

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.907 OF 2022**

**DISTRICT: PUNE  
SUB : COMM.APPOINTMENT**

Smt. Sonali Pradip Malusare, )  
Age: 28 years, Occ. Housewife, )  
Residing at Survey No.16, Saisiddhi Chowk, )  
Kulswamini Darshan, Flat No.6, )  
Ambegaon Pathar, Pune. )... **Applicant**

**Versus**

1) The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Having Office at, )  
Mantralaya, Main Building, 2<sup>nd</sup> Floor, Madam )  
Cama Road, Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai-32. )

2) Deputy Superintendent of Police, )  
(Headquarters) Superintendent of Police )  
Office Rural, Pune )  
Having office at Chavan Nagar, Pashan Road, )  
Pune – 411 008. )...**Respondents**

Shri R. Kale, 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 : 24.04.2023

**ORDER**

1. The Applicant has challenged communication dated 01.03.2022 issued by the Respondent No.2-Deputy Superintendent of Police, (Rural), Pune whereby her claim for compassionate appointment was rejected on the ground that deceased had 3rd child born after cut off

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

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

The Applicant -Sonali is one of the daughter of deceased Government servant namely Shri Kailash S. Pasalkar. He was Head Constable on the establishment of Superintendent of Police (Rural), Pune. Unfortunately, he died in harness on 05.09.2021 at the age of 55 years. During his lifetime initially he married to Pushpa and had two daughters from the wedlock namely Sonali and Pratiksha. They were born on 30.12.1994 and 06.11.2000 respectively. His first wife Pushpa died on 03.03.2004. After the death of Pushpa, Government servant Kailash Pasalkar performed marriage with one lady Mukta alias Ravati and have one daughter namely Anushka born from Mukta. Anushka was born on 29.02.2006. Here, it may be noted that subsequently Pratiksha died on 11.04.2017. After the death of father, Applicant Sonali made an application for compassionate appointment on 13.01.2022 on the post of Police Constable. However, application came to be rejected by impugned communication dated 01.03.2022 on the ground that deceased had third child born after cut off date i.e. 31.12.2001. In the impugned order, the Respondents stated that Anushka was born on 29.02.2006 which was after cutoff date 31.12.2001, therefore, the Applicant is not entitled to compassionate appointment in terms of G.R. dated 28.03.2001.

3. Heard Shri R. Kale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Learned Counsel for the Applicant submits that the rejection on the ground of 3rd child in family born after 28.03.2001 no more survive in view of the decision of the Hon'ble Bombay High Court in **W. P. No.7742 of 2014 Ms. Kashibai S. Wagh V/ The Zilla Parishad, Nashik & Ors.**, decided on 03.07.2019. In that case, the Hon'ble High Court in similar situation held the G.R. dated 28.03.2001 as

unconstitutional and directed the Respondents to consider the petitioner's entitlement to compassionate appointment. Para Nos.4 to 9 of the judgment are as under:-

*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. Necessary decision shall be taken within four weeks."*

5. Thus, the Hon'ble High Court had declared G.R. dated 28.03.2001 as unconstitutional. In other words, it is no more can be the reason for rejection of the claim made by the Applicant. When specific query was raised to learned P.O. about implementation of decision rendered by the Hon'ble High Court in **Kashibai Wagh's** case (cited supra) all that she stated that she needs to consult with G.A.D. Thus, the position emerges that as of now, there is no challenge to the decision of the Hon'ble High

Court dated 03.07.2019. Consequently, ultimate situation is that once the G.R. dated 28.03.2001, which is the only reason for denial of compassionate appointment, is held unconstitutional, the department cannot fall back upon the said G.R. Notably, the Hon'ble High Court delivered the judgment on 03.07.2019 and impugned order of rejection was issued on 07.04.2021 without taking note of the judgment of the Hon'ble High Court in which G.R. dated 28.03.2001 is held unconstitutional. It appears that the decision of the Hon'ble High Court was not brought to the notice of the Respondent No.2.

6. Notably, in similar situation, this Tribunal while dealing with identical issue disposed of the **O.A.No.510/2021 in Shri S. J. Pendharkar V/s State of Maharashtra**, through Principal Secretary, Home Department and directions were issued to Respondents to reconsider the claim of the Applicant Shri S. J. Pendharkar for compassionate appointment in the light of the decision of the Hon'ble High Court in **Kashibai Wagh's** case within six weeks from the date of order. Notably, the period of more than six weeks is already over. In present case also the Home Department is Respondent No.1. During the course of hearing, the Tribunal has raised specific query to learned P.O. about implementation of the decision of the Hon'ble High Court in **Kashibai Wagh's** case (cited supra). However, all that he stated that he has no knowledge about it.

7. Indeed, once the Hon'ble High Court in **Kashibai Wagh's** case held that G.R. dated 28.03.2001 is unconstitutional, the impugned communication dated 01.03.2022 whereby the claim of the Applicant is rejected solely on the ground of G.R. dated 28.03.2001, is totally unsustainable in law. In view of the decision of the hon'ble High Court in **Kashibai Wagh's** case, the Respondents were obliged to take remedial measures but Respondents are simply sitting over the matter which again shows total inaction and apathy on their part.

8. For the aforesaid reasons, impugned communication dated 01.03.2022 is liable to be quashed and set aside and the Respondents are required to consider the claim of the Applicant for compassionate appointment in the light to decision of the Hon'ble High Court in ***Kashibai Wagh's*** case and to take further steps for providing compassionate appointment subject to suitability and compliance of terms and conditions of the scheme. Hence the following order :-

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned communication dated 01.03.2022 is quashed and set aside.
- (C) The Respondents are directed to consider the claim of the Applicant for compassionate appointment in the light of decision of the Hon'ble High Court in ***Kashibai Wagh's*** case and her name be taken in the waiting list subject to fulfillment of other conditions in terms of scheme within six weeks from today and the decision shall be communicated to the Applicant within two weeks thereafter.
- (D) The liability to comply the order is on the Respondents jointly and severally.
- (E) If the Applicant felt aggrieved by the decision, she may avail further legal remedy in accordance of law.
- (F) No order as to costs.

**Sd/-**

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai

Date: 24.04.2023

Dictation taken by: Vaishali Santosh Mane

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