

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.233 OF 2023

DISTRICT : PUNE
Sub.:- Compassionate
Appointment

Shri Vikram Hona Shelke.)
Age : 33 Yrs, Occu.: Nil [unemployed])
R/o. Digi, Gaikwad Nagar, Survey No.2,)
Near Horizon School, Pune – 15.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Industries, Energy and Labour Dept,)
Mantralaya, Mumbai – 400 032.)
2. The Director.)
Government Printing Press,)
Charni Road, Mumbai.)
3. The Incharge Manager,)
Yerawada Prison Printing, Pune-6.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 13.07.2023

JUDGMENT

1. The Applicant has challenged the communications dated 02.04.2019 and 27.04.2019 issued by Respondents thereby rejecting his claim for compassionate appointment on the ground of birth of third child in the family after cut-off date i.e.31.12.2001 in terms of G.R. dated

28.03.2001 rendering their claim for compassionate appointment untenable.

2. Shortly stated facts giving rise to this O.A. are as under :-

Applicant's father viz. Hona Shelke was Class-IV employee on the establishment of Respondent No.2 – Director, Government Printing Press. He died in harness on 25.06.2015. He was married to Savitri and had two sons viz. Vikram (present Applicant) and Kiran. Savitri died on 05.11.2007. After her death, Hona Shalke performed second marriage with Kalpana on 04.02.2008 and gave birth to son Omkar on 23.03.2009. After the death of father, Applicant Vikram made an application for compassionate appointment on 20.07.2015 which was made within one year from the date of birth of Government servant. He also tendered Affidavit of his step mother Kalpana giving consent to the Applicant for compassionate appointment for herself and her son Omkar. However, Respondent Nos.2 and 3 rejected the claim on the ground that in view of G.R. dated 28.03.2001, there being birth of third child Omkar in the family after cut-off date i.e. 31.12.2001, the claim for compassionate appointment is not acceptable.

3. It is on the above background, the Applicant has challenged the communication dated 02.04.2019 and 27.04.2019 rejecting his claim for compassionate appointment.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of communication dated 02.04.2019 and 27.04.2019 *inter-alia* contending that since G.R. dated 28.03.2001 is held unconstitutional by Hon'ble Bombay High Court in **Writ Petition No.7742/2014 [Ms. Kashibai Wagh Vs. Zilla Parishad, Nashik and Ors.] decided on 03.07.2019**, the rejection of the claim for compassionate appointment is totally arbitrary and unsustainable in law. He, therefore, sought direction to the Respondents to consider the

Applicant's claim for compassionate appointment on suitable post as per his qualification.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the impugned communications *inter-alia* contending that in terms of G.R. dated 28.03.2001, there is embargo for compassionate appointment where third child is born after cut-off date in the family and in the present case, there being birth of Omkar on 23.03.2009, the compassionate appointment cannot be claimed. He further sought to contend that the compassionate appointment is not a matter of right but it is by way of concession and Government is free to frame policy determining terms and conditions for providing compassionate appointment. On this line of submission, he sum-up that in view of Government policy as reflected in G.R. dated 28.03.2001, the impugned communication needs no interference.

6. The short issue posed for consideration is whether impugned orders dated 02.04.2019 and 27.04.2019 rejecting Applicant's claim for compassionate appointment is legally sustainable and answer is in emphatic negative.

7. The facts as narrated above are not in dispute. During the course of hearing, specific query was raised to learned P.O. about the remedial measures taken by the Government in view of Judgment of Hon'ble High Court in ***Kashibai's*** matter declaring G.R. dated 28.03.2001 unconstitutional, but all that he stated that no further remedial measures for withdrawal of G.R. is taken. He further submits that the decision of Hon'ble Bombay High Court declaring G.R. dated 23.03.2001 unconstitutional is subsequent to the impugned communication. True, Applicant's claim was rejected by communication dated 02.04.2019 and 27.04.2019. Whereas Hon'ble High Court delivered the Judgment rendering G.R. dated 28.03.2001 unconstitutional on 03.07.2019. However, that hardly matters to justify the impugned communication. Once Hon'ble High Court declared G.R. dated 28.03.2001

unconstitutional, the Tribunal is bound to take note of it while deciding the issue in pending matters. Indeed, after the decision of Hon'ble High Court, the Government ought to have taken some remedial measures to rectify the situation, but no such steps are taken and Government is simply sitting over the matter.

8. The facts in the present case are similar to the facts in **Kashibai's** case. As regard legality of G.R. dated 28.03.2001, the Hon'ble High Court held that the intention behind such policy is to control the population and not to prohibit re-marriages. At this juncture, it would be apposite to reproduce Para Nos.2 to 8 from the Judgment, which are as under :-

“2. At the outset we record our displeasure to the fact that in the counter affidavit filed by Respondent No.3 in paragraph 6 a false statement of fact has been pleaded that there is a family dispute amongst the family of Sheshrao Trambak Wagh, an Assistant teacher under the first Respondent - Zilla Parishad, Nashik who died in harness, on 22 June 2007.

3. From his first pre-deceased wife he was blessed with two children. From the wedlock with the Petitioner a third child was born.

4. Under the policy of appointment on compassionate basis the Petitioner sought appointment which has been declined to her on the reason that the policy of the State Government prohibits public employment to a person who has begotten a third child after the cut-off date i.e. 31 December 2001. The policy decision concerning appointment on compassionate basis is dated 28 March 2001 and it also contains a stipulation that appointment on compassionate basis would not be granted to the dependent of deceased a government servant who had more than three children.

5. Aforesaid facts bring out that as regards the Petitioner she gave birth to only one child. Her deceased husband had two children from the previous wedlock.

6. The conditions in the policy decisions for grant of appointment on compassionate basis contains an embargo to the applicant being disentitled on the fact of the deceased government servant having 3 children.

7. Notwithstanding there being no prayer to quash the said 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.”*

9. Suffice to say, since G.R. dated 28.03.2001 is declared unconstitutional and no more exist, the claim of the Applicant could not have rejected and his claim for compassionate appointment ought to have been considered subject to other eligibility criteria on suitable post. The impugned communication is thus totally arbitrary and indefensible and liable to be quashed and set aside. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned communications dated 02.04.2019 and 27.04.2019 are quashed and set aside.
- (C) The Respondents are directed to consider the claim of Applicant for compassionate appointment, subject to fulfillment of other terms and conditions and his name be taken in waiting list within two months from today.
- (D) No order as to costs.

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

Mumbai
Date : 13.07.2023
Dictation taken by :
S.K. Wamanse.

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