

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.446 OF 2019**

**District : Solapur**

Smt. Firdous Mohammad Yunus Patel, )  
Age : 38 years, Occ : Nil , )  
R/o. Block No.7/8, Sadar Bazar, Police Line, )  
Lashkar, Solapur-3. ) **.. Applicant**

**Versus**

1) The Commissioner of Police, Solapur City, )  
Solapur. )  
2) The Director General and Inspector General )  
Of Police, (M.S.) Mumbai at Old Council Hall, )  
Shaid Bhagat Singh Marg, Mumbai 39. ) **..Respondents**

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

Smt. Archana B. K. , learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 03.11.2020.

**JUDGMENT**

1. The Applicant has challenged the order dated 08.08.2018 passed by Respondent No.3 Government of Maharashtra thereby rejecting the claim of the Applicant for appointment on compassionate ground on the ground that in terms of G.R. dated 28.03.2001 issued by the Government because of having more than two children to the deceased, she is not entitled to appointment on compassionate ground.

2. Shortly stated facts admittedly giving rise to the O.A. necessary for the decision of the O.A. are as under :-

- (a) The Deceased Mohammad was Police Constable on the establishment of Respondent No.1-The Commissioner of Police, Solapur City, Solapur.
- (b) The deceased Mohammad Yunus Patel had two wives namely Raisa and present Applicant Firdous.
- (c) The deceased Mohammad Patel had three children from first wife and two children from second wife.
- (d) The husband of Applicant Mohammad died in harness on 21.03.2008 leaving behind present Applicant and five children.
- (e) The first wife of the deceased Mohammad Patel died on 17.03.2008.
- (f) The Applicant made an application on 20.11.2009 for appointment to herself on the post of Clerk on compassionate ground.
- (g) The claim of the Applicant was rejected by Respondent No.1 on 12.07.2011 on the ground that deceased had five children (from first and second wife together), and therefore, in terms of G.R. dated 28.03.2001 she is not entitled for appointment on compassionate ground because of the birth of third child after 31.12.2001.
- (h) The Applicant has challenged the order dated 12.07.2011 by filing O.A.154/2016 in this Tribunal which was disposed of by order dated 30.01.2017 and the matter was remitted to Government with following directions :-

*“10. The matter is remitted back to the Respondent No.3 with a direction to consider the case of the Applicant on the anvil of Rule 6 of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 in accordance with the observations herein above made, after giving an opportunity to the applicant of being heard. The said decision be taken within a period of three months from today and its outcome be communicated to the applicant within one week thereafter. It is clarified that no other issue has been decided except one pertaining to Rule 6 of the said rule. The O.A. stands disposed of in these terms with no order as to costs. Hamdast.”*

- (i) The Respondent No.3 –Government of Maharashtra reconsidered the matter in view of the directions given by the Tribunal and again by order dated 08.08.2018 rejected the request pointing out ineligibility in terms of G.R. dated 28.03.2001 and it was also observed in the order that the matter is not required to be placed before High Power Committee for relaxation of condition of eligibility.
- (j) On the above background, the Applicant has again challenged the order dated 08.08.2018.

3. Shri R.M. Kolge, learned Counsel for the Applicant sought to assail the impugned order and made following submissions :-

- (i) In terms of Rule 6 of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'Rules 2005' for brevity), the Respondent No.3 ought to have placed the matter before Review Committee to consider the issue of relaxation and having not done so, the rejection is illegal.
- (ii) In the matter of Shri B.M. Karade though there was birth of third child in the family, the condition was relaxed by High Power Committee and the same treatment being not given to the Applicant, it amounts to discrimination and violation of Article 14 of the Constitution of India.
- (iii) The Applicant is second wife of the deceased and she had only two children from deceased and therefore, disqualification in terms of G.R. dated 28.03.2001 or 'Rules 2005' is not attracted.

4. Per contra, Smt Archana B.K., learned Presenting Officer for the Respondents supported the impugned order contending that in terms of G.R. dated 28.03.2001, the claim is totally unsustainable as the deceased had in all five children thereby incurring disqualification for appointment on

compassionate ground. As regards discrimination, she submits that Karde's case was considered as special case in peculiar fact and circumstances, and therefore, the ground of discrimination holds no order.

5. Admittedly, the deceased had two wives and has five children and their date of birth is as under :-

अ.क्र.	मुलांचे नाव	जन्मतारीख
१.	कु.सायमा म.युनुस पटेल - पहिल्या पत्नीपासून	०८.११.१९९७
२.	कु.सानिया म.युनुस पटेल .....	०५.०९.१९९९
३.	चि.सुफियान म.युनुस पटेल	२६.०७.२००३
४.	चि.अफान म.युनुस पटेल....दुस-या पत्नीपासून	१०.०१.२००३
५.	चि.याहिया म.युनुस पटेल.....	०४.११.२००७

6. Now, turning to G.R. dated 28.03.2001 (Page 16 of PB ). It was special G.R. issued in the matter of appointment on compassionate ground *inter-alia* providing that in case of birth of third child in the family on or after 31.12.2001, the family would be ineligible and disqualified for appointment on compassionate ground. As such, pertinent to note that this G.R. dated 28.03.2001 was issued specifically in respect of appointment on compassionate ground. It is on the basis of this G.R. dated 28.03.2001, the claim of the Applicant was rejected as admittedly three children were born in the family after 31.12.2001. Significant to note that in G.R. dated 28.03.2001 there is no provisions about relaxation of conditions.

7. Now, turning to 'Rules 2005', the Government of Maharashtra enacted these Rules in respect of recruitment of Group A, B, C and D. In the Government department, a person eligible for appointment in regular recruitment must produce small family certificate. "Small family" is defined under Section 2(2)(d) as wife and husband including two children. As such, in case of birth of third child after commencement of 'Rules 2005' such person is

not eligible to appear in regular recruitment process for Group A, B, C and D. True, Rule 6 of 'Rules 2005' provides that the Government may relax the provisions of any of these rules, under such circumstances and in such manner as it appear to be just and reasonable after recording the reasons for the same.

8. Suffice to say, 'Rules 2005' are for general recruitment for all posts whereas G.R. dated 31.12.2001 is special provision only for the purpose of appointment on compassionate ground. This being the position, it is G.R. dated 28.03.2001 which would prevail and the Rule 6 of 'Rules 2005' have no application.

9. Needless to mention that the dependant of employee who died in harness cannot claim the appointment on compassionate ground as a matter of right. There is no such vested right of appointment on compassionate ground. Therefore, the claim for compassionate appointment has to be in consonance with the scheme for the appointment on compassionate ground and the Government policy in relation thereto. When the Government has taken decision in its wisdom by G.R. dated 28.03.2001 much before enactment of 'Rules 2005', the matter in issue has to be governed by special G.R. dated 28.03.2001.

10. True, in O.A.154/2016, the directions were given to the Government to reconsider the case of the Applicant on the anvil of Rule 6 of 'Rules 2005'. Perusal of judgment reveals that G.R. dated 28.03.2001 was not at all brought to the notice of the Tribunal. Be that as it may, after the directions from the Tribunal, the Government reconsidered the issue and came to the decision that in terms of G.R. dated 28.03.2001, the heir of the deceased is not entitled for appointment on compassionate ground. It is further recorded in the

impugned order that there is no requirement to place the matter before High Power Committee for relaxation in terms of Rule 6 of 'Rules 2005'.

11. As stated above, the matter in issue is governed by G.R. dated 28.03.2001 and 'Rules 2005' have no application in the matter of appointment on compassionate ground. Therefore, the submission advanced by the learned Counsel that the matter ought to have referred before the High Power Committee to relax the condition in terms of Rule 6 of 'Rules 005' is misconceived.

12. As regard, appointment on compassionate ground to the heir of deceased Karade, the record reveals that the High Power Committee treated it as a special case and though the deceased Karade had two children, the widow was given appointment on compassionate ground. In that case, the deceased Karade was serving in Police department and while on duty in the incident of bank decoity at Panjab & Maharashtra Bank, Aeroli on 18.10.2006, he fought bravely and succeeded in saving cash of the Bank. In that incident Shri Karade was seriously injured by the decoits and was hospitalized in MGM Hospital, Navi Mumbai. After recovery on April 2007, Shri Karade resumed duty and later died due to heart attack on 02.06.2007 while on duty. As such, considering the courage and bravery shown by Shri Karade, it was treated as special case and relaxed the condition of G.R. dated 28.03.2001 and appointment on compassionate ground was granted. There is no such special case in the present matter. True, in this matter also the husband of the Applicant is died during the course of his service but there is no such special consideration alike the matter of Shri Karade. Therefore, the ground of discrimination does not appeal.

13. True, the issue of ineligibility has arisen because of three children from first wife and two children only from second wife. It was sought to contend by the learned Counsel for the Applicant that as the Applicant had only two children, she cannot be said ineligible for appointment on compassionate ground. However, learned Counsel for the Applicant overlook that as per G.R. dated 28.03.2001 in case of birth of third child to the deceased after 31.12.2001 then such family that means legal heirs of the deceased would be ineligible for appointment on compassionate ground. As such, family included the children born from both wives in the present matter and no such narrow interpretation can be adopted by excluding three children of the deceased from first wife. One needs to consider the number of all children to the deceased in reference to cut off date mentioned in G.R. dated 28.03.2001. As such, admittedly, the deceased had three children born after 31.12.2001 (first is from first wife and two are from second wife). His two sons from first wife were born before 31.12.2001. As such, number of children gone beyond permissible limit after 31.12.2001, and therefore, the rejection for appointment on compassionate ground cannot be faulted with.

14. 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. The claim for appointment on compassionate ground is not in consonance with policy decision taken by the Government in G.R. dated 28.03.2001 which regulates the condition for appointment of compassionate ground.

15. The totality of the aforesaid discussion leads me to conclude that the challenge to the impugned order is devoid of merit and O.A deserves to be dismissed. Hence the following order :-

**ORDER**

Original Application stands dismissed with no order as to costs.

Sd/-

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

Place : Mumbai  
Date : 03.11.2020  
Dictation taken by : VSM  
Uploaded on :  
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