

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.1102/2023 (D.B.)
WITH
CIVIL APPLICATION NO. 301/2024

Aman s/o Rajkishor Mishra,
Aged about 21 Years, Occupation-Nil,
R/o Dattapur, Vasahat Karmachari Colony,
Nagpur Road, Wardha District – Wardha.

... **APPLICANT**

// V E R S U S //

- 1] State of Maharashtra,
Through its Principal Secretary,
Home Department,
Manatralaya Mumbai - 32.
- 2] Superintendent of Police Wardha,
Near Ambedkar Statue, Civil Line,
Wardha, 442001.
- 3] State of Maharashtra,
Through its Secretary,
General Administration Department,
Hutatma Rajguru Chowk, Madam Kama Road,
Mantralaya, Mumbai 400032.

... **RESPONDENTS**

Shri S. Khandekar, Advocate for the Applicant.
Shri S.A. Sainis, learned P.O. for the Respondents.

Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman and
Hon'ble Shri Nitin Gadre,
Member (A).

Dated :- 09/12/2024.

J U D G M E N T

Heard Shri S. Khandekar, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under :-

The Father of applicant namely Rajkishor Mishra was working with the respondents as Assistant Sub Inspector. He died on 26/03/2022, leaving behind his wife i.e. mother of applicant and 2 sons and a daughter. The applicant is the son of deceased Rajkishor Mishra. The applicant had applied for appointment on compassionate ground, but his application is rejected by the Respondent Authority on the ground that applicant is third son of deceased Rajkishor Mishra. Therefore, in view of the Government Resolution dated 28/03/2001 he cannot be appointed. Hence, the applicant approached to this Tribunal for the following relief:-

“10.(A) quash and set aside the order dated 2/12/2022 (Annexure No.A-2) passed by the respondent no.2;

A-1 declare and hold that the cut-off date of 31/12/2001 as stipulated in Govt. Resolutions dated 28/3/2001 (Annexure A3) and 21/09/2017 (Annexure A-4) as arbitrary, irrational and illegal, and accordingly set aside the impugned order dated 02/12/2022 (Annexure A-2) passed by the respondent no. 2”

B. direct the respondents to consider the case of applicant for granting him appointment on compassionate basis against the post of Police Constable;

C. saddle the cost of instant Original Application on the respondents;

D. grant any other relief which this Hon'ble Court deems fit and proper in the premise."

3. The O.A. is strongly opposed by the respondents. It is submitted that, deceased Rajkishor Mishra was having three children. As per Government Resolution dated 28/03/2001, if the deceased employee is having third child after 31/12/2001, then compassionate appointment cannot be granted. Hence, Original Application is liable to be dismissed.

4. During the course of submission, learned counsel for the applicant Shri. Sachin Khandekar has submitted that the same issue was raised before the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2349/2023 in the case of ***Shri Amol Hiralal Telrandhe VS. The State of Maharashtra***, decided on 01/07/2024. Learned counsel for applicant has submitted that the Hon'ble Bombay High Court, Bench at Nagpur has declared that date in Clause-E of the Government Resolution dated 28/03/2001 be construed as 28/03/2002, i.e., one year from the date of

issuance of Government Resolution. As per the submission of learned counsel for applicant, applicant is born on 24/01/2002. Therefore, in view of the Judgment of the Hon'ble High Court, applicant is entitled to get appointment on compassionate ground.

5. Learned P.O. opposed the O.A. There is no dispute that, the G.R. dated 28/03/2001 was challenged before the Hon'ble Bombay High Court, Bench at Nagpur in W.P.No.2349/2023, decided on 01/07/2024. The Hon'ble High Court has observed in Para Nos.18, 19, 20 and 21 as under:-

“18. On perusal of Government Resolution dated 28/03/2001, it appears that protection is granted only for 9 months to the person to whom the third child is born ie. up to 31/12/2001. Now, question before us is that whether the period of 9 months is justified or sufficient period to serve the purpose of the legislation. The date of impugned Government Resolution is of 28/03/2001 specifying the cut-off date 31/12/2001 for the birth of third child i.e. a person would not be entitled to be appointed on compassionate ground, if the deceased employee have third child born beyond this cut-off date

19. Learned Counsel for Zilla Parishad in her reply submitted that we have acted as per Government Resolution. However, learned Counsel for Zilla Parishad submitted notes on gestation period wherein she relied on 'due date calculator of delivery available on Australian Government website and other website. A simple method to calculate the due date is to add 7 days to the date of the first day of woman's last period (menstrual cycle) then add 9 months.

20. *If we presume a first day of woman's menstrual cycle of last period before conception (pregnancy) as 28/03/2001 (i.e. the date of commencement of the Government Resolution) and calculate a due date as per above calculator in 2 steps then the result would be as follow (i.e. due date) (Based on 30 days average menstrual cycle of a woman) $28/03/2001 + 7 = 04/04/2001$ $04/04/2001 + 9 \text{ months} = 04/01/2002$.*

Therefore, even if minimum period of gestation as 9 months is taken into consideration, the due date is beyond the cut-off date.

The report also says that there are delivery, varies from woman to woman depending upon duration of varies menstrual cycle (as woman as varying normal average menstrual cycle from 21 days to 40 days) Accordingly, due date also calculated. Thus, considering the normal pregnancy calculator also, the cut-off date 31/12/2001 is unjustified and without any foundation or rational.

21. *In view of the Section 112 of the Evidence Act, if child is born within 280 days after the dissolution of marriage, it is conclusive proof that the child is legitimate child of that man. The further period, over and above this period of 9 months is to provide notice of introducing such disqualification. Moreover, by the time, woman get knowledge that she has been conceived fetus would might be of 4 to 6 weeks. Even if, she get knowledge of bar in view of the Government Resolution dated 28/03/2001, i.e. date of issuance of Government Resolution, she could not terminate the pregnancy unless there is medical contingency. In normal pregnancy, the termination of the pregnancy is not allowed by law. As such, the protection of one year is all these enactment is having some rational and medical loss."*

6. The Hon'ble High Court Bench at Nagpur in Writ Petition No.2349/2023 has passed the following order:-

“

ORDER

- i) *The petition is allowed.*
- ii) *It is declared that date in Clause- E of the Government Resolution dated 28/03/2001 be construed as 28/03/2002 i.e. one year from the issuance of Government Resolution.*
- iii) *The communication dated 21/03/2023 issued by respondent No.3, Zilla Parishad, Chandrapur, through its Chief Executive Officer, Chandrapur, is hereby quashed set aside.*
- iv) *It is declared that petitioner is entitled to be appointed on compassionate ground holding that the objection of third child is no more survive as third child was born within a period of one year of the issuance of notification.*
- v) *We hereby direct the respondent No.3- Zilla Parishad, Chandrapur, to issue an appointment order to the petitioner within a period of three months. By order dated 12/06/2023, this Court has already directed to keep one post of Junior Assistant vacant, same shall be continued till filling up the post by appointment of present petitioner.”*

7. In view of the order passed by the Hon’ble High Court in the above cited decision, the applicant is entitled to get employment on compassionate ground. Hence, we proceed to pass the following order :-

ORDER

- (i) O.A. is allowed.
- (ii) The impugned order passed by Respondent No.2 dated 02/12/2022 is hereby quashed and set aside.

- (iii) The respondents are directed to consider the case of applicant for appointment on compassionate ground.
- (iv) The respondents are directed to comply the order within a period of two months from the date of receipt of this order.
- (v) The C.A. is also disposed off.
- (vi) No order as to costs.

(Nitin Gadre)
Member (A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated:-09/12/2024.
PRM.

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman
& Member (A).

Judgment signed on : 09/12/2024