

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.995/2022**

**DISTRICT:- AHMEDNAGAR**

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Shaikh Imroj s/o. Shaikh Riyaz,  
Age : 29 years, Occu. : Nil,  
R/o. Village Savedi, Near Savedi Masjid,  
Ahmednagar, Dist. Ahmednagar. **...APPLICANT**

**V E R S U S**

1) The State of Maharashtra,  
Through it's Under Secretary,  
Home Department,  
Mantralaya, Mumbai.

2) The Superintendent of Police,  
Ahmednagar, Dist. Ahmednagar. **...RESPONDENTS**

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APPEARANCE :Shri Tushar C. Shinde, Counsel for  
Applicant.

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

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**CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN**

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**Decided on: 06-09-2023.**

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**O R A L O R D E R :**

1. Heard Shri Tushar C. Shinde, learned Counsel  
for applicant and Shri I.S.Thorat, learned Presenting  
Officer for the respondents.

2. Applicant has preferred the present O.A. being aggrieved by the order/communication dated 12-11-2021 issued by respondent no.1 thereby rejecting the request of the applicant for his appointment on compassionate ground.

3. The father of the applicant namely, Shri Shaikh Riyaz Ahmed Shafi was a Police Constable in Kotwali Police Station at Ahmednagar. While discharging the duties he suffered Covid-19 infection and succumbed to it on 13-01-2021. On demise of his father the applicant applied to respondent no.2 and requested for compassionate appointment. Respondent no.2 denied the request of the applicant on the ground that the deceased Government Servant had 3<sup>rd</sup> child born after 31-12-2001 i.e. after the cut-off date provided in the G.R. dated 28-03-2001. The applicant thereafter requested the respondent no.2 to consider his claim as a special case having regard to the fact that his father had succumbed to death while discharging duties in the Covid-19 pandemic period. Respondent no.2 forwarded the application of the applicant with respondent no.1 with favorable recommendation since the services of the deceased Shaikh

Riyaz were declared as the “Frontline Worker.” Respondent no.1, however, rejected the claim of the applicant vide its communication dated 12-11-2021.

4. While the application forwarded by respondent no.2 to respondent no.1 was pending consideration of respondent no.1, the applicant had filed O.A.No.400/2021 before this Tribunal. After the request was rejected by the respondent no.1, the applicant withdrew O.A.No.400/2021 with permission to file fresh O.A. challenging the order dated 12-11-2021 passed by respondent no.1. Accordingly, the applicant has preferred the present O.A.

5. According to the applicant, the reason as has been assigned in the impugned order is unjust and discriminatory. It is the case of the applicant that he being son of the deceased Government servant from his first wife Jabin and none of the children is born out of the said marriage of deceased Government servant with Jabin after the cut-off date, he is entitled for compassionate appointment and the G.R. dated 28-03-2001 will not come in his way for grant of such appointment. The applicant in the circumstances has prayed for setting aside the aforesaid communication and has also prayed for further

direction to the respondents to give appointment to him on compassionate ground.

6. Respondents have resisted the contentions raised and the prayer made in the O.A. Respondent no.1 and 2 have filed joint affidavit in reply. Respondents have denied the contentions raised in the O.A. According to the respondents, since the deceased Government servant has a child born after the cut-off date, none of the legal heirs of the said Government servant is entitled for appointment on compassionate ground in view of the G.R. date 28-03-2001. It is contended that the child by name Zeehan is born on 02-08-2003 i.e. after cut-off date of 31-12-2001. In the circumstances, according to the respondents, the impugned order does not suffer any illegality or procedural impropriety. Respondents have, therefore, prayed for dismissal of the application.

7. Shri Tushar Shinde, learned Counsel appearing for the applicant assailed the impugned order alleging that the respondents have misinterpreted the relevant 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, the applicant deserves to be considered for appointment on compassionate ground and the impugned order deserves to be quashed and set aside.

8. Learned Counsel pointed out that the facts of the present case are identical with the facts which existed in the case before the Hon'ble High Court *cited supra*. Learned Counsel submitted that though it is true that applicant's deceased father contracted the second marriage with Sabina and it is also a fact that from the said wedlock one child viz. Zeehan is born on 02-10-2003, clause (E) of the G.R. dated 28-03-2001 has to be read to include immediate family of the employee i.e. a sole spouse and no more than 2 children by that marriage as held by the Hon'ble Division Bench in the case (cited supra). The learned Counsel submitted that as per the aforesaid interpretation the respondents cannot disentitle the

applicant from seeking appointment on compassionate ground. Learned Counsel in the circumstances has prayed for allowing the O.A.

9. Shri Thorat, learned P.O. submitted that there are 3 children of the deceased Government servant from his first wedlock with Jabin i.e. mother of the present applicant. In the circumstances, according to the learned P.O. the ratio laid down in the case of **Firdous Mohammad Yunus Patel** (cited supra) would not apply to the facts of the present case. Learned P.O. submitted that while interpreting clause (E) of the G.R. dated 28-03-2001, the Hon'ble Division Bench of the Bombay High Court has recorded an unambiguous finding that "clause (E) must be read to include an immediate family of the employee, a sole spouse and no more than 2 children by that marriage." Learned P.O. submitted that the Hon'ble Division Bench has thus not caused any change in criteria of 2 children. Learned P.O. submitted that in view of the fact that family of deceased Riyaz and his first wife Jabin is concerned, Riyaz had 3 children out of the said wedlock and in the circumstances, the interpretation made by the Hon'ble Division Bench would also not favour the case of the

applicant. Learned P.O. in the circumstances supported the impugned order and prayed for dismissal of the O.A.

10. 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. It is not in dispute that Riyaz, the deceased Government servant, had contracted 2 marriages; one with Jabin and other with Sabina. It is also not in dispute that out of wedlock with Jabin, Riyaz had 3 children, viz., Imroj, Zishan and Humera. It is also not in dispute that the son Zeehan was born on 02-08-2003 i.e. after the cut-off date, out of wedlock of the deceased Government servant with Sabina.

11. The questions which fall for consideration are (i) whether the fact that one child of deceased Riyaz is born after the cut-off date will disentitle the applicant from securing appointment on compassionate ground, and (ii) whether the fact that deceased Riyaz, out of his marriage with Jabin had 3 children, will disentitle the applicant from claiming appointment on compassionate ground.

12. The aforesaid aspect has been dealt with by the Hon'ble Division Bench of the Bombay High Court in the

case of **Firdous Mohammad Yunus Patel** (cited supra). Firdous was the widow (second wife) of the deceased Government servant who was Police Constable in the services of the State. After the death of the Government servant, the said petitioner applied for employment in the Government service on compassionate ground. Her application was rejected on the ground that the deceased had more than 2 children. However, petitioner had only 2 children from the marriage with the deceased. There was a settlement and agreement between the first wife's brother and the petitioner that the first wife's children will be solely entitled for the terminal benefits and the petitioner would be entitled for applying for Government service on compassionate ground. Accordingly, terminal benefits were received to the first wife's children, however, Firdous, the second wife received nothing. In the aforesaid set of facts the Hon'ble Division Bench has interpreted the relevant provisions. Paragraph 13 of the said judgment is relevant in so far as the context is concerned. 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.”*

13. As has been observed by the Hon'ble Division Bench, clause (E) must be read to include an immediate family of the employee, i.e. employee himself, a sole spouse and no more than 2 children by that marriage. According to Shri Tushar Shinde, the learned Counsel appearing for the applicant, in view of the interpretation as has been made by the Hon'ble Division Bench, applicant's family will consist of his deceased father, his mother and 3 children out of the said wedlock including the applicant. Learned Counsel submitted that the fact of having 3 children from the marriage with Jabin would not attach disqualification as all the 3 children have born before 31-12-2001.

14. Clause (E) of the G.R. dated 28-03-2001, reads thus:

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

As per the aforesaid clause, family members of employees having third child born after 31-12-2001 shall not be

considered eligible for appointment on compassionate basis. Learned Counsel submitted that in the family of Riyaz with Jabin since none of the children is born after 31-12-2001 the applicant in no case can be disqualified for seeking appointment on compassionate ground. The applicant has provided the necessary particulars showing that he (Imroj) was born on 27-03-1993, Zishan on 20-11-1994 and Humera was born on 28-06-1996.

15. Submission so made by the learned Counsel appears convincing. Though out of the wedlock with Jabin, the deceased Government servant had 3 children, it is undisputed that none of them is born after the cut-off date. Clause (E) of the G.R. dated 28-03-2001 denies the compassionate appointment to the family members of the employee having 3<sup>rd</sup> child born after 31-12-2001. In the instant case if the family of deceased Government servant and Jabin is concerned, all the three children of the said family have born before 2001. In the circumstances, the fact that the deceased Riyaz had a child born from his second wife Sabina on 02-08-2003 would not disentitle the applicant who forms part of the first family, from getting the compassionate appointment.

16. It has come on record that the second wife of the deceased Government servant as well as the children born out of the said wedlock have given their “no objection” in favour of the applicant for making a claim for appointment on compassionate ground. Zishan and Humera have also accorded their no objection for considering the case of the applicant for compassionate ground. Applicant has also sworn an undertaking that he will take care of all the family members of the deceased Government servant. Applicant is holding eligibility so far as the age and qualification is concerned.

17. In the circumstances, it appears to me that the respondents have committed an error in rejecting the request of the applicant for appointment on compassionate ground. The impugned order, therefore, cannot be sustained and deserves to be set aside. For the reasons discussed above, applicant is held entitled to be appointed on compassionate ground. Hence, the following order is passed:

*ORDER*

[i] Order dated 12-11-2021 issued by respondent no.1 is 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 making application 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.**