

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

WRIT PETITION NO. 6413 OF 2015

Mangalabai W/o Rajesh Pradhan
Age 32 years, Occu.Household,
R/o Jalna at present Sailu,
C/o Maruti Ingle,
Railway Quarter, Sailu, Tq.Sailu,
District:Parbhani,

PETITIONER

VERSUS

1. The State of Maharashtra
Through General Administration Dept.
Mantralaya, Mumbai-32
2. The Chief Executive Officer,
Zilla Parishad, Jalna

RESPONDENTS

Mrs M. A. Kulkarni, Advocate for the petitioner;
Mr V. S. Badakh, A.G.P. for respondent No.1;
Mr S. S. Tope, Advocate for respondent No.2

**CORAM : PRASANNA B. VARALE &
R.G. AVACHAT, JJ.**

DATED : 17th JULY, 2019

ORAL ORDER:

Heard Mrs. Kulkarni, appearing for the
petitioner, learned A.G.P. for respondent No.1 and

Mr Tope, learned Counsel for respondent No.2.

2. With consent of the parties, the petition is taken up for hearing/disposal.

3. The petitioner is challenging the communication/order dated 31st December, 2019, whereby the claim of the petitioner for grant of appointment on compassionate ground in place of her deceased husband was turned down.

4. The facts giving rise to the present petition are summarized as below:

Petitioner's husband Rajesh Sopanrao Pradhan was appointed on Class-IV post in Primary Health Center, at village Raje Takali, Tq.Ghansawangi, District Jalna. Within a short span of service, hardly a year, the husband of petitioner expired on 8th June, 2007.

5. The petitioner submitted an application for grant of appointment on compassionate ground and on receiving the application by office of respondent No.2 called upon the petitioner to submit certain documents. On 17th April, 2008, the petitioner submitted the documents to respondent No.2.

6. On perusal of these documents, it revealed that the petitioner is having three issues and her third issue was born after 31st December, 2001. Respondent No. 2 in communication dated 31st December, 2013 while making reference to the Government Resolution dated 28th March, 2001 informed the petitioner that as the third issue is begotten after cut off date i.e. 31st December, 2001, the petitioner would not be entitled to seek any benefit of appointment on compassionate ground.

7. The petitioner then submitted a representation

to respondent No.2 on 6th February, 2014. It was submitted in the representation that the petitioner though had a third child after the cut off date, same was given in adoption to one Mr. Sakharam Sonaji Rakshe by her husband, as such, there are only two children. On these submissions, the claim for appointment on compassionate ground was reiterated.

8. As there was no consideration of this representation, the petitioner approached this Court by filing the present writ petition on 29th January, 2015.

9. The entire thrust of the submission of Mrs. Kulkarni, learned Counsel appearing for the petitioner was on the ground that, reference is made in the communication to the Government Resolution dated 28th March, 2001 and this Government Resolution applies only to the Government employees. It was also the submission of Mrs. Kulkarni, learned Counsel that there is no such

communication to the authorities of Zilla Parishad. Mrs. Kulkarni, learned Counsel thus submitted before this Court that the order passed by respondent No.2 - Chief Executive Officer, Zilla Parishad, Jalna impugned in the petition is unsustainable.

10. Per contra, Mr Tope, learned Counsel appearing for respondent No.2 vehemently opposes the submissions of the Counsel for the petitioner and supports the order impugned in the petition. Mr Tope, learned Counsel firstly submitted that the petitioner is not disputing the fact of having third child after cut off date and the only ground raised before respondent No.2 in the representation was of having two issues. Mr. Tope, learned Counsel submitted that in the representation, the petitioner states that there are only two children to the petitioner, whereas, in the documents submitted before the authority, the petitioner admitted that she is having three children and third child was begotten after cut off

date i.e. 31st December, 2001. Mr. Tope, learned Counsel then submitted that the petitioner was also called upon for personal hearing on 18th March, 2014 on the aspect of submission of the petitioner that third child was given in adoption by way of adoption deed. Thus, respondent No.2 provided every opportunity to the petitioner including opportunity of hearing.

11. Mr Tope, learned Counsel by inviting our attention to the copy of Government Resolution dated 28th March, 2001, placed on record at Annexure R-1 along with affidavit-in-reply submitted that this policy of the State Government was not restricted only to the Government employees but every department was made aware of this policy. He then invited our attention to the reference made in the Government Resolution i.e. copy of the Government Resolution being provided to Chief Executive Officers of Zilla Parishad in the State of Maharashtra, all the departments in the State including

General Administration Department. Thus, it was the submission of Mr Tope, learned Counsel that the State Government which is overall controlling authority of all the departments working at various levels and at various places in the State of Maharashtra apprised the policy of the State Government in Government Resolution dated 28th March, 2001 in general and in particularly class (e).

12. Mr Tope, learned Counsel then invited our attention to the judgment of the Division Bench of this Court in the matter of **Suleman Abbas Chiragali Hydary vs Pramod Nandlal Yadav and others**, reported in **2008(1) Bom.C.R. 887** to submit that, while dealing with the issue of disqualification on the ground of third child under Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the Division Bench specifically dealt with the submission that the policy may not be extended to adopted child. Perusal of the

judgment of this Court in the matter of **Suleman Abbas Chiragali**, cited supra, shows that the Division Bench referred to the Apex Court judgment in the matter of **Javed Vs. State of Haryana**, reported in **2003(8) S.C.C. 369**.

13. It would be useful for our purposes to refer to the observations made in paragraph-5 in the above referred judgment, which read thus:

"5.In this judgment persons having more than two living children are held to be clearly distinguishable from persons having not more than two living children. The disqualification enacted by the provision was to achieve the objective by creating a disincentive. The classification has been held not to suffer from any arbitrariness. Hon'ble Apex Court further held that the number of children, viz., two is based on legislative wisdom and it could have been more or less. The number

is declared to be a matter of policy decision which is not open to judicial scrutiny. Section 175(1)(q) disqualifying person with more than 2 children is found not violating any fundamental right or unreasonable as right to contest an election is neither a fundamental right nor a common law right but a right conferred by a Statute and obviously subject to qualifications and disqualifications enacted by legislation. For present LPA following fundings about giving such a child in adoption in paragraph 62 are important.

62. It was submitted that the enactment has created serious problems in the rural population as couples desirous of contesting an election but having living children more than two, are feeling compelled to give them in adoption. Subject to what has already been stated herein above, we may add that disqualification is attracted no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the

child away in adoption, the disqualification does not come to an end. While interpreting the scope of disqualification we shall have to keep in view the evil sought to be cured and purpose sought to be achieved by the enactment. If the person sought to be disqualified is responsible for or has given birth to children more than two who are living then merely because one or more of them are given in adoption the disqualification is not wiped out."

14. Mr Tope, learned Counsel then submitted that the object of providing appointment on compassionate ground is to give a solace to the family suffering from the financial distress and hardship due to the death of an earning member and this object can be achieved only if a person in need of such an appointment approaches within a reasonable time, so as to come out of the situation of the financial distress. A delay in approaching the authority would only lead to an assumption that the person is not genuinely interested to seek an

appointment to meet financial constrains.

15. In support of this submission, Mr Tope, learned Counsel invited out attention to the Apex Court judgment in the matter of **MGB Gramin Bank Vs. Chakrawarti Singh** reported in **2013 A.I.R. (SC) 3365**. It would be useful for our purposes to refer to the observations made in paragraph - 5 in the above referred judgment of the Apex Court.

"5. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family

of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.

The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds.

Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

16. Mr. Tope, learned Counsel also relied on the judgment of the Apex Court in the matter of **Umesh Kumar Nagpal Vs. State of Haryana**, reported in **1994 (4) SCC 138**. Paragraph-6 of the above referred judgment reads

thus :

"6. FOR these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

17. The submission of Mr Tope, learned Counsel was on the factual backdrop that the husband of the petitioner expired on 8th June, 2007 and the petitioner though submitted the application sometime in the year 2008, was waiting for considerable length of period i.e. till 2012 and had not approached the authority within a span of these 4-5 years and approached this Court only

after communication dated 31st December, 2013, that too challenging this communication after two years i.e. in the year 2015.

18. Considering above referred facts, we find considerable merit in the submissions of Mr Tope, learned Counsel appearing for respondent No.2. We see no reason to show any indulgence in the order passed by respondent No.2 impugned in the present petition. The petition, thus, being meritless deserves to be dismissed and is accordingly dismissed.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]