MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.978/2023(S.B.)

Chetan S/o Vitthalrao Narad,
Aged about 23 years, Occ. Nil,
R/o. : R.H.O. 712/1, Indira Gandhi Nagar,
Behind APMC Market, Hinganghat,
Tah. : Hinganghat, Dist. : Wardha.

Applicant.

Versus

1) The State of Maharashtra,
   through its Secretary,
   Home Ministry,
   Mantralaya, Mumbai-32.
2) The Commissioner of Police,
   Wardha, District Wardha.
3) Superintendent of Police,
   Office of Superintendent of Police,
   Wardha.

Respondents

Shri S.S.Sohoni, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 26th June, 2024.

JUDGMENT

Judgment is reserved on 24th June, 2024.

Judgment is pronounced on 26thJune, 2024.

Heard Shri S.S.Sohoni, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Durga was first wife of Vitthalrao Narad. He was employed in the respondent department. From this wedlock the applicant and Dhanashri were born. Durga died in the year 2003. Vitthalrao then performed marriage with Sunanda in the year 2004. From this wedlock Pawan was born on 27.05.2005. Vitthalrao died in harness on 26.08.2022. On 30.11.2022 the applicant, after obtaining "No objection" from his step mother, applied for appointment on compassionate ground. Respondent no.3 communicated rejection of said application by the impugned letter dated 02.05.2023 (Annexure-IV). The letter stated-

> **शासन निर्णय, सामान्य प्रशासन विभाग क्रमांक अकंपा-१२१७/प्र.क्र.१०२/का-८, दिनांक २१/९/२०१७ मधील अटी व शर्ती मधील नियम क्रमांक ६ लहान कुटुंबाचे प्रमाणपत्र मध्ये नमुद केल्याप्रमाणे दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचा-यांच्या कुटुंबियास अनुकंपा तत्वावर नियुक्तीसाठी पात्र समजले जाणार नाही. (शा.नि. दिनांक २८/०३/२००१)**
>
> Hence, this O.A..

3. Stand of respondent no.3 is that the impugned communication cannot be faulted since it is in consonance with G.R. dated 28.03.2001.

4. G.R. dated 21.09.2017 (at PP.23 to 53) contains compilation of various G.Rs. and Circulars issued by Government of Maharashtra on the subject of compassionate appointment. Para 6 of this G.R. states-

> **(६) लहान कुटुंबांचे प्रमाणपत्र :-**
>
> **दिनांक ३१ डिसेबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचा-यांच्या कुटुंबियास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही. (शासन निर्णय, दि. २८/३/२००१)**

5. In "***Kashabai Sheshrao Wagh Vs. the Zilla Parishad, Nashik and others***" (Judgment dated 03.07.2019 in Writ Petition No.7742 of 2014) the Hon'ble Bombay High Court (D.B.) held-

> ***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.***
>
> ***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.

In "***Bhagyashree Pradip Chopade Vs. MDC & Others***" (Judgment dated 08.03.2022 in Writ Petition No.6819 of 2021) Division Bench of the Hon'ble Bombay High Court, referring to G.R. dated 28.03.2001, held –

5. Government Resolution dated March 28, 2001 (hereafter "relevant GR") ordains that compassionate appointment cannot be claimed by a dependent of an employee dying-in-harness, who is otherwise qualified, if such employee has more than two children. In the present case, the deceased employee had 4 (four) children during his lifetime; but since his second and third daughters were twins, they were counted as 1 (one) child. Based on the terms of the relevant GR, the petitioner's application was rejected.

6. In order to wriggle out of the rigours of the relevant GR, two contentions have been raised by Mr.Udane, learned advocate appearing for the petitioner First is that the petitioner's brother, Atharva, has been given in adoption and, therefore, he cannot be counted as part of the family of the deceased employee. Secondly, the relevant GR being applicable only to employees of the State Government, its terms ipso facto are not applicable to the employees of MIDC; therefore, an illegality was committed in refusing the petitioner's prayer for compassionate appointment based on such GR.

7. We find both the contentions of Mr. Udane to be without substance.

8. The plea of adoption has been raised by the petitioner to paint the picture that the family of the deceased employee comprises of his widow and 3 (three) daughters of whom the last 2 (two) are twins. However, nothing turns on such adoption even if it were in accordance with the extant provisions of law. The underlying object of the relevant GR is to ensure that the employees who are bound thereby namely the Government employees, do not have more than 2 (two) children. If in case a third child is born to a Government employee, such an employee would not be entitled to certain benefits which includes an appointment on compassionate ground if such a situation were to arise. As is well-known, compassionate appointment being an exception to the rule of equal opportunity in the matter of public employment, it is well within the powers of the employer to attach reasonable conditions on the fulfilment whereof such benefit of compassionate appointment can be availed of. The condition that the relevant GR brought about being in the nature of a policy decision, which has led to rejection of the petitioner's application, is neither unreasonable nor violates any right of an employee. That apart, the disqualification for having an appointment on compassionate ground having occurred once the son, Atharva, was born to the deceased employee and the petitioner's mother, it is absolutely irrelevant for the purpose of the present case whether Atharva was given in adoption lawfully or whether giving Atharva in adoption could make the terms of the relevant GR inapplicable. We are of the view that the Government policy embodied in the relevant GR cannot be read in such a manner that it gives scheming parties the chance to defeat it by taking recourse to adoption. Suffice it to record, the contingency on the occurrence whereof appointment on compassionate ground could be

refused having set in with the birth of Atharva, we see no reason to hold the impugned rejection to be arbitrary or illegal.

9. Turning to the second contention, we have learnt from Ms.Gadre, learned advocate for the respondents that MIDC has no independent scheme or policy for appointment of dependents of employees dying-in-harness on compassionate ground and it is the policy of the Government, applicable to its employees, that is followed by MIDC. If Mr.Udane's submission were to be accepted that the relevant GR applies only to the employees of the State Government and not to employees of MIDC and, consequently, would also not apply to the petitioner, by applying the same logic it has to be held that the scheme or policy for compassionate appointment of the State Government does not apply to MIDC and, thus, MIDC is under no obligation to make appointment on compassionate ground. In such a case, the petitioner would have no semblance of a right to claim appointment on compassionate ground on the death of her father in view of the settled law that there can be no such appointment without a scheme/policy. Hence, this contention advanced by Mr. Udane is a self-defeating one and cannot be accepted; accordingly it is overruled.

10. Having considered the materials that have been furnished by way of additional compilation by Ms. Gadre, we are of the considered opinion that the petitioner while seeking compassionate appointment tried to deceive MIDC and its officers. Any attempt on the part of an aspirant for public employment, which is deceitful, has to be sternly dealt with. This is a fit and proper case where the writ petition ought to be dismissed with exemplary costs. However, considering the submission of Mr.Udane that the petitioner has disabled siblings, we refrain from imposing costs.

6. In "***Firdous Mohammad Yunus Patel Vs. State of Maharashtra and Others (2023) 2 Mah LJ 408 decided on 04.08.2022***

another Division Bench of the Hon'ble Bombay High Court held-

> ***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.***
>
> ***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 it 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.***
>
> ***The MAT was not asked to do very much more than to direct the State Government to exercise its power under Rule 6 of 2005 Rules and to consider Firdous's case. While addressing the question, it is true that the MAT needed to have regard to the applicable Rules***

and to the applicable Government Resolution of 28th March 2001. As we have noted, the 2005 Rules provide for an exception, as the proviso of Rule 3 quoted above shows. This is a situation where the employee does have more than three children on the date of commencement of the 2005 Rules. The disqualification would not attach to such a case. The disqualification is therefore not absolute but must be addressed regarding the facts and circumstances of each case.

Having said this, we are mindful of the concern expressed by Mr.Sawant, learned AGP for the Government. An order such as this, he says, and however compelling the circumstances, should not serve as an invariable precedent on facts because otherwise the floodgates will literally open, and the Government will be inundated with application after application for compassionate employment. We accept this. The operative portion of this order is limited to the very peculiar facts and circumstances of the case. Having said that, we believe our interpretation of clause (E) of the GR and of Rule 6 of the 2005 Rules, being a pronouncement on law, must continue as a binding decision. That interpretation cannot be restricted to the facts of this case.

7. The divergence of opinion in Kashabai *(supra)* and Bhagyashree *(supra)* was noticed by another Division Bench of the Bombay High Court while hearing Writ Petition No.9284/2022 (Sunita and Another Vs. State of Maharashtra). The issue then referred to the Full Bench was "whether Clause-E" (of G.R. dated 28.03.2001) can be said to have been declared unconstitutional for all purposes and in its entirety. This reference was pending before the Full Bench.

8. In the meantime, in ***Musaddique Ahmed Khan Vs. the State of Maharashtra and Others*** (Judgment dated 19.04.2023 in Writ Petition No.3227/2022) another Division Bench of the Hon'ble Bombay High Court held –

> ***7. In view of the submission that the issue is covered, it would be necessary to note the facts which fell for consideration in Bhagyashree Pradeep Chopade v. MIDC and others. Mr. Pradeep Chopade died in harness on 14-10-2013 leaving behind him his widow, three daughters and son. One of the daughters Bhagyashree applied for appointment on compassionate grounds without disclosing that she has a younger sibling Atharva. The employer-MIDC learnt from enquiries that Atharva was born on 18-7-2008, and relying on the Government Resolution dated 28-3-2001, Bhagyashree's application seeking appointment on compassionate ground came to be rejected.***
>
> ***8. The Coordinate Bench considered the Government Resolution dated 28-3-2001, which is the Government Resolution on the basis of which the petitioner herein is denied employment,***
>
> ***thus :-***
>
> > *"8. The plea of adoption has been raised by the petitioner to paint the picture that the family of the deceased employee comprises of his widow and 3 (three) daughters of whom the last 2 (two) are twins. However, nothing turns on such adoption even if it were in accordance with the extant provisions of law. The underlying object of the relevant GR is to ensure that the employees who are bound thereby, namely the Government employees, do not have more than 2 (two) children. If in case a third child is born to a Government employee, such an employee would not be entitled to certain benefits which includes an appointment on compassionate*

ground if such a situation were to arise. As is well-known, compassionate appointment being an exception to the rule of equal opportunity in the matter of public employment, it is well within the powers of the employer to attach reasonable conditions on the fulfilment whereof such benefit of compassionate appointment can be availed of. The condition that the relevant GR brought about being in the nature of a policy decision, which has led to rejection of the petitioner's application, is neither unreasonable nor violates any right of an employee. That apart, the disqualification for having an appointment on compassionate ground having occurred once the son Arharva was born to the deceased employee and the petitioner's mother, it is absolutely irrelevant for the purpose of the present case whether Atharva was given in adoption lawfully or whether giving Atharva in adoption could make the terms of the relevant GR inapplicable. We are of the view that the Government policy embodied in the relevant GR cannot be read in such a manner that it gives scheming parties the chance to defeat it by taking recourse to adoption. Suffice it to record, the contingency on the occurrence whereof appointment on compassionate ground could be refused having set in with the birth of Atharva, we see no reason to hold the impugned rejection to be arbitrary or illegal."

9. We have given due consideration to the submission canvassed by Mr.Raheel Mirza that Clause-E of the Government Resolution dated 28-3-2001 is unreasonable and arbitrary. Mr.Raheel Mirza would heavily rely on the judgment dated 03-7-2019 in Writ petition 7742/2014 (Ms.Kashabai Sheshrao Wagh v. Zilla Parishad, Nashik and others). Mr.Raheel Mirza would submit that Clause-E of the Government Resolution dated 28-3-2001 is already declared unconstitutional. Mr.Raheel Mirza would submit

that the decision of the Coordinate Bench in Kashabai Wagh is not noticed in Bhagyashree Chopade.

10. In Kashabai 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 brunt 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 Kashabai 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. Kashabai 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 exploding population and not to prohibit remarriages. The relief appears to have been granted to the petitioner in Kashabai 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 Kashabai Wagh will have to be restricted to the facts of the case.

12. We have no hesitation in aligning with the view which is articulated in Bhagyashree Chopade. In our considered view, Condition-E serves a salutary purpose and is indubitably a population control measure. The appointment on compassionate grounds is not a right muchless a vested right. Au contraire, such appointments are an exception to the rule that every recruitment to public post must satisfy the test of Articles 14 and 16 of the Constitution of India. Appointment on compassionate grounds must be considered only within the four corners of the policy prevailing. The State Government is well justified in incorporating a condition in the policy for appointment on compassionate grounds that the benefit shall not be available to an employee if the third child is born after the relevant date. We find nothing unreasonable or arbitrary in such condition.

9. By Judgment dated 27.07.2023 the reference in Sunita *(supra)* was answered by the Full Bench (***Sunita and Another Vs. the State of Maharashtra and Another (2023) 5 Mah LJ 40 (FB)***) as follows –

19. In view of the above, we are unable to accept the contention of the Petitioner that the declaration in Kashabai (supra) would have a binding effect in perpetuity. The said conclusion would, at best, be restricted only to the facts of the said case. For the reasons recorded hereinabove, in the light of the law crystallized by the Honourable

Supreme Court, the declaration in Kashabai (supra) that clause E of the Government Resolution dated 28.03.2001 is unconstitutional, shall not be deemed to have been so declared for other matters and would be restricted to the facts of the said case. We answer the issue addressed to us, accordingly.

10. As mentioned above, in Firdous *(supra)* the Bombay High Court held that their interpretation of Clause (E) of the G.R. and of Rule 6 of 2005 Rules, being a pronouncement on law shall continue as a binding precedent and that interpretation cannot be restricted to the facts of the case. This binding precedent covers the instant case. Admittedly, from the marriage between Vitthalrao and Durga only the applicant and one daughter by name Dhanashri are born. In Firdous it is held that 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. Thus, birth of third child of Vitthalrao from his second marriage with Sunandabai, on 27.05.2005 will not attract the prohibition stipulated in G.R. dated 28.03.2001. It needs to be stated that the Judgment in Firdous (supra) has attained finality on account of rejection of Special Leave Petition filed against it in the Hon'ble Supreme Court, by order dated 31.10.2022.

11. As a result of conclusion drawn as aforesaid the impugned order dated 02.05.2023 (Annexure-IV) cannot be sustained. It is

accordingly quashed and set aside. Respondent no.3 shall consider afresh application submitted by the applicant for his appointment on compassionate ground on its own merits and in the light of aforedrawn conclusion of this Tribunal. **The O.A. is allowed in these terms with no order as to costs.**

(M.A.Lovekar)
Member (J)

Dated – 26/06/2024
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 Member (J).
Judgment signed on and pronounced on	:	26/06/2024.
Uploaded on	:	27/06/2024.