
(2012) 02 BOM CK 0159
In the Bombay High Court
Case No : Writ Petition No. 8989 of 2011

Radhabai

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : (2012) 6 ALLMR 177 : (2012) 6 MhLj 956

Hon'ble Judges : Sunil P. Deshmukh, J;B.R. Gavai, J

Bench : Division Bench

Advocate : Sudarshan J. Salunke, for the Appellant; K.G. Patil, Asstt. Govt. Pleader for Respondent No. 1 and Shri P.P. Dama, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Sunil P. Deshmukh, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties. Petitioner, an erstwhile married daughter of deceased Vitthal Tatyaram Chandane, now a divorcee, has approached this court invoking its powers under Article 226 of the Constitution of India, against communication dated 18.4.2011 under which her request and claim to appointment on compassionate ground has been declined by Zilla Parishad, Beed-Respondent No. 2 herein for Government Resolution dated 26.10.1994 does not give allowance to such an appointment since she had been married and as such, purported to reject her application dated 14.3.2011.

2. Father of the petitioner had been serving as a watchman on daily wages in Respondent No. 2-Zilla Parishad/Respondent No. 3-Department from 1989 onwards continuously. His services had been regularized by order dated 16.7.2002 and had been in the pay scale of Rs. 2550-55-2650-60-3200. During the course of employment, father of the petitioner died on 4.8.2009.

3. The petitioner though had been married to one Narayan Pandurang Channe,

the matrimonial relationship did not last long and from last about 15-16 years, she had been staying with her parents and dependent on them. Ultimately, the sour marital relationship has resulted into a decree of divorce passed by Civil Court in H. M. P. No. 54 of 2010.

4. The father had been the only earning source for his wife and the petitioner-married, daughter returned to parents. With death of the father, the family had been exposed to all sorts of perils and had no source of livelihood worth the name. The petitioner and her mother, as such, had been in dire need of gainful employment

5. Policy and Scheme of appointment on compassion, had kindled their hopes of a source for their livelihood and petitioner had, accordingly, on 14.3.2011 applied to Respondent No. 2 for appointment due to death of her father. However, as Respondent No. 2 under the communication dated 18.4.2011 had declined to accede to the request of the petitioner for reason that her case is not covered under clause 3(a) of Govt. Resolution dated 26.10.1994 for appointments on compassionate ground, the petitioner has impugned the said communication in this petition. It would also be worthwhile to note that, but for the limits as appreciated under the impugned communication, there appears to be no objection of the Respondents to appointment of petitioner on compassionate ground.

6. A co-ordinate bench of this court had come across a similar situation in Writ Petition No. 1284 of 2011 decided on 1.8.2011, whereunder a married daughter had been declined appointment on compassionate ground. The decision of the said bench has been reported in Aparna Narendra Zambre - nee - Aparna Mohan Kulkarni and Vaishali Mohan Kulkarni Vs. Assistant Superintendent Engineer, Krishna -Koyana Upsa Sinchan Project Board, Sangli, Collector, Office of the Collectorate, Sangli and The State of Maharashtra, . In the said judgment, there is reference to the decision of a Division Bench of Madras High Court reported in U. Arulmozhi Vs. The Director of School Education, The Chief Educational Officer, The District Educational Officer and The Registrar, Tamil Nadu Administrative Tribunal, as well as decision of learned Single Judge of this High Court in Writ Petition No. 6056 of 2010 (The State of Maharashtra vs. Medha Prashant Parkhe). The Madras High Court had held that exclusion of married daughter from consideration for appointment on compassionate ground is unsustainable. The co-ordinate Bench and learned Single Judge have referred to various authorities of High Courts and had also held that the orders impugned were unsustainable.

7. The learned Single Judge (Smt. Nishita Mhatre, J.) in her judgment in Writ Petition No. 6056 of 2010 (para 14.2) has referred to a Karnataka High Court citation in the case of Manjula Vs. State of Karnataka and Another, , and had quoted paragraph No. 12 therefrom which reads as under:

12. In these circumstances, this Court is of the view that no married women can

be denied of any entry into service on compassionate employment just because she is married. In fact the State Government has accepted the theory of no employment for married woman living with her husband. There may be cases where the married woman may be living with her parents notwithstanding her marriage for various reasons and there may be cases like the present one in which case the married woman would be dependent on their parents on account of death of her husband. Therefore, what this Court would do is to read down the Rule thereby providing employment to dependent married daughters subject of course to the satisfaction of the management of the dependency of the said married daughters in the given circumstances. This view in my view would support the cause of women in terms of Article 14 and 15 of the Constitution of India. They cannot be denied employment merely on the ground of marriage. The Division Bench has also noticed dependency in such cases. Therefore, the "dependency" should be the yardstick and not the "marriage" to wipe out the tears from the eyes of the suffering family on account of the loss of an earning member in the family.

8. The observations of the Court are aptly applicable to the case before us. The dependency of the petitioner on her father's income has been further underscored in the present case by subsequent event whereunder she is now a divorcee.

9. This High Court in quite a few cases has allowed the petitions filed by married daughters for appointment on compassionate ground, as well as nominees of the freedom fighters, relying on the citations referred to. The reasons and rationale in all those cases apply on all fours to the situation in the present case. Petitioner herein, therefore, would be entitled to be considered for appointment on compassionate ground by Respondents No. 2 and 3. Clause 3(a) of the Govt. Resolution dated 26.10.1994 would not detain us from passing an order directing the respondents to consider petitioner for appointment on compassion.

10. As such, the impugned communication dated 18.4.2011 issued by Respondent No. 2 is set aside, and Respondents Nos. 2 and 3 are directed to consider the petitioner for appointment on compassionate ground due to death of her father while in service. The petition is thus allowed. Rule is made absolute in above terms. No order as to costs.