

A VIJAYA UKARDA ATHOR (ATHAWALE)  
v.  
STATE OF MAHARASHTRA AND ORS.  
(CIVIL APPEAL NOS.409-410 OF 2015)

B JANUARY 14, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

*Service law – Compassionate Appointment – Non-grant of, to the appellant-daughter of the deceased employee in the Municipal Corporation – However, compassionate appointment given to the illegitimate son of the deceased employee – Writ petition by the appellant – Dismissal of, on the ground that the appellant was married in the year 2009, thus, was ineligible for compassionate appointment. – Policy decision was taken by the State Government on 26.2.2013 for grant of compassionate appointment to married daughter – Said order upheld in review application – Appeal before this Court – The questions as regards the effect of Government Resolution whereby only unmarried daughters of the deceased was eligible for appointment; policy decision dated 26.02.2013 taken by the State Government as per which the married daughter is also eligible to get compassionate appointment; non-consideration of the applications submitted by the appellant; eligibility of the illegitimate son of the deceased employee for compassionate appointment, remitted back to the High Court for consideration, in the light of the facts and circumstances of the case – Government Resolution, General Administration Department, No. Comp. 1093/2335/M. No.90/93/Eight, dated 26.10.1994 – Policy decision.*

*Shreejith L. vs. Deputy Director (Education) Kerala and Ors. 2012 (6) SCR 427: (2012) 7 SCC 248; The Chief Commissioner, Central Excise and Customs, Lucknow & Ors.*

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vs. *Prabhat Singh* 2012 (11) SCR 209 : 2013 (1) SCALE 506 A  
- referred to.

Case Law Reference:

2012 (6) SCR 427 Referred to Para 6

2012 (11) SCR 209 Referred to Para 6 B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 409-410 of 2015.

From The Judgment and Order dated 18.03.2013 and 22.11.2013 of the High Court of Judicature of Bombay Bench at Nagpur in Writ Petition No. 1341 of 2013 and Miscellaneous Application No. 511 of 2013 respectively. C

Sanjai Kumar Pathak, Arpit Rai, Shashi Pathak for the Appellant: D

Suhas Kadam Anirudha Rajput, Lemax Lawyers & Co., Shankar Chillarge, Aniruddha P. Mayee, Satyajit A. Desai, Anagha S. Desai for the Respondents.

The Judgment of the Court was delivered by E

R. BANUMATHI, J. 1. Delay condoned. Leave granted.

2. These appeals arise out of the impugned Order dated 18.03.2013 passed by the High Court of Bombay Bench at Nagpur, in W.P. No.1341 of 2013 and Order dated 22.11.2013 passed in the Review Application No.511 of 2013 in Writ Petition No.1341 of 2013, whereby the High Court dismissed the Writ Petition and also the Review Application thereby declining to issue direction to consider the case of the appellant for compassionate appointment. F G

3. The issue relates to the compassionate appointment between the rival claimants. Late Ukarda Athor (Athwale), who was working as a clerk in Municipal Corporation, Amravati, had H

A two wives namely Shantabai Ukarda Athor and Kuntabai  
 Ukarda Athor. He died on 18.06.1997. The appellant-Vijaya  
 Ukarda Athor (Athawale), is daughter of Late Ukarda  
 Pundlikrao Athor (Athawale) through the first wife, 3rd  
 B respondent is the son of Late Ukarda Athor through the second  
 wife. Smt. Shantabai Ukarda Athor, mother of the appellant,  
 filed a Regular Civil Suit No.40 of 2001 in the Court of Civil  
 Judge (Junior Division), Anjanagaon-Surji, Dist. Amravati,  
 seeking for a declaration being the legal heirs of deceased  
 C Ukarda Athor, they have the right in the property, pension and  
 funds of deceased Ukarda Athor and the said suit was decreed  
 by the judgement dated 15.01.2005. In the Succession Case  
 No.6/1998 Dated 24.09.2007 filed under Section 372 of the  
 Indian Succession Act, 1925, the Civil Judge (J.D.), Distt.  
 Amravati, *interalia*, ordered that the mother of the appellant  
 D would be entitled for the benefit of the pension of the deceased.  
 In the succession case, it was further ordered that the appellant  
 and her mother would be entitled to 1/4th share each of total  
 amount of GPF and other funds of Ukarda Athor. On 25.5.2009,  
 respondent No.3 moved an application seeking compassionate  
 E appointment. On 19.4.2012, the appellant filed an objection  
 application, raising objection for consideration of job  
 application filed by respondent No.3 and requesting the  
 authorities not to give him the compassionate appointment. The  
 Municipal Corporation vide order dated 18.09.2012 appointed  
 F respondent No.3- Sagar Ukarda thereby declaring the  
 appellant ineligible for the compassionate appointment as she  
 has already got married.

4. Aggrieved by the order of non-grant of appointment,  
 appellant herein filed a Writ Petition No.1341 of 2013 before  
 G the High Court of Bombay. Vide order dated 18.03.2013, the  
 High Court dismissed the aforesaid writ petition holding that  
 on the date of appointment, the appellant was a married  
 daughter and the policy decision was taken by the State  
 Government on 26.2.2013 for grant of compassionate  
 H appointment to married daughter and before the said date the

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appellant was not eligible for any appointment. The appellant filed a review application before the High Court which was also dismissed vide order dated 22.11.2013. In these appeals, the appellant assails the above orders.

5. Learned counsel for the appellant contended that at the time of death of her father Mr. Ukarda Athor (dated 18.06.1997) the appellant who was then a minor, submitted an application seeking appointment on 29.12.1997 and again after attaining majority, the appellant sought compassionate appointment for the post of clerk vide her application dated 19.03.1998, filed in a prescribed proforma. However, for a long time, no appointments took place in the respondent-Corporation. It was also submitted that appellant got married in 2009, but still she would take care of the needs of her widowed mother and there is no bar for giving compassionate appointment to a married daughter and rejecting the claim of a married daughter who is otherwise suitable for seeking compassionate employment defies any logic. It was submitted that the High Court did not keep in view that the appointment has been sought on compassionate grounds for the post of clerk ever since the death of appellant's father as per the well settled proposition laid down by the Supreme Court. It was contended that the compassionate appointment given to respondent No.3, who is an illegitimate son of the deceased-employee is not sustainable.

6. The learned counsel for the second respondent-Corporation submitted that the appointment on compassionate ground cannot be claimed as a matter of right but can be claimed only in terms of the Rules or Regulations framed in this regard. Placing reliance upon the judgments of this Court in the case of *Shreejith L. vs. Deputy Director (Education) Kerala and Ors.*, (2012) 7 SCC 248 and *The Chief Commissioner, Central Excise and Customs, Lucknow & Ors. vs. Prabhat Singh*, 2013 (1) SCALE 506, it was submitted that where the norms have been laid down for making compassionate

A appointments, the same have to be strictly followed.

B 7. The learned counsel further submitted that when the application for compassionate appointment was considered as per Government Resolution dated 26.10.1994, only unmarried daughter was eligible to be considered for compassionate appointment. Learned counsel urged that the State Government has taken a Policy Decision only on 26.02.2013, as per which the married daughters would also be eligible for consideration for the grant of compassionate appointment subject to the fulfilment of certain conditions. The learned counsel further  
C contended that before 26.02.2013 since the appellant was not eligible to be considered for compassionate appointment, the High Court rightly dismissed the writ petition and the impugned orders do not suffer from any infirmity warranting interference.

D 8. The learned counsel for the respondent No.3 submitted that even though respondent No.3 is the son of a deceased employee out of second wedlock and illegitimate child, yet there is no denying the fact that he remains the son of deceased-  
E Ukarda Athor and therefore, the respondent No.3 was entitled to the same treatment as is available to the child of first marriage. It was submitted that as the illegitimate son of the deceased the 3rd respondent is entitled to get appointment on compassionate ground subject to the fulfilment of certain criteria as laid down by the authorities and in consideration of the  
F status of the respondent No.3 and the Policy Decision of the State Government, rightly respondent No.3 was given the appointment and the High Court rightly dismissed the writ petition and also the review application and the impugned orders warrant no interference.

G 9. We have carefully considered the rival contentions and perused the impugned order and other materials on record.

H 10. The fact that the appellant is the daughter through the first wife-Shantabai Athor and respondent No.3 is the son through the second wife-Kuntabai Athor of Late Ukarda Athor

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are not in dispute. Ukarda Athor died on 18.06.1997. According to the appellant, her mother submitted an application dated 29.12.1997 stating that her daughter Vijaya Athor-appellant who is aged seventeen years and then a minor studying in 10th standard, should be given compassionate appointment when she attains majority. According to the appellant after she attained majority she has submitted another application on 19.03.1998, seeking compassionate appointment; but for quite sometime, the same was not considered by the authorities. The appellant was married in the year 2009. The contention of the appellant is that her application for compassionate appointment was kept pending by the authorities without any justifiable reason. But according to the respondent No.2-Corporation, giving employment in government service on compassionate ground was then governed by "Government Resolution, General Administration Department, No. Comp.1093/2335/M.No.90/93/Eight, dated 26 October, 1994". As per the said Resolution only the unmarried daughter of the deceased would be eligible for the appointment as per Rules. Reliance is placed on clause (3)(a) of Government Resolution which reads as under:

"(3) (a). Husband/wife, son or unmarried daughter of the deceased/ prematurely retired government employee OR son/unmarried daughter lawfully adopted, before death/ premature retirement, shall be deemed to be the relatives eligible to be appointed as per rules. Except them, no other relative shall get the benefit under this scheme."

The State Government has taken a Policy Decision on 26.02.2013 and held that the married daughters are also entitled for compassionate appointment subject to certain conditions.

11. In our considered view, the questions viz.: (i) the effect of "Government Resolution, General Administration Department, No. Comp. 1093/2335/M. No.90/93/Eight, dated 26.10.1994 and effect of Clause (3)(a); (ii) the plea that the

- A appellant submitted application on 29.12.1997 and 19.03.1998, that the same was not considered by the authorities for quite sometime; (iii) at the time when the applications for compassionate appointment was considered in 2012 whether 3rd respondent was eligible to be considered; (iv) the effect of
- B subsequent policy decision dated 26.02.2013 taken by the State Government as per which the married daughter is also eligible to get compassionate appointment; and (v) such other relevant questions which are to be examined. In our considered
- C view, instead of this Court examining the above questions, the matter is to be remitted back to the High Court for considering the above questions in the light of the facts and circumstances of the case.

12. In the result, the impugned Orders of the High Court in
- D Writ Petition No.1341 of 2013 dated 18.03.2013 and Review Application No. 511 of 2013 dated 22.11.2013 are set aside and the appeals are allowed and the matter is remitted back to the High Court for consideration of the matter afresh. The High Court shall give sufficient opportunity to the appellant and the respondents and consider the matter afresh expeditiously
- E and in accordance with law.

Nidhi Jain

Appeals allowed & remitted back to High Court.