

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 394 OF 2021
(Subject – Compassionate Appointment)**

DISTRICT : DHULE

1. **Smt. Rekha wd/o Rajendra Mohite,**)
Age : 47 years, Occu. : Household ,)
R/o : 24-A, Wadel Road, Wadibhokar,)
Deopur, Dhule.)
2. **Umesh s/o Rajendra Mohite,**)
Age : 20 years, Occu. : Nil,)
R/o : As above.) **APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Home Department, M.S., Mantralaya,)
Mumbai - 32.)
2. **Superintendent of Police,**)
Dhule, Navnath Nagar, Dhule.) ... **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicants.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **21.10.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original

Application is filed challenging the impugned letter dated 02.07.2020 (Annexure A-9) issued by the respondent No. 2 i.e. the Superintendent of Police, Dhule rejecting the claim of applicant No. 2 viz. Umesh Rajendra Mohite for compassionate appointment and consequently seeking direction to the respondent No. 2 to include the name of the applicant No. 2 in the list of compassionate appointment seekers and further to give compassionate appointment to the applicant No. 2.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant Nos. 1 and 2 are respectively widow and son of the deceased Government servant viz. Rajendra Ambar Mohite. The said deceased Rajendra Ambar Mohite was in service of Dhule District Police Force. He died in harness on 19.06.2018 while serving as Police Naik. After his death, the applicant No. 1 received condolence message on 19.06.2018 (part of Annexure A-2 collectively) from the respondent No. 2, whereby it was specifically conveyed to the applicant No. 1 that if she or her child was in need of appointment on compassionate ground, then an application therefor was required to be filed within one year as per the provisions of G.R. dated 22.08.2005. Accordingly, the

applicant No. 1 submitted application dated 01.12.2018 (Annexure A-3) to the respondent No. 2 seeking to consider the applicant No. 2, who was then aged about 17 years upon completion of age 18 years.

(b) It is further submitted that the applicant No. 1 along with her deceased husband Mr. Rajendra Mohite had begotten three children viz. Komal Rajendra Mohite, Umesh Rajendra Mohite (applicant No. 2) and Diksha Rajendra Mohite on 09.12.1999, 21.10.2001 & 13.09.2003 respectively. As such 3rd child was born to her after cutoff date of 31.12.2001 as mentioned in G.R. dated 28.03.2001 (Annexure A-4).

(c) It is further submitted that the respondent No. 2, however even after completion of age of majority of the applicant No. 2 by the letter dated 13.03.2019 (Annexure A-5) rejected the claim of the applicant No. 2 for compassionate appointment stating that the applicant No. 2 is not eligible to get compassionate appointment in view of birth of 3rd child to applicant No. 1 from deceased Government servant on 13.09.2003 after cutoff date of 31.12.2001 as mentioned in G.R. dated 28.03.2001.

(d) It is further submitted that the deceased Government servant died on 19.06.2018 and as such, the respondent No. 2 was required to consider the claim of the applicant No. 2 for compassionate appointment as per the G.R. dated 21.09.2017 (Annexure A-6), which was issued by amalgamating all previous G.Rs., Notifications and Circulars since 26.10.1994.

(e) It is the contentions of the applicant that when the compassionate appointment is governed by the G.R. dated 21.09.2017 (Annexure A-6) rejection of compassionate appointment by taking into consideration G.R. dated 28.03.2001 is misplaced. In view of the consolidated G.R. dated 21.09.2017 (Annexure A-6), the G.R. dated 28.03.2001 regarding small family had become stale and obsolete. It is difficult for the Government servant to imagine that in future he would die untimely and obstacle of 3rd child being begotten after 31.12.2001 would be hurdle in getting the compassionate appointment. In view of the same, denial of compassionate appointment by the impugned letter dated 02.07.2020 (Annexure A-9) issued by the respondent No. 2 is unsustainable in the eyes of law. This Tribunal at Mumbai vide order dated 27.09.2019

passed in **O.A. No. 293/2017** in the case of **Shri Siddhesh Mangesh Sawant Vs. The state of Maharashtra and Ors.** has been pleased not only to quash and set aside the impugned order therein rejecting his claim for compassionate appointment, but was further pleased to direct the respondent authorities to take decision on the application of the applicant Siddhesh for compassionate appointment as reflected in Annexure A-7. In these circumstances, after receipt of impugned letter dated 02.07.2020 (Annexure A-9), the applicant No. 1 submitted request application dated 25.02.2020 (Annexure A-8) to the respondent No. 2 for consideration of compassionate appointment claim. However, the respondent No. 2 by issuing impugned letter dated 02.07.2020 (Annexure A-9) addressed to the applicant No. 1 turned down the request for compassionate appointment. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 and 2 by one Shri Ishwar Mohan Katkade, working as the Deputy Superintendent of Police (Home), Dhule, District Dhule in the office of respondent No. 2. Thereby he denied the adverse contentions raised in the O.A. and contended that it is a fact that

3rd child was born to the applicant No. 1 from the deceased Government servant Mr. Rajendra Ambar Mohite on 13.09.2003 i.e. after cutoff date of 31.12.2001 as mentioned in G.R. dated 28.03.2001 governing the small family. In view of the same, the impugned order of rejection of compassionate to the applicant No. 2 by the impugned letter dated 02.07.2020 (Annexure A-9) is legal and proper and is in accordance with provisions of the G.R. dated 28.03.2001 in that regard. In terms of the said G.R., the family of deceased Government servant having 3rd child born after cutoff date of 31.12.2001 is not entitled for getting compassionate appointment. The family is legally precluded from benefit of compassionate appointment. The decision in O.A. 293/2017 referred and relied upon by the applicant is different case, where there was twins born earlier and 3rd child is born just immediately after stipulated date. In view of the same, there is no merit in the present O.A. and the same is liable to be dismissed.

4. I have heard the arguments advanced at length by Shri Avinash Deshmukh, learned Advocate for the applicants on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents on the other hand.

5. Undisputedly, the applicant No. 1 is the mother of the applicant No. 2. Husband of the applicant No. 1 and the father of the applicant No. 2 viz. Rajendra Ambar Mohite, who was in service of Dhule District Police Force as Police Naik died in harness on 19.06.2018. The respondent No. 2 vide condolence message dated 19.06.2018 (part of Annexure A-2 collectively) sent to the applicant No. 1 apprised bereaved family benefits of compassionate appointment in case on untimely death of Government servant. Accordingly, the application dated 01.12.2018 (Annexure A-3) was submitted by the applicant No. 1 for getting compassionate appointment to her son i.e. the applicant No. 2, who was then minor aged about 17 years. The applicant No. 1 was not willing to get the compassionate appointment. The respondent No. 2 considered the application and by the communication dated 13.03.2019 (Annexure A-5) communicated to the applicant No. 1 that the applicant No. 2 was not eligible to get the compassionate appointment in view of the fact that the 3rd child was begotten to applicant No. 1 from her deceased husband on 13.09.2003 by referring to the G.R. dated 28.03.2001, which stipulated that the family having 3rd child being after cutoff date of 31.12.2001 will not be entitled for compassionate appointment.

6. Further it is a fact that after receipt of the communication dated 13.03.2019 (Annexure A-5), the applicant came across the decision of this Tribunal dated 27.09.2019 in O.A. No. 293/2017, whereby the compassionate appointment was considered even in case of 3rd child. The applicant No. 1 accordingly by giving reference of the said decision, made a request application dated 25.02.2020 (Annexure A-8) to the respondent No. 2 seeking to reconsider the compassionate appointment to her son i.e. the applicant No. 2. The said request application was rejected by the respondent No. 2 by the impugned communication / order dated 02.07.2020 (Annexure A-9), which is challenged in this Original Application.

7. The case of the applicant would be covered under the consolidated G.R. dated 21.09.2017 issued by the General Administration Department, State of Maharashtra (Annexure A-6). The said G.R. dated 21.09.2017 is issued by consolidating the previous 41 G.Rs., Notifications and Circulars. Clause 6 of Scheduled-A of the said G.R. dated 21.09.2017 is based on the G.R. dated 28.03.2001, which is as follows :-

“(६) लहान कुटुंबाचे प्रमाणपत्र :-

दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचाऱ्यांच्या कुटुंबियास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही (शासन निर्णय, दि. २८.०३. २००१)”

8. No doubt, the applicants have come out with the contention that reference of previous G.R. dated 28.03.2001 in subsequent G.R. of 21.09.2017 about small family cannot be referred for rejecting the claim of compassionate appointment. However, the G.R. dated 21.09.2017 is issued consolidating all previous G.Rs., Notification and Circulars governing the scheme of compassionate appointment. In the view of the same, the said G.R. dated 28.03.2001 cannot be said to become stale and absolute.

9. Learned Advocate for the applicant to support the claim in the present Original Application has placed reliance on the decision of the co-ordinate Bench of this Tribunal at Mumbai dated 27.09.2019 passed in **O.A. No. 293/2017** in the case of **Shri Siddhesh Mangesh Sawant Vs. The state of Maharashtra and Ors.** In the said cited case, the applicant therein is the son of deceased Government servant, who died in harness on 24.1.2013. Deceased was working in Police Department. The deceased had twins born on 04.11.1995. He had 3rd child born on 28.04.2002. The applicant requested the respondent No. 2 to consider him for compassionate appointment. His application was rejected by the impugned order dated 17.09.2014 stating that the 3rd child born after 31.12.2001 would not entitle him for

compassionate appointment as per G.R. dated 28.03.2001 issued by the G.A.D. It was observed that the said G.R. was published in Police Gazette on 24.11.2001. The Government servant is expecting to be aware of the orders issued by the Government from time to time. However, in the said case earlier there was twin and 3rd child was born immediately after stipulated date. In view of the said peculiar circumstances, the respondent No. 1 was directed to take a decision for consideration of compassionate appointment.

10. The facts in the present case are different, so far as there was no twin begotten to wife of the deceased government servant. In view of the same, in my considered opinion, the view taken in the above-said cited O.A. cannot be made applicable in the present case.

11. However, that apart the learned Advocate for the applicant during course of arguments has placed on record decision of the Hon'ble High Court of Judicature at Bombay dated 03.07.2019 in **W.P. No. 7742/2014** in the matter of **Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and Ors.** In the said citation case, claim was rejected by the Zilla Parishad, Nashik by referring to the G.R. dated 23.03.2001, which deals with policy of

the State Government prosecuting the person who has begotten 3rd child after cutoff date of 31.12.2001. In para Nos. 7 and 8, it is observed as under :-

“7. Notwithstanding there being no prayer to quash the said 3 17 WP 7742-2014.doc condition as unconstitutional, we declare the same to be unconstitutional. For the reason in a given set of facts, as in the instant case, the Petitioner who has only one child would suffer the brunt of public employment being denied on the reasoning that her deceased husband was blessed with two children from the previous marriage. The intention behind the policy is to control the exploding population and not to prohibit remarriages. The Petitioner was the second wife of the deceased employee of Zilla Parishad and as far as she was concerned, she bore only one child.

8. Declaring the Petitioner to be eligible to be considered for grant of appointment on compassionate basis, we direct the Respondents to consider her entitlement as per policy, meaning thereby, the Respondents would consider whether the Petitioner is in such state of penury that she needs an appointment on compassionate basis so that she and her family can survive.”

12. Learned Presenting Officer appearing for the respondents opposed the submissions raised on behalf of the applicants and

contended that the impugned communication is legal and proper in view of the G.R. dated 28.03.2001 regarding small family.

13. After having considered the rival submissions and more particularly from the citation relied upon by the learned Advocate for the applicants in the matter of **Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and Ors.** (cited supra), it is crystal clear that the said G.R. dated 28.03.2001 issued by the State Government is declared unconstitutional and the Government was directed to consider the entitlement of petitioner thereof whether the petitioner is in such state of penury that she needs an appointment on compassionate basis so that she and her family can survive.

14. In view of the above-said case law, in my humble opinion, the denial of claim of compassionate appointment to the applicant No. 2 by the respondent No. 2 would not be sustainable in the eyes of law and consequently, the respondents would be liable to consider the claim of the applicant No. 2 for compassionate appointment in accordance with law keeping aside the G.R. dated 28.03.2001. I therefore, proceed to pass the following order :-

ORDER

The Original Application No. 394/2021 is allowed in following terms :-

- (A) The impugned communication / letter dated 02.07.2020 (Annexure A-9) issued by the respondent No. 2 is hereby quashed and set aside.
- (B) The respondents are directed to consider the claim of the applicant No. 2 i.e. Umesh Rajendra Mohite for compassionate appointment as per the seniority in accordance with law keeping aside the G.R. dated 28.03.2001.
- (C) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 21.10.2022.

(V.D. DONGRE)
MEMBER (J)