

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.258 OF 2021**

**DISTRICT : Solapur**

Shri Rajaram Appa Gholap, )  
Age : 42 years, Occ.: Nil )  
At Rastapur, Post Surdi, Tal.Barashi, )  
Dist. Solapur. ) **...Applicant**

**Versus**

1. The Government of Maharashtra, )  
Through Principal Secretary, )  
Department of Forest, Mantralaya, )  
Mumbai 32. )
2. District Collector, Solapur. )
3. Range Forest Officer, Barshi. )
4. Deputy Conservator of Forest, Solapur )  
Forest Department, Solapur. )
5. Chief Conservator of Forest (Regional) )  
Pune Region Pune Van Bhavan, )  
Gokhale Nagar, Pune 411 016. )
6. Deputy Chief Conservator of Forest, )  
Pune Region Pune, Senapati Bapat Marg )  
Pune 411 004. ) **...Respondents**

**Shri D. K. Chavan, Advocate for Applicant.**

**Smt. Kranti Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 04.01.2022**

**JUDGMENT**

1. The Applicant has challenged communication dated 02.02.2021 issued by the Respondent No.4- Deputy Conservator of Forest, Solapur thereby rejecting the claim for appointment on compassionate ground invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Following are the undisputed facts giving rise to this O.A. :-

(A) Applicant's father namely Appa Laxman Gholap was initially working as daily wager, Van Majur with the Respondents from 1985.

(B) Later, in terms of G.R. dated 31.01.1996 his services were regularised on supernumerary post as Van Majur.

(C) Shri Appa Gholap died in harness on 27.07.1999 leaving behind his widow and son Rajaram i.e. present Applicant.

(D) The Applicant applied on 20.09.1999 for appointment on compassionate ground but his application came to be rejected by communication issued in October 1999 (page no.23 of PB) stating that there is no such provisions for appointment on compassionate ground after the death of Van Majur.

(E) The Applicant did not challenge the said order by taking recourse of law.

(F) The Applicant again applied afresh on 05.10.2000 for appointment on compassionate ground.

(G) The Applicant then made representation in 2001 and thereafter in 2009 (page no.28 and 30 of PB) but it was not responded by Respondents. The Applicant again made an application dated 10.08.2009 for appointment on compassionate ground.

(H) Respondent No.4 by his letter dated 09.09.2020 asked the Applicant to remain present in the office on 15.09.2020 for verification of documents and in accordance to it, the Applicant submitted documents.

(I) Respondent No.4 having found that Applicant has four children (3 daughters and 1 son) born after cut off date i.e. 31.12.2001 informed the Applicant that in terms of G.R. dated 28.03.2001 which was reiterated in G.R. dated 21.09.2017, he is not entitled for appointment on compassionate ground and called upon the Applicant to submit his explanation, if any.

(J) The Applicant by letter dated 12.10.2020 explained to Respondent No.4 that the condition mentioned in G.R. dated 21.09.2017 is applicable to the deceased only and not to the claimant i.e. Applicant and in alternative prayed to exempt him from G.R. dated 21.09.2017.

(I) Respondent No.4 however by communication dated 02.02.2021 informed to the Applicant that he is not entitled to appointment on compassionate ground since he has 3<sup>rd</sup> and 4<sup>th</sup> child born after 31.12.2001 i.e. cut off date mentioned in G.R.

3. It is on the above background, the Applicant has challenged the communication dated 02.02.2021 by filing present Original Application.

4. Shri D. K. Chavan, learned Counsel for the Applicant sought to contend that Applicant is struggling for 20 years for appointment on compassionate ground but the Respondents exhibit total insensitivity in the matter. As regard applicability of G.R. dated 28.03.2001, he vehemently urged that the said condition of not having 3<sup>rd</sup> child born after 31.12.2001 is applicable only to the deceased Government servant and not to his heirs. Thus, according to him, even if, the Applicant has four children all are born after 31.12.2001 that would not make the Applicant ineligible for appointment on compassionate ground.

5. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer submits that Applicant having admittedly four children born after 31.12.2001 is not entitled to the appointment on compassionate ground in terms of G.R. dated 28.03.2001. She further submits that condition for not having 3<sup>rd</sup> child born after 31.12.2001 as mentioned in G.R. dated 28.03.2001 has to be construed including ban of appointment to the heir, if he has 3<sup>rd</sup> child born after 31.12.2001. That apart, she further submits that Applicant's father died in 1999 and the period of more than 20 years is over which suggests that there was no such immediate need or financial distress so as to claim appointment on compassionate ground. Thus, according to her, claim for appointment on compassionate ground being delayed by 20 years is unsustainable in law. In this behalf, she placed reliance on the decision of the Hon'ble High Court

delivered in **W.P. No.43/2020 Smt. Aarti Purushottam Nimje V/s State of Maharashtra & Ors**, decided on 06.12.2021 wherein having found that family of deceased had survived 23 years claim for appointment on compassionate ground was rejected.

6. In view of submission advanced at a bar, the main issue for consideration is whether condition of not having 3<sup>rd</sup> child born after 31.12.2001 as mentioned in G.R. dated 28.03.2001 is applicable to the Applicant.

7. At the very outset, it needs to be clarified that admittedly the Applicant Rajaram was married in 2004 and have four children born in 2005, 2007, 2009 and 2011 respectively. Needless to mention that the object of granting compassionate employment to the heir of deceased is intended to enable the family members of a deceased employee to tide over to sudden financial crises and appointment on compassionate ground should only be made in accordance to the scheme framed by the Government in this behalf. Appointment on compassionate ground is thus offered on humanitarian ground as an exception to the rules of equity in the matter of public employment and it cannot be claimed as a vested right. Suffice to say the claim for compassionate appointment is traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.

8. At this juncture, it would be apposite to see the relevant condition in G.R. dated 28.03.2001. Initially the Government of Maharashtra by G.R. dated 26.10.1994 framed policy for providing appointment on compassionate ground to the heir of deceased Government servant to tide over financial crises suffered by family on account of death of sole bread earner of the family. Thereafter from time to time some changes were made in the policy as necessitated over the passage of time. By G.R. dated 28.03.2001 following condition was incorporated in the scheme for appointment on compassionate ground

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

9. Though at first site aforementioned /stipulation seems to be applicable in a situation where deceased Government servant had third child born after 31.12.2001, however, in my considered opinion having regard to the aim and object of the policy of appointment on compassionate ground as well as policy of population control such a narrow interpretation would run counter to policy. The aforesaid stipulation has to be considered harmoniously with aim and object of the population control policy adopted by the Government and it has to be construed as applicable where heir of the deceased Government servant has got third child born after 31.12.2001. In the present case, admittedly the Applicant has four children and all are born after 31.12.2001. In terms of G.R. dated 28.03.2001, the deceased government, if had third child born after 31.12.2001 his heirs held ineligible for compassionate appointment. I see no reason to exclude his heirs if had third child born after cut off date from the operation of said condition otherwise it would render it nugatory. This being the position, such a family of deceased will have to be held ineligible for appointment on compassionate ground.

10. At this juncture, it would not be out of place to mention here that the Government of Maharashtra has subsequently framed Maharashtra Civil Services (Declaration of Small Family), Rules 2005 to the effect if there is a birth of third child after enforcement of Rules, 2005, it is treated as disqualification for appointment in Government service. No doubt, Rules 2005 are applicable to direct recruitment but the fact of matter is that where there is birth of third child after enforcement of Rules 2005, it is treated as disqualification in Government service.

11. Suffice to say, harmonious construction of G.R. dated 28.03.2001 along with Rules of 2005 clearly indicates that the condition mentioned in Clause 'e' of G.R. dated 28.03.2001 in its scope includes a situation where heir of the deceased has third child born after 31.12.2001. As such, the submission advanced by learned Counsel for the Applicant that the said stipulation is restricted to the number of children to deceased Government servant only is misconceived and run counter to the aim and object of the scheme.

12. That apart, as rightly pointed out by learned P.O. that after the death of deceased Government servant, the period of more than 22 years is over which is suggestive of the fact that there was no such immediate need or financial distress in the family for appointment on compassionate ground. As stated above, initially the claim made by the Applicant by his application dated 20.09.1999 was rejected by communication issued in October 1999 (page no.23 of PB). The Applicant did not challenge that communication by taking appropriate legal remedy. He again went on making applications and representations. He made second application on 05.10.2000 and sent reminder in 2001 (Page 24 and 28 of PB) but did not take any steps to know about it nor approached the Tribunal for legal remedy. He thereafter again made representation on 28.08.2009 i.e. after 8 years gap. He did not take any such legal steps in intervening period. He again applied on 10.08.2009 (page no.31 of PB) and thereafter again applied on 12.10.2020. His application dated 12.10.2020 has been processed and finally it came to be rejected by communication dated 02.02.2021 which is impugned in the present Original Application. As such, for more than 22 years, he did not approach the Tribunal. In other words, the family of the Applicant survives for 22 years without any appointment on compassionate ground which clearly suggests that there was no such immediate need for appointment on compassionate ground to the family otherwise Applicant would not have remained silent spectator and ought to have availed legal remedy.

13. Learned P.O. rightly referred to the decision in **Aarti Nimje's** case (cited supra) wherein the Hon'ble High Court rejected the claim which was made after 23 years from the death of deceased Government servant. The Hon'ble High Court held that compassionate appointment cannot be offered after lapse of substantial period of time since the death of the breadwinner for the family. Hon'ble High Court held "*By the time this writ petition came to be instituted, the family of the deceased had survived 23 (twenty-three) long years, which would suggest that there was no immediate need to make an appointment on compassionate ground. Thus, we hold that the need to offer succour by*

*offering an appointment on compassionate ground to save the family from financial distress did not really exist on the date of the institution of the writ petition.” Suffice to say the situation in present case is squarely covered by the aforesaid decision of the Hon’ble High Court.*

14. The totality of the aforesaid discussion leads me to conclude that the impugned communication does not suffer from any legal infirmity and challenge to it holds no water. The Original Application deserves to be dismissed. Hence the following order.

**ORDER**

Original Application is dismissed with no order as to costs.

**Sd/-**

**(A.P. KURHEKAR)**  
**Member-J**

Place :Mumbai

Date : 04.01.2022.

Dictation taken by : VSM

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