

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.272 OF 2021**

**DISTRICT: BEED**

Shri Bhavesh Suresh Suryawanshi, )  
Age:-20 yrs, Occ. Nil, Res. of: Flat No.7 bldg. No.10 )  
Sneha Sagar Co-op. Hsg. Society, Sukapur, )  
New Panvel, Dist. Raigad – 410 2016. )... **Applicant**

**Versus**

1) The State of Maharashtra, )  
Through Addl. Chief Secretary, Home Department) )  
Mantralaya, Mumbai-32. )

2) The Commissioner of Police, )  
Navi Mumbai, C.B.D. Belapur, Navi Mumbai. )...**Respondents**

Shri R.M. Kolge, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 16.02.2022.

**ORDER**

1. The Applicant has challenged the order dated 22.02.2021 whereby the claim of the Applicant for appointment on compassionate ground has been rejected on the ground that deceased had third child born after cutoff date 31.12.2001, and therefore, not entitled for appointment on compassionate ground.

2. Shortly stated facts giving rise to Original Application are as under:-

The deceased Suresh Suryawanshi was Head Constable on the establishment of the Respondent No.2 – Commissioner of Police, Navi Mumbai. He died in harness on 16.09.2020 leaving behind widow and

four children namely Rupali (DOB 25.09.1998), Bhavesh (DOB 16.07.2000), Bhavana (DOB 02.12.2003) and Minakshi (DOB 24.03.2005). After the death of father, the Applicant Bhavesh Suryawanshi (Son) had applied for appointment on compassionate ground in place of the deceased. However, his application came to be rejected by impugned order dated 22.02.2021 on the ground that the deceased had third child born after 31.12.2001 which was cutoff date for eligibility in terms of G.R. dated 28.03.2001 which is reproduced in consolidated G.R. dated 21.09.2017.

3. Learned Counsel for the Applicant sought to assail the impugned communication dated 22.02.2021 on the ground that G.R. dated 28.03.2001 are not applicable to present situation in view of enforcement of special Act namely Maharashtra Civil Services (Declaration of Small Family), Rules 2005 which has come into force w.e.f. 28.03.2005. He tried to contend that all the children were born before commencement of 'Rules 2005', and therefore, G.R. dated 28.03.2001 by implication is superseded by 'Rules 2005'. He further sought to contend that the deceased died due to corona infection, and therefore, this aspect ought to have been considered sympathetically by the authorities while processing claim of the Applicant for appointment on compassionate ground instead of rejecting it on technical ground.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to support the impugned order *inter-alia* contending that 'Rules 2005' are not applicable to appointment on compassionate ground since 'Rules 2005' are for direct recruitment in Government service. Whereas, the issue about eligibility for appointment on compassionate ground is governed by special scheme and by G.R. dated 28.03.2001, it has been clarified that where the deceased had third child born in family after cutoff date 31.12.2001 then he will not be eligible for appointment on compassionate ground. He further tried to contend that even if the

deceased Government servant died due to corona, G.R. dated 28.03.2001 would apply with all force.

5. Indisputably, the deceased died in harness on 16.09.2020 leaving behind widow and four children. There is no denying that the deceased has four children. Third child Bhavana born on 02.12.2003 and thereafter Minakshi was born on 24.03.2005. It is thus explicit that the deceased two children namely Bhavana and Minakshi born after 31.12.2001 which is cutoff date in G.R. dated 28.03.2001.

6. In G.R. dated 28.03.2001, there is specific clause which reads as under :-

“ (इ) दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचा-यांच्या कुटुंबियांस अनुकंपा तत्त्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही.”

It is thus explicit that there being third child and forth child born after cutoff date applicant is not entitled to appointment on compassionate ground.

7. The submission advanced by learned Counsel for the Applicant that in view of the enforcement of 'Rules 2005', G.R. dated 28.03.2001 stands impliedly superseded is totally unacceptable. 'Rules 2005' are applicable to direct the recruitment in Government service. Whereas, the issue of appointment on compassionate ground is governed by G.R. issued by the Government from time to time as welfare police decision so as to provide relief to the family of the deceased Government servant who is in distress on account of death of sole earning member in the family. By G.R. dated 28.03.2001, specific condition has been laid down that where third child is born after cutoff date 31.12.2001 such family would not be eligible for appointment on compassionate ground. Thus, when the issue is governed by special policy in the matter of appointment on compassionate ground in that event 'Rules 2005' cannot be said applicable for appointment on compassionate ground. 'Rules 2005' are applicable to direct the recruitment in Government service and not to the appointment on compassionate ground which is an exceptional to the recruitment process.

8. As such, the impugned communication rejecting the claim of the Applicant on the ground that the deceased had third child born in the family after 31.12.2001 cannot be faulted.

9. However, there is another material aspect of the matter to be taken note of about the death of deceased Government servant on account of Covid-19 infection. The deceased was Police Head Constable and died in harness on 16.09.2020. The Applicant has produced death summary which reveals that he died due to Covid-19. He was admitted in D.Y. Patil hospital on 11.09.2020 and died on 16.09.2020. The Government of Maharashtra had taken several decisions to provide some reliefs to the families of dependent and heir of citizens died due to Covid-19. For example by G.R. dated 27.09.2021, the Government of Maharashtra had extended the benefits of scheme of appointment on compassionate ground to Group 'A' and 'B' Government servants which was earlier restricted to Group 'C' and 'D' only. This G.R. is made applicable from 01.01.2020 on the background of spread of Covid-19 which has devastated several families.

10. Now turning to the facts of the present case, there is no denying that the deceased Government servant died due to Covid-19. He died leaving behind widow, three daughters and one son. There seems to be no earning member in family. Undoubtedly, G.R. dated 28.03.2001 would come in the way of Applicant for appointment on compassionate ground since the deceased had third child born after cutoff date mentioned in G.R.

11. However, in my considered opinion, it would be appropriate that the Respondent No.1- Government should consider this for relaxing the condition mentioned in G.R. dated 28.03.2001 as a special case having regard to the admitted position that the deceased died due to Covid-19 in harness leaving no earning member in the family. Liberty is given to the Applicant to make detail representation to the Government to

consider his claim for appointment on compassionate ground as a special case and exemption from G.R. dated 28.03.2001. Since it is a policy decision, the Government is expected to take appropriate decision having regard to all attending circumstances.

12. In view of above, Original Application is disposed off with following directions.

**ORDER**

- (A) Original Application is disposed of with direction to Applicant to make detail representation to the Respondent No.1 for appointment on compassionate ground as a special case and for exemption of G.R. dated 28.03.2001. The representation shall be made within a month from today.
- (B) If representation is made within a month, the Respondent No.1 shall consider the same and take decision within a month from the date of receipt of the representation and the decision thereon as the case may be, shall be communicated to the Applicant.
- (C) No order as to costs.

Sd/-  
**(A.P. Kurhekar)**  
**Member (J)**

*Place: Mumbai*  
*Date: 16.02.2022.*  
*Dictation taken by: Vaishali Santosh Mane*

