

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.1151 OF 2022**

**DISTRICT : SATARA**

Shri Prashant Shivaji Kadam, )  
Age 36 years, Worker, R/o Taloshi, Post Govare, )  
Taluka Patan, District Satara )..Applicant

Versus

1. The Executive Engineer, )  
Tembhu Electricity, Irrigation Department, )  
Oglewadi, Karad )
2. Superintending Engineer, )  
Erection Board, Kolhapur )
3. The State of Maharashtra, )  
Water Resources Department, )  
Maharashtra Krishna Valley Development )  
Corporation, Tembhu Electricity, )  
Irrigation Department, Oglewadi, Karad )
4. The Principal Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai )..Respondents

Shri A.S. Gaikwad – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)  
RESERVED ON : 17<sup>th</sup> August, 2023  
PRONOUNCED ON: 23<sup>rd</sup> August, 2023

### **J U D G M E N T**

1. Heard Shri A.S. Gaikwad, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. The Applicant has challenged communication dated 20.02.2020 rejecting his claim for compassionate appointment.
3. Shortly stated facts giving rise to O.A. are as under:-

The Applicant - Prashant S. Kadam is one of the son of deceased Government servant namely Shri Shivaji Pandurang Kadam. He was working as Security Guard on the establishment of Respondent No.3. Unfortunately, he died in harness on 16.01.2019. During his lifetime initially he married to Sunita and had two children from the wedlock namely Prashant (Applicant) and Sandeep. They were born on 02.03.1987 and 20.03.1989 respectively. His first wife Sunita died on 21.11.1998. After the death of Sunita, Government servant Shivaji Kadam performed marriage with one lady Manda on 28.05.2001 and had two children namely Deepali and Harshwardhan born from Manda. Deepali was born on 17.03.2004 and Harshwardhan was born on 29.12.2007. Here, it may be noted that subsequently Shivaji Kadam died on 16.01.2019. After the death of father, Applicant Prashant made an application for compassionate appointment on 25.02.2019. However, application came to be rejected by impugned communication dated 20.02.2020 on the ground

that deceased had third child born after cutoff date i.e. 31.12.2001. In the impugned order, the Respondents stated that deceased Government servant had 3rd child 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.

4. It is on the above background, the Applicant has challenged the communication dated 20.02.2020 rejecting his claim for compassionate appointment.

5. Shri A. S. Gaikwad, learned Advocate for the Applicant sought to assail the legality of communication dated 20.02.2020 inter-alia contending that since G.R. dated 28.03.2001 is held unconstitutional by the **Hon'ble Bombay High Court in Writ Petition No.7742 of 2014 Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik & Ors., decided on 03.07.2019**, the rejection of the claim for compassionate appointment is totally arbitrary and unsustainable in law. He, therefore, sought direction to the Respondents to consider the Applicant's claim for compassionate appointment on suitable post as per his qualification.

6. In **Kashabai's** case (cited supra), 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."*

7. Ld. Advocate for the applicant further relied on the following judgments:

(i) *O.A.No.907/2022 (Smt. Sonali P. Malusare V/s State of Maharashtra & Anr), decided by this Tribunal on 24.4.2023.*

(iii) *O.A. No.233/2023 (Shri Vikram H. Shelke V/s State of Maharashtra & Ors.), decided on 13.07.2023.*

8. Indeed, once the Hon'ble High Court in ***Kashabai Wagh's*** case held that G.R. dated 28.03.2001 is unconstitutional, the impugned communication dated 20.2.2020 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 ***Kashabai 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.

9. Per contra, Shri A. J. Chougule, learned Presenting Officer opposed the OA and stated that in terms of G.R. dated 28.03.2001 there is embargo for compassionate appointment where third child is born after cut-off date in the family and in the present case, there being birth of Dipali on 17.03.2004, the compassionate appointment cannot be claimed. Learned P.O. further submits that the issue of 3rd child born after cutoff date of 31.12.2001 is pending before the Division Bench of this Tribunal.

10. I refer to and rely on the order dated 3.7.2019 passed by the Hon'ble High Court in W.P. No.7742 of 2014 ***Ms. Kashabai S. Wagh*** (supra) wherein paras 6 to 8 reads as under:

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.*

11. Relying on the ratio laid down by the Hon'ble High Court in ***Kashabai S. Wagh*** (supra), I proceed to pass the following:

### **ORDER**

(A) The Original Application is allowed.

(B) Impugned communication dated 20.2.2020 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 *Kashabai Wagh* (supra) and his name be taken in the waiting list subject to fulfillment of other conditions in terms of scheme within two months from today and the decision shall be communicated to the applicant within two weeks thereafter.

(D) No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**23.8.2023**

Dictation taken by: S.G. Jawalkar.