

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.164 OF 2020

DISTRICT : SANGLI

Shri Akshay Digambar Khandare.)
Age : 25 Yrs., Occu.: Nil,)
R/o. Shivaji Road, Near Water Tank,)
Vatsala Nagar, Tal.: Miraj, District : Sangli.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Superintendent of Police.)
Vishrambag, Sangli.)
3. Special I.G.P.)
Kolhapur Range, Kolhapur.)...**Respondents**

Mr. M.B. Kadam, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 01.10.2021

JUDGMENT

1. The Applicant has challenged the communication dated 23.10.2017 and 03.01.2018 whereby the claim of the Applicant for appointment on compassionate ground has been rejected on the ground that deceased had third child born on 01.10.2005 which was after cut-off

date 31.12.2001 in terms of G.R. dated 28.03.2001, and therefore, not entitled to appointment on compassionate ground.

2. Applicant's father viz. Digambar Khandare was Police Constable on the establishment of Respondent No.2 – Superintendent of Police, Sangli. He died in harness on 25.07.2017 leaving behind mother, widow and three children viz. Akshay, Neha and Ajay. After the death of father, the Applicant Akshay had applied for appointment on compassionate ground in place of his father. However, Respondent No.2 rejected his claim by communication dated 23.10.2017 and 03.11.2018 *inter-alia* stating that deceased had third child born after cut-off date in terms of G.R. dated 28.03.2001, and therefore, not eligible for appointment on compassionate ground, which is under challenge in the present O.A.

3. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Mrs. K.S. Gaikwad, learned Presenting Officer for the Respondents.

4. The small issued posed for consideration in the present O.A. is whether the claim of the Applicant for appointment on compassionate ground was tenable in view of G.R. dated 28.03.2001 and the answer is in emphatic negative.

5. Admittedly, Applicant's father had three children viz. Akshay, Neha and Ajay. Youngest son Ajay was born on 01.10.2005.

6. The perusal of G.R. dated 28.03.2001 reveals that Government had taken policy decision that where third child is born to an employee after cut-off date i.e. 31st December, 2001, the said family will not be eligible for appointment on compassionate ground. It is on the basis of this G.R, Applicant's name for appointment on compassionate ground has been rejected.

7. In 2001, since there were no Rules in place, the G.R. was issued thereby rendering family ineligible for appointment on compassionate

ground where third child is born after 31st December, 2001. Thereafter, Rules viz. Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 came in force which also makes a person ineligible for appointment in Government service, if he had three children. Here, situation is governed by G.R. dated 28.03.2001 which specifically debars for appointment on compassionate ground where third child is born in the family after 31st December, 2001. In the present case, admittedly, third child was born on 01.10.2005, and therefore, he was held ineligible for appointment on compassionate ground

8. In this O.A, the sole ground relied upon to challenge the impugned communication is of alleged discrimination. According to Applicant, in the matter of Smt. Alka B. Karde, though she had third child born after cut-off date, the appointment on compassionate ground was granted, and therefore, on the ground of parity, the Applicant would have been appointed on compassionate ground.

9. In so far as appointment to Shri Alka B. Karde is concerned, it was considered as a special case and condition was relaxed by Special Committee headed by Chief Secretary appointed by Government in this behalf. In that case, deceased was Police Hawaldar in Navi Mumbai and in the incident of dacoity on Bank took on 18.10.2006, deceased Hawaldar Karde fought bravely and succeeded saving cash of crores of rupees. In that incident, Hawaldar Karde sustained severe injuries but later succumbed to the injuries on 02.06.2007 while on duty. Therefore, considering the services rendered by deceased Karde, his case was recommended for appointment on compassionate ground relaxing condition of G.R. dated 28.03.2001 and accordingly, special Committee had relaxed the norms. Whereas, in the present case, there is no such special case, so as to relax the condition mentioned in G.R. dated 28.03.2001. Suffice to say, the ground of discrimination raised by the Applicant holds no water.

10. Needless to mention that appointment on compassionate ground cannot be claimed a matter of inheritance or succession and it is claim based upon certain criteria aimed to provide succor to distressed family which must be in conformity with the scheme for appointment on compassionate ground. By G.R. dated 28.03.2001, the Government had taken police decision that where third child is born after 31.12.2001, the family would be ineligible for appointment on compassionate ground. This decision is taken to have small family and to control population in the larger interest of country. As such, where claim for appointment on compassionate ground does not fit in the scheme, it has to be rejected, since it is only by way of concession and not as of vested or legal enforceable right.

11. At this stage, it would be apposite to refer the decision of Hon'ble Supreme Court in the matter of **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)**, wherein it has been clarified as follows :-

“The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.”

This Judgment is squarely attracted to the facts of the present case, as these could not be appointment on compassionate ground in contravention of G.R. dated 28.03.2001.

12. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned communication holds no water and O.A. deserves to be dismissed. Hence, the order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.10.2021
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\October, 2021\O.A.164.20.w.10.2021.Compassionate Appointment.doc

Uploaded on