

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 9302 OF 2015

Sangita W/o. Balaji Dawre ... Petitioner

VERSUS

The State of Maharashtra & Ors. ... Respondents

.....
Mr T. M. Venjane, Advocate for the petitioner
Mrs M. A. Deshpande, AGP for respondent/State
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 21ST MARCH, 2018.

ORDER:

1. Mr Venjane, the learned counsel for the petitioner submits that, the claim of the petitioner for appointment on compassionate ground is rejected erroneously. The reliance on Government Resolution dt. 28.03.2001 is misplaced. The learned counsel submits that, the Government Resolution dt. 28.03.2001 has been superseded and substituted by Government Resolution dt. 22.08.2005. The Government Resolution dt. 22.08.2005 does not mandate a condition that, if third child is begotten after 2001, then the candidate would be ineligible for appointment on compassionate ground. The learned counsel also relies on the Maharashtra Civil Services (Declaration of

Small Family) Rules, 2005 and submits that, for appointment in any Government Service, the cut off date prescribed for birth of third child is 28.03.2006. Even as per that the petitioner would be eligible as the third child has been begotten to the petitioner on 22.02.2006.

2. The learned Assistant Government Pleader Mrs M. A. Deshpande and Shri. V. V. Bhavthankar, learned counsel for respondent No. 2 submit that, Government Resolution dt. 28.03.2001 is not superseded.

3. We have considered the submissions. The appointment on compassionate ground is governed by the executive instructions issued by the Government from time to time. Government Resolution dt. 22.08.2005 though refers to the Government Resolution dt. 28.03.2001, however, it only modifies some of the terms and conditions. Para 3 of the Government Resolution dt. 22.08.2005 clearly states that, except the modification as stated above, the other conditions with regard to compassionate appointment will apply. The condition of the person not having a third child after 31.12.2001 as per Government Resolution dt. 28.03.2001 still subsists, the same is not superseded. As the appointment on compassionate ground is pursuant to executive instructions, it would not be necessary to rely on the provisions of the Maharashtra Civil Services (Declaration of

Small Family) Rules, 2005, as the same is applicable for service in the Government on the basis of nomination by competition.

4. Considering the above, no case for interference is made out. The writ petition is dismissed. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde