

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 1240/2022(S.B.)**

Divya d/o Santosh Barbate,  
Aged about 24 years, Occ. Nil,  
R/o Shatabdi Square,  
Near Bullet Bar, Nagpur.

**Applicant.**

**Versus**

1. State of Maharashtra,  
Through its Secretary,  
Ministry of Forest,  
Mantralaya, Mumbai-32.
  
2. The Chief Conservator of Forest,  
(Head of Forest Force),  
Maharashtra State, Van Bhawan,  
Civil Lines, Ramgiri Road,  
Nagpur-440001.

**Respondents**

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Shri P.J.Mehta, Ld. Counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**  
**Dated: - 21<sup>st</sup> February, 2024.**

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## **JUDGMENT**

Heard Shri P.J.Mehta, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

Father of applicant Santosh Bhalchandra Barbate was working under the respondent no.2 as Peon. He died on 10.07.2006. On 29.10.2011, the mother of applicant was appointed on compassionate ground on Clause-IV post as "Peon". Unfortunately, the mother of applicant also died on 07.08.2015. Therefore, the applicant applied for appointment on compassionate ground. Her claim was rejected by the respondents as per order / communication dated 24.08.2021. The respondents have informed the applicant that as per the Government Resolution dated 28.03.2001, if any third child is born after 31.12.2001 then appointment on compassionate ground cannot be provided. The deceased Sangita Barbate was having fourth child. His date of birth is 04.09.2003 and therefore, as per G.R. dated 28.03.2001, the applicant was informed that she is not entitled for appointment on compassionate ground. Therefore, the applicant approached to this Tribunal for the following reliefs-

- 1) ***Quash and set aside the impugned order issued by the Respondent No.2 dated 28/08/2021 denying appointment on***

*compassionate grounds, for the factual and legal submissions made in the Application.*

*2) Be further pleased to direct the Respondent No. 2 to give the appointment to the Applicant on compassionate ground as per her entitlement, within specified period of time.*

*3) Any other relief as this Hon'ble Tribunal may deem fit and proper may kindly be granted in the interest of justice, equity and fairness.*

3. The O.A. is strongly opposed by the respondent no.2. It is submitted that as per the G.R. dated 28.03.2001, the applicant is not entitled for appointment on compassionate ground because the deceased employee was having fourth child. As per the said G.R., if the third child is borne on or after 31.12.2001 then appointment on compassionate ground cannot be provided.

4. During the course of submission, the learned counsel for the applicant has pointed out the Judgments in O.A.No.907/2022, 1151/2022 and 1326/2022 of M.A.T., Principal Bench at Mumbai. As per the submission of learned counsel for the applicant, all these O.As. were allowed relying on the Judgment of Hon'ble High Court in the case of **Ms.Kashibai Wagh Vs. Zilla Parishad, Nashik and Ors. decided on 03.07.2019**, and therefore, prayed to allow this O.A..

5. The learned P.O. has pointed out the Judgment in the case of **Musaddique Ahmed Khan Vs. State of Maharashtra and Others**

**reported in 2023 Volume (5) Mh.L.J.] 603.** He has submitted that the Hon'ble High Court has held that if the third child is born after 31.12.2001, then appointment on compassionate ground cannot be provided. The learned P.O. has pointed out para nos. 10 and 11 of the Judgment and submitted that the Judgment in the case of **Ms.Kashibai Wagh Vs. Zilla Parishad, Nashik and Ors.** was considered by the Hon'ble High Court.

6. There is no dispute that the Judgment in the case of **Musaddique Ahmed Khan Vs. State of Maharashtra and Others reported in 2023 Volume (5) Mh.L.J.] 603** is a recent Judgment while delivering the Judgment, the Hon'ble High Court has considered the Judgment in the case of **Ms.Kashibai Wagh Vs.Zilla Parishad, Nashik and Ors.** There is a detailed discussion in respect of the said Judgment in para nos.10 and 11 of the Judgment.

7. The G.R. of 31.12.2001 is very clear. As per the G.R. dated 31.12.2001, if any employee having third child born after 31.12.2001 then employment on compassionate ground cannot be provided. The Hon'ble High Court has specifically held in the case of **Musaddique Ahmed Khan Vs. State of Maharashtra and Others reported in 2023 Volume (5) Mh.L.J.] 603** as under-

***10. In Kashibai Wagh, the Coordinate Bench noticed that only one child was born to the petitioner from the wedlock with the***

***deceased employee. The deceased employee had two children from the wedlock. Having noticed the factual position and the embargo on granting compassionate appointment to the family of the deceased employee if third child is born after 31-12-2001, the Coordinate Bench observed thus:***

*"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 burnt of the 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 remarriage. 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."*

***11. With due respect to the observations extracted supra, we are not persuaded to hold that Kashibai Wagh is a binding precedent. The Coordinate Bench proceeded to declare the embargo unconstitutional, "notwithstanding there being no prayer to quash the said condition". It is clear that there was neither any structured plea questioning the constitutional validity of the condition and obviously no response from the Zilla Parishad, in the absence of such plea. Kashibai Wagh makes no reference to the submissions which were canvassed. Indeed, it is not discernible from the judgment whether any submission was canvassed at all on the constitutional validity of the condition concerned. While paragraph 7 supra is the conclusion of the Coordinate Bench, we have not come across any reason or rationale other than the observation that the intention behind the policy is to control the exploring population and not to prohibit remarriages. The relief appears to have been granted to the petitioner in Kashibai Wagh since she was the second wife of the deceased employee and as far***

*as she is concerned. She gave birth to only one child. In our considered view, the observations in Kashibai Wagh will have to be restricted to the facts of the case.*

8. In view of the G.R. dated 31.12.2001 and the Judgment of Hon'ble High Court in the case of *Musaddique Ahmed Khan Vs. State of Maharashtra and Others reported in 2023 Volume (5) Mh.L.J.] 603* the applicant is not entitled for appointment on compassionate ground because father / mother of applicant was having fourth child after 31.12.2001. Hence, rejection of the claim of the applicant on compassionate ground is perfectly legal and correct. Hence, the following order is passed-

**ORDER**

The O.A. is dismissed with no order as to costs.

**(Justice M.G.Giratkar)**  
**Vice Chairman**

**Dated - 21/02/2024**  
rsm.

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 Vice Chairman.  
Judgment signed on : 21/02/2024.  
Uploaded on : 26/02/2024.

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