

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 158 OF 2021
(Subject – Compassionate Appointment)**

DISTRICT : AURANGABAD

Kumar Pravin Sanjay Jadhav,)
Age : 22 years, Occu. : Education,)
R/o. : Prakash Nagar, Mukundwadi,)
Aurangabad. Mob. 954555468.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through Chief Secretary,)
Home Department,)
M.S. Mantralaya, Mumbai – 32.)
- 2) **The Superintendent of Police,**)
Aurangabad, T.V. Center Road,)
(Gramin), Cidco N-10,)
Dist. Aurangabad.)

.. RESPONDENTS

APPEARANCE : Smt. Rakhi V. Sundale, Advocate for the
Applicant.

: Shri N.U. Yadav, Presenting Officer for
Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **23.11.2021.**

O R D E R

1. The Original Application bearing No. 158 of 2021 has been filed on behalf of original applicant namely, Shri Kumar Pravin

Sanjay Jadhav, R/o. Prakash Nagar, Mukundwadi, Aurangabad on 15.03.2021 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 04.03.2021 issued by the respondent No. 2.

2. The background facts of the matter may be summarized as follows:-

(a) The original applicant is the son of one late Shri Sanjay G. Jadhav, who was working as Police Constable at Police Station, Pachod (Gramin), Dist. Aurangabad. Late Shri Sanjay G. Jadhav died on 18.01.2004 while in service. He is survived by his wife, one daughter and two sons.

(b) When the original applicant became major, his mother filed an application dated 10.01.2018 for appointment on compassionate ground in favour of the original applicant. The respondent No. 2 took note of name of the original applicant at Sr. No. 9 of the list of the candidates for appointment on compassionate ground. However, upon scrutiny, the respondent No. 2 rejected the said application vide an order dated 04.03.2021 on the ground that the said application is in contraventions of the provisions of Clause 6 of Annexure-A of the Government

Resolution issued by the General Administration Department, Government of Maharashtra, bearing No. अकंपा १२१७/प्र.क. १०२/आठ, मंत्रालय, मुंबई, दि. २१.०९.२०१७.

(c) Aggrieved by the impugned order of rejection of his application for appointment on compassionate grounds by the respondent No. 2, the present original application has been filed by the original applicant seeking following reliefs.

3. **Relief sought** – The original applicant has sought following reliefs:-

A. This O.A. may kindly be allowed.

B. Record and proceeding be called for;

C. The impugned order dated 04.03.2021 issued by the respondent No. 2 may kindly be quashed and set aside and direct the respondent No. 2 to decide the case of applicant for compassionate appointment as per provisions of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005.

D. Pending hearing and final disposal of this original application, respondent No. 2 be kindly directed to restart the compassionate appointment procedure of the applicant.

E. Any other equitable and suitable relief may please be granted in favour of this applicant, for which this is entitled as per law.”

4. **Grounds for seeking relief prayed for :** The only ground of rejection of the application has been that the small family norms, as enunciated in clause-6 of Annexure-A of the G.R. dated 21.09.2017, stand violated. The original applicant has given following grounds on which his application deserves to be considered for appointment on compassionate ground:-

(a) By Government Resolution dated 28.03.2001, the provisions of Small family norms were introduced as a mandatory criteria for eligibility for appointment on compassionate ground. However, the same was published in Police Gazette on 24.11.2003 and the third child was born on 18.05.2003. Therefore, the provisions of the said G.R. dated 28.03.2001 does not find application in the present matter.

(b) The respondent No. 2 has not looked into the below mentioned provisions of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 which has been notified by the General Administration Department of State

Government by a notification bearing No. SRV.2000/CR (17/2000)XII, dated 28.03.2005; Rule 3 of which is being quoted as follows for ready reference:-

“3. Necessity of declaration of Small Family – Notwithstanding any things contained in any rules or orders or instruments made in that behalf, regulating recruitment to Group A, B, C or D post in Government Service or any other order or instruments made in that behalf, the declaration of Small Family shall be an additional essential requirement for an appointment to Group A, Group B, Group C or Group D post in any Government service:

Provided that, a person having more than two children on the date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such a commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.”

5. Pleadings and Arguments :

(a) Affidavit in reply on behalf of respondent Nos. 1 and 2 was filed on 27.07.2021. Rejoinder affidavit to the affidavit in reply filed on behalf of respondent Nos. 1 and 2 was filed

on behalf of the applicant on 25.08.2021. The matter was fixed for final hearing on 16.09.2021 on which date the matter was part heard and the same continued on 20.10.2021 and was concluded on 29.10.2021.

(b) During the process of arguments, the learned advocate for the applicant has first submitted that the eligibility of the applicant is protected by the provisions of Rule 3 of the *Maharashtra Civil Servicers (Declaration of Small Family) Rules, 2005*. The learned Advocate further cited an order passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 293 of 2017, dated 27.09.2019, in which relief was granted on the ground that the small family provisions was published in *Police Gazette* on 24.11.2003 (*Ref. para nos. 4 and 7 of the said order, which is annexed at page No. 137 of the paper book*). The learned Advocate for the applicant also relied on a judgment of Hon'ble Supreme Court in **Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi and Ors. (1981 AIR 746, 1981 SCR (2) 516)**.

(c) The learned Presenting Officer arguing for the respondents has contended that the application for

appointment on compassionate ground was time barred and is in violation of the Small Family norms, about which late Shri Sanjay G. Jadhav was well aware of, as the said provisions were issued on 11.08.2000, which was applicable as eligibility of getting Leave Travel Concession too, and the third child was born on 18.05.2003. The learned Presenting officer also contended that the provisions of Rule 3 of the *Maharashtra Civil Servicers (Declaration of Small Family) Rules, 2005* are not relevant in the present matter as the same is applicable as an additional essential eligibility condition for those seeking appointment in Government services.

(d) Upon concluding arguments, the learned Advocate for the applicant submitted written notes of arguments on behalf of the applicant whereas, the learned Presenting Officer submitted that the affidavit in reply submitted may be treated as his written notes of arguments.

(e) After the two sides concluded their respective arguments and submissions, the matter was reserved for orders on 29.10.2021.

6. **Analysis of facts and conclusion** :- Facts on record and oral submissions made by the two contesting sides essentially culminate into following questions to be answered for arriving at conclusion on merits of the Original Application and admissibility of relief sought :-

- (a) *Whether the application of the applicant requesting for appointment on compassionate grounds was time barred?*
- (b) *Whether provisions of Rule 3 of the Maharashtra Civil Servicers (Declaration of Small Family) Rules, 2005, in any way, provides exception to the mandatory provisions of small family norms applicable for appointment on compassionate ground as stipulated by G.R. dated 28.03.2001 and compilation G.R. dated 21.09.2017?*
- (c) *Whether the ratio laid down by Hon'ble Supreme Court in **Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi and Ors. (1981 AIR 746, 1981 SCR (2) 516)**, holds good in the present matter, considering the facts of the present matter?*

(d) Whether order passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 293/2017, dated 27.09.2019, is applicable as precedent?

Upon analysis of facts of the matter, we arrive at following answers to the four questions stated above:

(a) Whether the application of the applicant requesting for appointment on compassionate grounds was time barred?

Analysis and Answer- As the date of birth of the original applicant is 18.03.1999 and he applied for appointment on compassionate ground on 10.01.2018, he is well within time-limit prescribed by Clause 10 of Annexure-A of G.R. dated 21.09.2017 read with G.R. dated 11.09.1996 and Government Circular dated 05.02.2010. *Therefore, answer to this question is in negative.*

(b) Whether provisions of Rule 3 of the Maharashtra Civil Servicers (Declaration of Small Family) Rules, 2005, in any way, provides exception to the mandatory provisions of small family norms applicable for appointment on compassionate ground as stipulated by

G.R. dated 28.03.2001 and compilation G.R. dated 21.09.2017?

Analysis and Answer- Provisions of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, are applicable as additional essential eligibility criteria in respect of applicant seeking appointment under Government job, but these provisions do not dilute / provide exception to the eligibility criteria for surviving family member of a deceased employee to get benefits of appointment on compassionate ground. This position has been admitted by learned Advocate for the applicant on 20.10.2021, which is duly recorded in oral order passed on the day.

(c) *Whether the ratio laid down by Hon'ble Supreme Court in **Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi and Ors. (1981 AIR 746, 1981 SCR (2) 516)**, holds good in the present matter, considering the facts of the present matter?*

Analysis and Answer - While citing decision of Hon'ble Supreme Court in **Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi and Ors. (1981**

AIR 746, 1981 SCR (2) 516, the learned Advocate for the applicant, for reasons best known to her, has quoted two truncated points of para 6, omitting the intermediate part. Moreover, the said judgment relates to the matter of Preventive Detention Vs. Punitive Detention. As the ratio in the said citation is altogether different, the same does not hold good in the present matter before the Tribunal.

(d) *Whether order passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 293/2017, dated 27.09.2019, is applicable as precedent?*

Analysis and Answer- Coming to the citation of an order passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 293 of 2017 dated 27.09.2019; it is evident that the said order has been passed on the basis of the some documents referred to as "Police Gazette". However, on being asked to produce a copy of the said Police Gazette for ready reference, the learned Advocate for the applicant has submitted a copy of communication bearing no. प्रलि/आस्था-9/माअअ-जाधव/२०२१/८६२२, dated 28.10.2021, issued by one Shri R.H. Nilwant, Office Superintendent, office of Superintendent of Police, Aurangabad (Rural), issued to the

original applicant under provisions of Right to Information Act, 2005. The operative part of the said communication is reproduced below:-

“ उपरोक्त विषयी कळविण्यात येते की, अर्जदार श्री. प्रविण संजय जाधव रा. प्रकाश नगर, मुकुंदवाडी, औरंगाबाद मो. ९५४५५५५५४६८ यांनी त्यांच्या दिनांक २५.१०.२०२१ च्या माहिती अधिकार अर्जामध्ये शासन निर्णय क्र. अकंपा १०००/प्र.क. २०/२०००, दिनांक २८.०३.२००९ चा शासन निर्णय आपल्या पोलीस पत्रकात (Police Gazette) मध्ये केव्हा प्रकाशित करण्यात आला याबाबत माहिती मागीतलेली आहे.

त्या अनुषंगाने कळविण्यात येते की, शासन निर्णय हे पोलीस पत्रकात (Police Gazette) मध्ये प्रकाशित करण्यात येत नाहीत. सदर शासन निर्णय WWW.MAHARASHTRA GOV. IN सदर वर उपलब्ध आहे.

सही
(आर. एच. निलवंत)
कार्यालयीन अधीक्षक
पोलीस अधीक्षक कार्यालय, औरंगाबाद (ग्रा.)”

From the above facts brought on record, it is amply clear that the correct facts had not been placed before the Principal Seat of this Tribunal at Mumbai in O.A. No. 293/2017 and therefore, the order passed in the same does not set precedent.

Conclusion:

On Considering of all the facts on record and oral submissions made, I am of the considered opining that there is

no merit in the Original Application and therefore, following order is being passed :-

ORDER

- (A) The Original Application No. 158 of 2021 is, hereby, dismissed for being devoid of merit.
- (B) No order as to cost.

PLACE : AURANGABAD.
DATE : 23.11.2021.

(BIJAY KUMAR)
MEMBER (A)

KPB S.B. O.A. No. 158 of 2021 BK 2021 Compassionate Appointment