

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 158/2021(S.B.)

Amol S/o Vitthalrao Patil,
Aged : 35 years, Occupation : Nil,
R/o. Takali, Tah. Motala,
District – Buldhana- 443103.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai – 400032.
- 2) The Collector, Buldhana District,
Buldhana.
- 3) Assistant Superintendent
Engineering, Mechanical Board,
Nagpur, Vainganga Nagar, Ajani,
Nagpur- 440003.
- 4) Assistant Superintending
Engineer, Irrigation Project
Division, Buldhana,
Dist. Buldhana

Respondents

Shri R.D.Karode, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 05th July 2022.

JUDGMENT

Judgment is reserved on 30nd June, 2022.

Judgment is pronounced on 05th July, 2022.

Heard Shri R.D.Karode, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

Vitthal Patil, father of the applicant, died in harness on 22.12.2012 (Annexure A-1). He was holding the post of Veejtantri in the respondent department. The applicant submitted application dated 02.02.2013 (Annexure A-2) for appointment on compassionate ground. In seniority list his name was included. In 2014 it was at Sr.No.13 and in 2020 it was at Sr.No.9 (Annexure A-3). By letter dated 11.01.2021 (Annexure A-4) respondent no.2 communicated to the applicant that as per G.R. dated 28.03.2001 he had incurred disqualification & his name would be deleted from the seniority list if it was found that his youngest sister Vaishanavi was born after 31.12.2001. G.Rs. dated 28.03.2001 & 21.09.2017 (Annexure A-5 collectively) contain this prohibition-

(६) लहान कुटुंबाचे प्रमाणपत्र :-

दिनांक ३१ डिसेंबर २००९ नंतर तिसरे अपत्य झालेल्या कर्मचा-यांच्या कुटुंबियास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही. (शासन निर्णय दि.२८/०३/२००९)

On that basis the applicant was held to have incurred disqualification. The impugned communication (Annexure A-4) stated-

महाराष्ट्र शासन सामान्य प्रशासन शासन निर्णय क्र.अकंपा.१०००/प्र.क्र. २०/आठ दि.२८/०३/२००९ व महाराष्ट्र शासन सामान्य प्रशासन शासन निर्णय क्र. अकंपा.१२१७/प्र.क्र.१०२/आठ दि.२९ सप्टेंबर २०१७ नुसार नमुद केल्याप्रमाणे दि. ३१.१२.२००९ नंतर तिसरे अपत्य झालेल्या कर्मचा-यांच्या कुटुंबियास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही. तेव्हा कु.वैष्णवी वि पाटील (मुलगी) यांचे जन्मतारखेचा दाखला मुळ प्रतित त्वरीत सादर करण्यात यावा. उपरोक्त नमुद शासन निर्णयानुसार कु.वैष्णवी वि पाटील यांचा जन्म दिनांक ३१.१२. २००९ नंतर असल्यास आपले नाव प्रतिक्षा सुचितुन कमी करण्यात येईल याची नोंद घ्यावी.

Said prohibition is held to be unconstitutional by the Bombay High Court in judgment dated 03.07.2019 (Annexure A-6) delivered in W.P.No.7742/2014. Consequently, the impugned communication cannot be sustained. Hence, this application.

3. Reply of respondent no.3 contains *inter-alia* following averments-

Accordingly the answering respondent took the review as per the directions of respondent No.4 and informed the applicant that as per the bonafide

certificate filed along with the application for appointment on compassionate ground, it appears that the 5th child of deceased Vitthal Patil is born on 30.10.2002 and in pursuance of the GR dated 28.03.2001 and 21.09.2017 if the third child is born after 31.12.2001 the employee would not be eligible for compassionate appointment. Therefore you are required to submit the birth certificate of Ku.Vaishnvi Patil and if so found that she was born after cut off date, your name will be deleted from the waiting list. The answering respondent has acted as per guidelines issued by the State Government in Government Resolution which are binding on the applicant as well as respondents. The applicant has not challenged the validity of the GR and as such not illegality can be attributed on the respondents.

So far as judgment cited by the applicant in Writ Petition No.7742 of 2014 is based on altogether different set of facts and therefore the finding of this case is not applicable in the present case. The intention of inserting the provision of more than two children is with intention to control the population of India. The applicant is having five children, which demonstrates he was not concerned with the problem of population and after cut off date also given the birth to his fifth child. Therefore his disqualification for giving benefits for Government Schemes to him is not illegal.

4. Learned Advocate Shri R.D.Karode for the applicant relied on the judgment of Bombay High Court dated 03.07.2019 in Writ Petition No.7742/2014 (Annexure A-6). According to learned P.O., facts of W.P.No.7742/2014 were completely different and hence no reliance can be placed on this judgment.

In para 4 of this judgment it was observed –

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.

In para 7 it was held-

“Notwithstanding there being no prayer to quash the said condition as unconstitutional, we declare the same to be unconstitutional”.

5. In view of aforequoted ruling of the Bombay High Court the impugned communication (Annexure A-4) cannot be sustained. Hence, the order.

ORDER

The application is allowed in the following terms-

The impugned communication (Annexure A-4) is quashed and set aside. Case of the applicant for giving him an appointment on compassionate ground shall be considered on its own merits by disregarding the prohibition contained in G.R. dated 28.03.2002 since the same has been held to be unconstitutional. If it is found that the applicant fulfils eligibility criteria, his place in the common seniority list which he held prior to the impugned communication, shall be restored. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 05/07/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 05/07/2022.
and pronounced on
Uploaded on : 05/07/2022.