

THE STATE OF MAHARASHTRA AND ANR.

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v.

MS. MADHURI MARUTI VIDHATE (SINCE AFTER
MARRIAGE SMT. MADHURI SANTOSH KOLI)

(Civil Appeal No. 6938 of 2022)

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SEPTEMBER 30, 2022

[M. R. SHAH AND KRISHNA MURARI, JJ.]

Service Law – Compassionate appointment – Married daughter, if entitled to – Father died in harness – Mother appointed on compassionate ground, also died while in service – Elder married daughter made application for seeking appointment on compassionate ground, rejected – Thereafter, respondent-younger married daughter’s application for appointment on compassionate ground was also rejected – Tribunal directed appellants to appoint respondent on compassionate ground – Order confirmed by High Court – On appeal, held : Compassionate appointment is an exception to the general rule of appointment in the public services – In such cases, out of pure humanitarian consideration in view of the fact the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment – Respondent being a married daughter cannot be said to be dependent on the deceased employee, i.e., her mother – Even otherwise, she is not entitled to appointment on compassionate ground after seven years from the death of the deceased employee – Tribunal as well as the High Court committed serious error in directing the appointment of the respondent on compassionate ground – Order of the Tribunal and that of the High Court set aside – Constitution of India – Arts.14, 16.

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Service Law – Compassionate appointment – Object of – Held : Object of granting compassionate employment is to enable the family to tide over the sudden crisis – Object is not to give such family a post much less a post held by the deceased – In the present case, appointing respondent-a married daughter on compassionate ground will be contrary to its object.

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- A *Service Law – Appointment on compassionate ground, an exception – Constitution of India – Arts.14, 16 – Held : For all the government vacancies equal opportunity should be provided to all aspirants as mandated u/Arts. 14 and 16 – However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms – Compassionate ground is a concession and not a right.*
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Director of Treasuries in Karnataka and Anr. v. V. Somyashree (2021) SCC Online SC 704; State of Himachal Pradesh and Anr. v. Shashi Kumar (2019) 3 SCC 653 : [2019] 2 SCR 432 – relied on.

- C *N. C. Santhosh v. State of Karnataka (2020) 7 SCC 617 : [2020] 3 SCR 1177; Govind Prakash Verma v. LIC (2005) 10 SCC 289 – referred to.*

Case Law Reference

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|---|-------------------|-------------|----------|
| D | [2020] 3 SCR 1177 | referred to | Para 5 |
| | [2019] 2 SCR 432 | relied on | Para 6.1 |
| | (2005) 10 SCC 289 | referred to | Para 6.1 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6938 of 2022.

- E From the Judgment and Order dated 07.01.2019 of the High Court of Judicature at Bombay in Writ Petition No.11614 of 2018.

Siddharth Dharmadhikari, Aaditya A. Pande, Bharat Bagla, Sachin Patil, Advs. for the Appellants.

- F Raahul Trivedi, Ashok Trivedi, Rishabh Mishra, Riyaan Bhola, Mrs. Priti Jignesh Joshi, Ms. Priyanka Soni, Vaibhav Mishra, Prabodh Kumar, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- G 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 07.01.2019 passed by the High Court of Judicature at Bombay in Writ Petition No. 11614 of 2018 by which the High Court has dismissed the said writ petition and has confirmed the order passed by the Maharashtra Administrative Tribunal (hereinafter referred to as the
- H “Tribunal) directing to appoint the respondent on compassionate ground,

the State of Maharashtra through the Principal Secretary, Water Resources Department has preferred the present appeal. A

The facts leading to the present appeal in nutshell are as under:-

2.1 That the father of the respondent was in the clerical cadre serving with the appellants. He died in harness. After his death, his wife, i.e., mother of the respondent was appointed on compassionate ground. However, she died while in service. That thereafter the elder sister of the respondent namely Mrs. Sangita M. Thonge made application for seeking appointment on compassionate ground. The said application was rejected vide communication dated 18.08.2011 on the ground that she cannot be given the appointment on compassionate ground as she is a married daughter. B C

2.2 That thereafter the State Government issued a Government Circular dated 26.02.2013, according to which the employment was to be provided to one of the legal heirs and representatives of the deceased government servant on compassionate grounds. D

2.3 That thereafter the respondent, a married daughter of the deceased employee – Late Smt. Lata Maruti Vidhate applied for appointment on compassionate ground vide representation dated 12.03.2013. At this stage, it is required to be noted that respondent is the second married daughter and the application made by her elder married sister was already rejected earlier in the year 2011. The application of the respondent for appointment on compassionate ground came to be rejected vide order dated 23.04.2013. E

2.4 The respondent filed O.A. No. 860 of 2015 before the Tribunal approximately after a period of two years from the rejection of her application for appointment on compassionate ground. The Tribunal vide its judgment and order dated 24.03.2017 allowed the said O.A. and directed to consider the respondent's case for appointment on compassionate ground. The order passed by the Tribunal has been confirmed by the High Court by the impugned judgment and order, which is the subject matter of present appeal before this Court. F G

3. Having heard the learned counsel for the respective parties, the question which is posed for the consideration of this Court is:

Whether in the facts and circumstances of the case narrated hereinabove, the respondent shall be entitled to the appointment on compassionate ground? H

A 4. The undisputed facts are that on the death of the deceased
employee – father of the respondent, who died in harness, the mother of
the respondent was given appointment on compassionate ground. The
mother of the respondent died on 28.03.2006. That thereafter the elder
married sister of the respondent made an application for appointment on
B compassionate ground, which came to be rejected in the year 2011 on
the ground that being a married daughter, she cannot be said to be
dependent on her deceased mother and therefore, she is not entitled to
the appointment on compassionate ground. That after a period of seven
years from the date of death of her mother, again, the respondent being
the younger married daughter made an application for appointment on
C compassionate ground in the year 2013. In light of the aforesaid facts,
the question posed is required to be considered.

 5. While considering the issue involved in the present appeal, the
law laid down by this Court on compassionate ground on the death of the
deceased employee are required to be referred to and considered. In
D the recent decision, this Court in the case of **Director of Treasuries in
Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704**,
had occasion to consider the principle governing the grant of appointment
on compassionate ground. After referring to the decision of this Court in
N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617, this Court
has summarised the principle governing the grant of appointment on
E compassionate ground as under:-

- (i) that the compassionate appointment is an exception to the
general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- F (iii) the appointment to any public post in the service of the
State has to be made on the basis of the principle in
accordance with Articles 14 and 16 of the Constitution of
India;
- G (iv) appointment on compassionate ground can be made only
on fulfilling the norms laid down by the State's policy and/
or satisfaction of the eligibility criteria as per the policy;
- (v) the norms prevailing on the date of the consideration of the
application should be the basis for consideration of claim
for compassionate appointment.

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6. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

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6.1 In the case of **State of Himachal Pradesh and Anr. Vs. Shashi Kumar** reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of **Govind Prakash Verma Vs. LIC**, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-

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“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

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“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without

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- A any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood.
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- C The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”
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26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the

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deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

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7. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

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7.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, to appoint the respondent now on compassionate ground shall be contrary to the object and purpose of appointment on compassionate ground. The respondent cannot be said to be dependent on the deceased employee, i.e., her mother. Even otherwise, she shall not be entitled to appointment on compassionate ground after a number of years from the death of the deceased employee.

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8. Under the circumstances and in the facts and circumstances of the case narrated hereinabove, the Tribunal as well as the High Court have committed serious error in directing the appellants to appoint the respondent on compassionate ground. The judgment and order passed by the Tribunal confirmed by the High Court directing the appellants to consider the case of the respondent for appointment on compassionate ground after a number of years is unsustainable.

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9. In view of the above and for the reasons stated above, the order passed by the Maharashtra Administrative Tribunal in O.A. No.

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- A 860 of 2015 and the impugned judgment and order passed by the High Court dismissing the writ petition and confirming the order passed by the Tribunal are hereby quashed and set aside.

Present appeal is accordingly allowed. No costs.

Divya Pandey
(Assisted by: Roopanshi Virang, LCRA)

Appeal allowed.