitioner was appointed as Junior Clerk on compassionate ground on 8/8/2007. The petitioner's services were terminated on 23/12/2010 before which date the petitioner had already appeared for English and Marathi typing examination in November 2010. She had appeared for the said examination before termination of her services. The petitioner was not given any show cause notice before her services were terminated. In the peculiar facts and circumstances of the present case, we feel the action on the part of the respondents in terminating the services of the petitioner without awaiting the results of the examination is unjustified. The petitioner has admittedly passed the requisite examinations.

9. During the course of hearing, we had indicated to the learned Assistant Government Pleader whether the petitioner can be reinstated as a Junior Clerk as Learned Counsel for the petitioner on instructions submitted that she

would give up her claim for any back-wages if she is reinstated. Learned AGP today submits that it is not possible to make a statement.

10. We find from the decision in W.P.No. 4872 of 2012 of this Court that the respondents had issued a show cause notice to the petitioners therein before terminating their services. The petitioners therein had appeared for examinations before termination of their services and even though they passed the examinations later on, this Court was pleased to set aside the termination in the peculiar facts and circumstances of that case.

11. In the peculiar facts and circumstances of the present case, having regard to the fact that the petitioner is a widow and she had appeared for the examination before her termination but passed the examination thereafter, we are of the opinion that the order dated 23/12/2010 passed by the respondents terminating the services of the petitioner deserves to be quashed and set aside. In our opinion, in the interest of

justice, the respondents should have given opportunity to the petitioner to represent her case before terminating her services. Admittedly, no show cause notice was given. We accept the statement of the learned Counsel for the petitioner on instructions that she is giving up the claim of back-wages.

12. The impugned order passed by the Tribunal is quashed and set aside. The respondents are directed to reinstate the petitioner as a Junior Clerk within a period of two months from today with all consequential benefits and continuity but without back-wages.

13. The Writ Petition is allowed.

14. Rule made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)