

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.217/2022

DISTRICT:- JALGAON

Ahmed Raza Sadique Shaikh,
Age : 21 years, Occu. : Student,
R/o. Plot No.51, Gat No.53,
Shiv Colony, Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Secretary,
General Administration Department,
Mantralaya, Mumbai-400 032.
- 2) The Director of Land Record,
Nasik Division, Nasik.
- 3) The District Superintendent,
Land Record, Jalgaon.
- 4) Deputy Superintendent,
Land Record, Raver,
Tq. Raver, Dist. Jalgaon.

...RESPONDENTS

APPEARANCE :Shri Asif Ali, Counsel holding for
Smt. A.N.Ansari, Counsel for
Applicant.

:Shri I.S.Thorat, Presenting Officer for
the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on: 06-09-2023.

O R A L O R D E R :

1. Heard Shri Asif Ali, learned Counsel holding for
Smt. A.N.Ansari, learned Counsel for Applicant and Shri
I.S.Thorat, learned Presenting Officer for the respondents.

2. Applicant has preferred the present O.A. for quashment of communications dated 16-12-2021 and 14-02-2022 issued by respondent no.2 whereby the said respondent has communicated the applicant that he cannot be considered for giving appointment on compassionate ground since his father, the deceased Government, had third child after the cut-off date i.e. 31-12-2001.

3. The father of the applicant namely, Shri Sadique Ishaque Shaikh was serving as Shirastedar in the office of respondent no.4 and expired on 06-04-2020 while in service. He had suffered kidney problem and ultimately suffered untimely death because of that. Deceased Sadique Ishaque Shaikh had contracted two marriages. The applicant was born from the first wife of deceased Sadique. Name of the mother of the applicant was Smt. Tabassum. From the marriage with Smt. Tabassum, deceased Sadique Shaikh had two children; applicant Ahmed Raza and Owez. Smt. Tabassum died on 03-10-2006 because of cancer. The applicant and his brother Owez both were minor at the time of death of their mother. The deceased Government servant contracted second

marriage in the year 2007 with one Smt. Nusrat. From the said wedlock deceased Sadique had two children, namely, Zubiya Sadique Shaikh and Mohammed Noor Sadique Shaikh. After the death of the Government servant the applicant made an application on 27-01-2022 with respondent no.2 seeking his appointment on compassionate ground. However, the applicant was denied the appointment on compassionate ground vide communications referred to hereinabove on the ground that he was not entitled for such appointment since his father, the deceased Government servant, had 3rd child after the cut-off date i.e. 31-12-2001. The aforesaid communications are challenged in the present O.A.

4. Learned Counsel Shri Asif Ali holding for Smt. A.N. Ansari, learned Counsel for the applicant submitted that respondents have rejected the claim of the applicant for his appointment on compassionate ground for wrong reasons and by misinterpreting the relevant legal provisions. Learned Counsel relying upon the judgment of the Division Bench of the Hon'ble Bombay High Court in the case of **Firdous Mohammad Yunus Patel V/s. State of Maharashtra & Ors. [2022 (6) Bom. C.R. 94]**,

submitted that, in view of the law laid down in the said judgment, and more particularly, the interpretation made by the Hon'ble Division Bench of clause (E) of the G.R. dated 28-03-2001, and rule 6 of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 ("Rules of 2005" for short), the applicant deserves to be considered for appointment on compassionate ground and the impugned order deserves to be quashed and set aside.

5. Learned Counsel submitted that though it is true that the applicant's father contracted second marriage and also had two children out of the said wedlock in addition to two children from his first wife, clause (E) of the said G.R. dated 28-03-2001 has to be read as ruled by Division Bench of the Hon'ble Bombay High Court in the case of Firdous (cited supra), to include an immediate family of the employee i.e. a sole spouse and no more than two children by that marriage. Learned Counsel submitted that as per the aforesaid interpretation the family to which the applicant belongs consists of his deceased father, his deceased mother, he himself and his brother Owez. Learned Counsel submitted that deceased Sadique, thus, had only two children from his wedlock with Smt.

Tabassum, and as such, said immediate family of deceased Sadique has to be held a small family as defined under Rule 2 of the Rules of 2005. Learned Counsel submitted that in the aforesaid circumstances the respondents could not have denied the claim of the applicant for his appointment on compassionate ground.

6. Respondents have resisted the contentions raised and prayers made in the O.A. Respondent No. 2 has filed affidavit in reply contending therein that deceased Sadique, as per the record available with the office, had four children. Out of which, only one was born before 31-12-2001 and other three children, all have born after the cut-off date. In the circumstances, none of the legal heirs of the deceased was entitled for to be appointed on compassionate ground.

7. It is further contended that second wife namely, Smt. Nusrat has also applied for appointment on compassionate ground and that is also one of the reasons stated by respondent No.2 for rejecting claim of the applicant. The main defense which respondent No. 2 has raised, however, pertains to the fact that the family of the deceased Government servant cannot fall within the

definition of the small family as defined in the Rules of 2005.

8. Shri I.S. Thorat, learned Presenting Officer reiterated the contentions raised by respondent No.2 in his affidavit in reply. Learned P.O. further submitted that brother of the applicant Owez is also born after the cut-off date i.e. on 21-06-2003, and in the circumstances, even if it is assumed that clause (E) is to be read to include the immediate family of the deceased Government servant since one child from said wedlock has born on 21-06-2003 i.e. after the cut-off date, none of the legal heirs of the deceased Government servant can be held entitled and/or eligible for the appointment on compassionate ground. Learned P.O. in the circumstances has prayed for rejecting the O.A.

9. I have duly considered the submissions made on behalf of the applicant and the respondents. I have also gone through the documents placed on record by the parties. It is not in dispute that deceased Government servant had contracted two marriages; one with deceased Smt. Tabassum and another with Smt. Nusrat. It is also not in dispute that the deceased Government servant from

the wedlock with Smt. Tabassum had two children, namely Ahmed Raza and Owez. It is also not in dispute that Owez is born on 21-06-2003. It is also not in dispute that deceased Government servant from his second marriage with Smt. Nusrat had two children namely, Zubiya Sadique Shaikh and Mohammed Noor Sadique Shaikh and both are born after the cut-off date i.e. after 31-12-2001.

10. The question which falls for consideration in the aforesaid facts and circumstances is whether the applicant can be held entitled for the appointment on compassionate ground.

11. Identical issue was for consideration before the Division Bench of the Hon'ble Bombay High Court in the case of Firdous (cited supra). In the said matter Firdous who was the second wife of the deceased Government servant had applied for appointment on compassionate ground. Her application was rejected on the ground that the deceased Government servant had more than two children and some of them were born after the cut-off date i.e. 31-12-2001. The Hon'ble Division Bench, however, rejected the said contention and interpreted clause (E) of the G.R. dated 28-03-2001 holding that clause (E) must be

read to include the immediate family of an employee i.e. sole spouse and no more than two children by that marriage. I deem it appropriate to reproduce hereinbelow the entire paragraph 13, which reads thus:

“13. The question before us is about the correct interpretation of clause (E) of the Government Resolution of 28th March 2001. It speaks of family members of employees having a third child, i.e., more than two children. This clause must be reasonably read. It is intended to apply to a median situation where the employee and his spouse constitute a small family with no more than two children. If one sees it like this, then Mohammad and Firdous were indeed a small family. They had only two children. The rule does not contemplate a situation where the employee separately contracts a marriage with another person and has children by that other marriage. We do not see how Firdous could possibly held responsible for Mohammad's relationship with Raisa, his first wife, or his three children from that marriage with Raisa. Firdous was no part of that marriage. It is impossible to contemplate a situation where Firdous would earn a disqualification for something for which she was not, and could not be, responsible. The consequences of Mohammad's marriage to Raisa, or, more

accurately, any disqualification in that regard could not justly or justifiably be visited on Firdous. It is equally clear that had the situation been reversed, Raisa would not have been able to claim employment on a compassionate ground, because she did in fact have three children by Mohammad. But it seems most inequitable that while Raisa's three children get the terminal benefits owed to Mohammad on his demise, Firdous should suffer a complete threshold disqualification from being even considered for compassionate employment. Clause (E) cannot, in our judgment, be so broadly construed as to include cases that lie at the extremities and are clearly exceptions. Clause (E) must be read to include an immediate family of an employee, a sole spouse and no more than two children by that marriage. The disqualification attaches because of number of children of the employee from that spouse. We do not see how we can be extended to a situation such as the present one. We hasten to clarify that we are not saying, and we do not suggest, that this case can serve as a precedent even within a community that permits multiple marriages. Each case must be assessed on its own merits.”

12. In view of the interpretation as has been made by the Hon’ble Division Bench, the applicant’s family will

consist of his deceased father, his deceased mother, he himself and his brother Owez. Thus, from the wedlock with his first wife Smt. Tabassum i.e. mother of the applicant, deceased Government servant had only two children. As such, his said family would fall in the definition of 'small family' irrespective of the fact that one son by name Owez is born after the cut-off date i.e. 31-12-2001. In the circumstances, it appears to me that respondent No.2 shall not have held the applicant ineligible for compassionate appointment on the ground that the deceased Government servant had more than two children and some of them are born after the cut-off date.

13. Learned Counsel for the applicant brought to my notice that though the second wife of deceased Sadique Shaikh had also made an application seeking compassionate appointment for herself, subsequently she has given her "No Objection" in favour of the applicant for his appointment on compassionate ground. Learned Counsel invited my attention to the agreement arrived at amongst the applicant, second wife of the deceased and the children born to the deceased Government servant from the said marriage. All of them have given no objection for

the compassionate appointment of the applicant in place of the deceased Government servant.

14. For the reasons stated above, the impugned communications cannot be sustained and deserve to be set aside. Applicant is held entitled for his appointment on compassionate ground. Hence, the following order: -

O R D E R

[i] Communications dated 16-12-2021 and 14-02-2022 issued by respondent no.2 are quashed and set aside.

[ii] Respondents are directed to include the name of the applicant in the waiting list maintained of the candidates eligible to be appointed on compassionate ground and to issue the order of appointment in his favour as and when his turn would come. Seniority of the applicant in the waiting list shall be reckoned from the date of his filing application with the authorities seeking appointment on compassionate ground.

[iii] O.A. stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 06-09-2023.