

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.169 OF 2020
(Subject:-Compassionate Appointment)**

DISTRICT: - NANDED

Mrs. Megha Prasad Kapure,)
Age : 39 Years, Occu: Household,)
R/o.: Swapnaja Garden, Near Zenda Chowk,)
Swayamvar Mangal Karalaya,)
Taroda Kh. Taluka & District: Nanded)...**APPLICANT**

V E R S U S

The Superintendent of Police,)
Near Shivaji Statue, Parbhani,)
District-Parbhani.)..**RESPONDENTS**

APPEARANCE : Shri Shivraj V. Deshmukh, learned
Advocate for the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **01.12.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned letter cum order dated 12.07.2019 (Annex. 'A-5') issued by the respondent i.e.

the Superintendent of Police, Parbhani rejecting the claim of the applicant for compassionate appointment on the ground of 3rd child being begotten to the applicant from her deceased husband who was in Government service in view of rider of G.R. dated 28.03.2001 (Annex. 'A-7').

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant's husband namely Prasad Nivrutti Kapure was working in police department at Purna District-Parbhani as Police. He died in road accident while on duty on 04.01.2004. The applicant made application for compassionate appointment to the respondent on 16.06.2004 (Annex. 'A-1'). The applicant belongs to SC category.

(ii) Pursuant to the said application, the respondent called upon the applicant to remain present on 07.02.2005 on the activity/play ground along with all the required documents for considering her claim for compassionate appointment by issuing letter dated 03.02.2005 (Annex. 'A-2'). Accordingly, the applicant remained present on the said date with all the required documents and submitted the documents.

(iii) Thereafter the respondent again by letter dated 22.09.2008 (Annex. 'A-3') called upon the applicant to remain present at Police Head Quarter, Parbhani along with all the requisite documents on 23.09.2008. Accordingly, the applicant remained present there on 23.09.2008 with all the requisite documents. Thereafter, the respondent by issuing letter dated 04.02.2019 (Annex. 'A-4') informed her that her name has been selected for appointment on the post of Sevak (Class-IV) by the selection committee. Thereby she was called on 08.02.2019 to fill up the Attestation Form in the office of respondent. Accordingly, she submitted her form.

(iv) Thereafter, however, the respondent by impugned letter dated 12.07.2019 (Annex. 'A-5') informed the applicant about rejection of her claim for compassionate appointment on the ground of having 3rd child begotten after 31.12.2001 in view of G.R. dated 28.03.2001.

(v) It is submitted that the applicant has three children i.e. one (1) Prem Prasad Kapure born on 15.03.1999, (2) Pratham Prasad Kapure born on 23.11.2001 and (3) Pratiksha Prasad Kapure born on 21.10.2003. Their birth certificates are produced at Annexure 'A-6' collectively.

(vi) It is further submitted that G.R. dated 28.03.2001 regarding small family is old one. Subsequent to that the Government of Maharashtra issued notification on 01.07.2005 (part of Annex. 'A-8' collectively) in respect of Maharashtra Civil Services (Declaration of Small Family) Rule, 2005. It is made applicable in the State from 28.03.2005. This notification dated 01.07.2005 (part of Annex. 'A-8' collectively) would prevail over G.R. dated 28.03.2001 (Annex. 'A-7'). No child is born to the applicant after 28.03.2005 from which date Rule, 2005 was made applicable. Requisite affidavit about small family was obtained from the applicant (part of Annex. 'A-8' collectively) under Maharashtra Civil Services (Declaration of Small Family) Rule, 2005. The Original Application No.293 of 2017 is decided by the Principal seat of this Tribunal at Mumbai by order dated 27.09.2019 (Annex. 'A-9') giving compassionate appointment though 3rd child was born between 31.12.2001 to 28.03.2005 holding that the compassionate appointment is basically to meet the economic hardship of the Government servant, who has expired and further on the ground that G.R. dated 28.03.2001 was published in the year 2003. In view of above, it is the contention of the applicant that the impugned

letter cum order dated 12.07.2019 (Annex. 'A-5') rejecting the claim of the applicant for compassionate ground is not legal and proper and is liable to be quashed and set aside.

3. Application is resisted by filing affidavit in reply on behalf of the respondent by one Jayant Meena working as Superintendent of Police, Parbhani. Thereby he denied adverse contention raised in the Original Application.

(i) It is specifically submitted that the respondent by letter dated 04.02.2019 (Annex. 'R-2' collectively) called upon the applicant to file declaration and verification of certain information in view of her selection on compassionate ground for the post of Sevak and it was not by oral order. Accordingly, the applicant submitted form of affidavit on 06.06.2019 (part of Annex. 'R-2' collectively) along with the details of her children. From the said declaration, it was found that the applicant was disqualified for the benefit of compassionate appointment as per G.R. dated 28.03.2001 and therefore, by communication dated 05.07.2019 (Annex. 'R-3'), the applicant was informed that she was found disqualified accordingly, which document is also produced by the applicant at Annex. 'A-5'. In view of that, the impugned decision/communication is in accordance with law. There is

no merit and substance in the Original Application and it is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri Shivraj V. Deshmukh, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer representing the respondents on other hand.

5. Considering the facts and documents on record, it is evident that the impugned communication dated 12.07.2019 (Annex. 'A-5') is issued by the respondent disqualifying the applicant for getting compassionate appointment on the ground that the applicant has begotten 3rd child from her marriage with the deceased husband, who was Government servant, namely Pratiksha Prasad Kapure being born on 21.10.2003 which is after cut-off date of 31.12.2001 as laid down in G.R. dated 28.03.2001. The applicant has come out with the case that disqualification for compassionate appointment is because of the birth of the 3rd child in the family of the deceased Government servant after cut-off date on 31.12.2001 as per law laid down in the G.R. dated 28.03.2001. However, in fact the said rider or restriction is laid down by enactment of notification dated 01.07.2005

(Annex. 'A-8') known as Maharashtra Civil Service (Small Family Affirmation) Rules, 2005, which have come into force w.e.f. 28.03.2005. The cut-off date mentioned therein is 28.03.2005. No 3rd child is born to the applicant after said cut-off date of 28.03.2005.

6. In this regard, it would not be out of place to refer to the decision of the Hon'ble High Court of Judicature at Bombay dated 03.07.2019 in **W.P. No. 7742/2014** in the matter of **Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and Ors.** In the said citation case, claim was rejected by the Zilla Parishad, Nashik by referring to the G.R. dated 23.03.2001, which deals with policy of the State Government prohibiting the person, who has begotten 3rd child after cut-off date of 31.12.2001. In para Nos. 7 and 8, it is observed as under :-

“7. Notwithstanding there being no prayer to quash the said 3 17 WP 7742-2014.doc 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.”

7. In the circumstances as above, there is no need to go to the contentions raised on behalf of the applicant to make Rule of 2005 in respect of small family make applicable in supersession of G.R. dated 28.03.2001 (Annex. 'A-7'). It is crystal clear that that G.R. dated 28.03.2001 issued by the State Government is declared unconstitutional and the Government was directed to consider the entitlement of petitioner in the abovesaid case law of **Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and Ors.** thereof whether the petitioner is in such a stage of penury that she needs an appointment on compassionate basis so that she and her family can survive.

8. In the circumstances, in my humble opinion, the denial of claim of compassionate appointment to the applicant by the respondent would not be sustainable in the eyes of law and consequently, the respondent would be liable to consider the claim of the applicant for compassionate appointment in accordance with law keeping aside the G.R. dated 28.03.2001. I therefore, proceed to pass the following order :-

ORDER

The Original Application No. 169/2020 is allowed in following terms:-

- (A) The impugned communication / letter dated 12.07.2019 (Annexure 'A-5') issued by the respondent hereby quashed and set aside.
- (B) The respondent is directed to consider the claim of the applicant for compassionate appointment as per the seniority in accordance with law keeping aside the G.R. dated 28.03.2001.
- (C) There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)