

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

**ORIGINAL APPLICATION NO. 597 OF 2021  
(Subject – Compassionate Appointment)**

**DISTRICT : JALGAON**

1. **Smt. Pradnya wd/o Deepak Medhe,** )  
Age:54 years, Occu.: Household , )  
R/o :Room No. 8, Bldg. No. 4, )  
New Police Line, Bhusawal, Dist. Jalgaon.)
2. **Rupesh s/o Deepak Medhe,** )  
Age : 28 years, Occu. : Nil, )  
R/o : As above. ) .... **APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,** )  
Throughits Addl.Chief Secretary, )  
Home Department, M.S., Mantralaya, )  
Mumbai - 32. )
2. **Superintendent of Police,** )  
7, M.G. Road, Zilla Peth, Pratap Nagar, )  
Jalgaon. )... **RESPONDENTS**

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**APPEARANCE** : Shri Avinash Deshmukh, Advocate for the  
Applicants.

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

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

**DATE** : **21.10.2022.**

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**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 15.03.2021 (Annexure A-6) issued by the respondent No. 2 i.e. the Superintendent of Police, Jalgaon rejecting the claim of applicant No. 2 viz. Rupesh Deepak Medhe 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 No. 1 is the stepmother of the applicant No. 2. The applicant Nos. 1 and 2 are respectively widow and son of the deceased Government servant viz. Deepak Baliram Medhe. The said deceased Deepak Baliram Medhe was in service of Jalgaon District Police Force. He died in harness on 08.12.2020 while serving as Assistant Sub Inspector of Police (ASI). Death certificate of the said deceased Government servant is at part of Annexure A-1 collectively.

(b) It is submitted that the said Mr. Deepak Medhe had initially married with Pradnya (biological mother of

applicant No. 2), who however, died on 28.09.2002 (Annexure A-2). The said Pradnya was real sister of the applicant No. 1. The said deceased Mr. Deepak Medhe and deceased Mrs. Pradnya (biological mother of the applicant No. 2) had begotten two sons viz. Rupesh Deepak Medhe (applicant No. 2) and Shubham Deepak Medhe. After death of Pradnya, Mr. Deepak Medhe married with the present applicant No. 1 i.e. Mangala alias Pradnya (in cause title described only by name Pradnya) on 17.11.2002 (Annexure A-3) and from the said marriage, her son Sampann was begotten to applicant No. 1 on 07.10.2003. In view of the same, only one child was begotten to applicant No. 1 from her marriage with Deepak Medhe. But that was the 3<sup>rd</sup> child of Deepak Medhe being born after cut-off date of 31.12.2001 as mentioned in G.R. dated 28.03.2001 (Annexure A-4).

(c) It is further submitted that after death of Deepak Medhe during COVID-19 pandemic situation on 08.12.2020, the applicant No. 1 submitted an application / proposal with requisite documents dated 15.01.2021 (Annexure A-5 collectively) to the respondent No. 2 seeking

compassionate appointment to her stepson i.e. the applicant No. 2.

(d) The respondent No. 2, however, vide impugned letter / order dated 15.03.2021 (Annexure A-6) rejected the claim of the applicant No. 2 for compassionate appointment for sole reason by recording G.R. dated 28.03.2001, which provides that legal heirs of Government employee, who had begotten 3<sup>rd</sup> child after 31.12.2001 would not be eligible for compassionate appointment.

(e) It is further submitted that the respondent No. 2 ought to have considered the claim of compassionate appointment for applicant No. 2 only in view of the consolidated G.R. dated 21.09.2017 (Annexure A-7).

(f) It is the contentions of the applicant that when the compassionate appointment is governed by the G.R. dated 21.09.2017 (Annexure A-7) 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-7), 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 3<sup>rd</sup> 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 15.03.2021 (Annexure A-5) issued by the respondent No. 2 is unsustainable in the eyes of law.

(g) 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-9. In these circumstances, after receipt of impugned letter dated 15.03.2021 (Annexure A-6), the applicant No. 1 submitted request application dated 27.05.2021 (Annexure A-8) to the respondent No. 1 through the respondent No. 2 for consideration of compassionate appointment claim. However, the aforesaid representation made by the applicant No. 1 has not proved to be fruitful inasmuch as

neither the respondent No. 1 nor the respondent No. 2 have given any response given response thereto. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent No. 2 by one Shri Ambadas s/o Shantaram More, working as Police Inspector, Human Resources, in the office of the Superintendent of Police, Jalgaon, Dist. Jalgaon i.e. the respondent No. 2. Thereby he denied the adverse contentions raised in the O.A. and submitted the impugned communication / order dated 15.03.2021 (Annexure A-6) rejecting the claim of the applicant No. 2 is legal and proper being based on the contentions of the G.R. dated 28.03.2001 relating to small family, whereby the compassionate appointment to the legal heirs of the deceased Government servant is denied when the 3<sup>rd</sup> child is born to the deceased Government servant after cut-off date of 31.12.2001 as mentioned in G.R. dated 28.03.2001. The publication of the said G.R. in Police Gazzette on 24.11.2003 is of no relevance. In view of the same, the applicant No. 2 is ineligible for getting the compassionate appointment. In the present case, the 3<sup>rd</sup> (Sampann) was born to applicant No. 1 from her marriage with deceased Government servant after cut-off date of 31.12.2001. In view of the same, the impugned letter / communication dated

15.03.2021 is legal and proper. Hence, 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 stepmother of the applicant No. 2. Husband of the applicant No. 1 and the father of the applicant No. 2 viz. Deepak Baliram Medhe, who was in service of Jalgaon District Police Force as Assistant Sub-Inspector of Police died in harness on 08.12.2020. Accordingly, the application / proposal along with requisite documents dated 15.01.2021 (Annexure A-5 collectively) was submitted by the applicant No. 1 to the respondent No. 2 for getting compassionate appointment to her stepson i.e. the applicant No. 2. The applicant No. 1 was not willing to get the compassionate appointment. The respondent No. 2 considered the application and by the impugned communication dated 15.03.2021 (Annexure A-6) 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 child was begotten to

applicant No. 1 from her deceased husband, which was 3<sup>rd</sup> child of the deceased Government servant on 07.10.2003 by referring to the G.R. dated 28.03.2001, which stipulated that the family having 3<sup>rd</sup> child being after cut-off date of 31.12.2001 will not be entitled for compassionate appointment.

6. Further it is a fact that after receipt of the impugned communication dated 15.03.2021 (Annexure A-6), 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 3<sup>rd</sup> child. The applicant No. 1 accordingly by giving reference of the said decision, made a request application dated 27.05.2021 (Annexure A-8) to the respondent No. 1 through the respondent No. 2 seeking to reconsider the compassionate appointment to her stepson i.e. the applicant No. 2. However, the said representation was not considered by the respondents.

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) लहानकुटुंबाचे 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 have 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 Gazzette 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 3<sup>rd</sup> 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 3<sup>rd</sup> child after cut-off 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. 597/2021 is allowed in following terms :-

- (A) The impugned communication / letter dated 15.03.2021 (Annexure A-6) 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. Rupesh Deepak Medhe 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)**