



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5997 OF 2023

Jyoti w/o Ganesh More, ... **Petitioner**
Age 41 Years, Occu: Nil
R/o C/o Raghunath Mahajan
Bhatt Galli, Chopada, Dist. Jalgaon

VERSUS

1. The State of Maharashtra,
Through Its Principal Secretary,
General Administration Department,
Mantralaya, Mumbai 400 032
2. The Maharashtra State Road Transport ... **Respondents**
Corporation (MSRTC),
Through Managing Director,
Anandrao Nair Road, Bombay Central,
Mumbai
3. The Divisional Controller,
MSRTC, Jalgaon Division,
New Bus Stand, Jalgaon.
4. Suman w/o Raghunath Mahajan,
Age 69 years, Occu: Nil
R/o Bhatt Galli, Chopada, Dist. Jalgaon
5. Raghunath s/o Daulat Mahajan,
Age 75 Years, Occu: Nil
R/o Bhatt Galli, Chopda,
Tq. Chopada, Dist. Jalgaon

Mr. Prasanna D. Dadpe, Advocate for the Petitioner
Mr. V. M. Kagne, AGP for respondents-State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.
DATE : 26th October, 2023

JUDGMENT (Per: Y. G. Khobragade, J.)

1. **Rule.** Rule made returnable forthwith and with the consent of both sides heard finally.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioner, who is a married sister of deceased employee-Shri Gulab Mahajan, has put-forth Prayer Clauses (A), (B) and (C) as under:

"(A) By issuing appropriate writ order or direction in the like nature, this Hon'ble Court may be pleased to quash and set aside the communication dated 16.01.2023 issued by Respondent No.3 thereby refusing to consider the request of petitioner for grant of compassionate appointment to the petitioner.

(B) By issuing appropriate writ order or direction in the like nature, this Hon'ble Court may be pleased to hold that the impugned communication dated 16.01.2023 is violative of Article 14, 16 and 19 of the Constitution of India and thus quashed and set aside.

(C) By issuing appropriate writ order or direction in the like nature, this Hon'ble Court may be pleased to issue directions to the respondent Nos. 2 and 3 to grant appointment to the petitioner on the post of cleaner at the office of MSRTC at Chopada which is under the control of respondent No. 3."

3. The learned Advocate appearing for the Petitioner vehemently canvassed that, the Petitioner's deceased brother Shri Gulab Mahajan was serving as Assistant with Respondent No.3- Divisional Controller, MSRTC, Jalgaon. However, on 29.07.2020, the Petitioner's brother died in harness. Smt. Suman Mahajan and Shri Raghunath Mahajan, Respondent Nos.4 and 5 respectively, are her old aged parents. The Petitioner and her another brother Ravindra, are married. Her married brother is residing separately with his family. The Petitioner's sister Kavita Mahajan has renounced the world. The Petitioner got married with one Ganesh More. Out of the wedlock, the Petitioner is blessed with two children. The Petitioner's parents were residing with her deceased brother Gulab Mahajan, however, due to death of her brother, no one is looking after her old aged parents and the Petitioner is taking all care of her parents, who were solely depending on the income of the deceased Gulab. The Petitioner's deceased brother was unmarried. Therefore, on 19.11.2020, 02.07.2021, 27.07.2021 and 10.08.2021, the Petitioner submitted applications to Respondent No.3 and prayed for appointment on compassionate ground in place of her deceased brother Gulab. However, on 16.01.2023, Respondent No.3 Divisional Controller passed the impugned order and turned down Petitioner's request because she is a married sister of deceased employee and

therefore, as per Office Order No. 5/994, the Petitioner does not fall within the definition of family. Further, she was not dependent on the income of the deceased employee, hence, she is not entitled for appointment on compassionate ground. According to the learned counsel for the Petitioner, even the married daughter and sister are entitled for appointment on compassionate basis, however, the Respondent No. 3 has illegally rejected application of the Petitioner. Therefore, prayed for quashing and setting aside the impugned order.

4. In support of the submissions, the learned Advocate, appearing for the Petitioner relied on the judgment dated 10.11.2017 passed by the Co-ordinate Bench of this Court in Writ Petition No. 7797 of 2014 (**Swapanali Shekhar Kalbhor & Ors. Vs. State of Maharashtra & Ors.**) at the Principal Seat, wherein it has been held that a married daughter finds place in the scheme of compassionate appointment, if the conditions are satisfied as per the policy.

5. Per contra, the learned AGP Shri V. M. Kagne submitted that the Petitioner is the married sister of deceased employee of Respondent No.3. The Petitioner is blessed with two children out of her wedlock and is happily cohabiting with her husband at her matrimonial house. So also, as per the Scheme of compassionate appointment, Office Order

No. 5 of 1994 framed by Respondent No.2 M.S.R.T.C., a married sister does not fall within the ambit of family member or dependent. Therefore, on 16.01.2023, Respondent No.3 passed the impugned order and rightly rejected the proposal of the Petitioner for appointment on compassionate ground, which is just and proper. Hence, prayed for dismissal of the Petition.

6. It will not be out of place to mention here that, late Gulab Raghunath Mahajan was permanent employee of Respondent No.3. He was unmarried and while in service, he died on 29.07.2020. Respondent No.2 M. S. R. T. C. framed a policy for grant of appointment on compassionate ground vide Office Order No.5 of 1994 on 16.02.1994, in which definition of "Family" is provided under Clause-2 which, verbatim, reads as under:

"कुटुंब" या संज्ञेमध्ये कर्मचा-याची पत्नी/पती, मुले, अविवाहित मुली तसेच कर्मचा-यांच्या मृत्युपूर्वी/अकाली सेवा निवृत्तीपूर्वी कायदेशीर रित्या दत्तक घेतलेला मुलगा/अविवाहित मुलगी व त्यांचेवर अवलंबून असणारा अविवाहित भाऊ, अविवाहित बहीण यांचा समावेश होतो."

7. Clauses 6 and 7 of the Office order 5/1994 provides as under:-

"(6) रा. प. कर्मचा-यांची पत्नी /किंवा विधवा /मुलगा किंवा अविवाहीत मुलगी यांचा अनुकंपा तत्वावर नेमणुकीसाठी विचार करण्यात येईल, मात्र रा. प. कर्मचा-यांच्या विधवेने पुनर्विवाह केल्यास ती या योजनेनुसार नेमणुकीस पात्र राहणार नाही.

"(7) या अवलंबितापैकी कोणीही नोकरी करण्याच्या विहित अटी पूर्ण करित नसेल व संबंधित कर्मचा-याची पत्नी/विधवा/मुलगा/मुलगी यांनी तसे अॅफिडेव्हीट दिल्यास मृत/अपात्र कर्मचा-यांच्या त्यांच्यावर अवलंबून असलेल्या एक भावास नेमणुकीसाठी अर्ज करता येईल."

8. Therefore, as per the policy of Respondent No.2 M.S.R.T.C. after the death of deceased employee, first right goes to wife/husband, son, unmarried daughter and second right goes to the adopted son/unmarried daughter, unmarried brother and unmarried sister. Therefore, considering the Policy framed by Respondent No.2, the married sister of the deceased employee does not fall within the ambit of "family" for the purpose of getting compassionate employment, as provided in Clause-2 of the Office Order/Policy.

9. The Petitioner is the married sister of the deceased employee of Respondent No.3 and she is happily cohabiting with her husband at her matrimonial house. She has two children. Therefore, we are of the view that, the Petitioner cannot be said to be dependent on the deceased employee and the Petitioner is not entitled for appointment on compassionate ground.

10. Though the learned Advocate for the Petitioner relied on the judgment in **Swapanali Shekhar Kalbhor (supra)**, however, the said judgment is not applicable to the facts and circumstances of the present case. Therefore, we do not find that the impugned order, passed by Respondent No.3 rejecting the application of the Petitioner for grant of appointment on compassionate ground, suffers from any illegality.

11. Thus, in the above circumstances, **this Petition is dismissed.**
Rule is discharged. No order as to cost.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan