

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5172 OF 2022

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| <ol style="list-style-type: none">1. Man S/o Vikas Meshram, aged about 22 years, Occupation : Student,2. Siddharth s/o Vikas Meshram, aged about 23 years, Occupation : Student,3. Abhinil s/o Vikas Meshram, aged about 19 years, Occupation : Student,4. Smt.Jyoti wd/o Vikas Meshram, aged about 53 years, Occupation : household, <p style="margin-left: 40px;">Petitioner No.1 to 4 resident of Plot No.160, Old Bagadganj, Near Budhha Vihar, Tehasil and District Nagpur.</p> <ol style="list-style-type: none">5. Ashwin s/o Vikas Meshram, aged about 29 years, Occupation : Nil, R/o 57, Suyog Nagar, Ring Road, Nagpur. | Petitioners |
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-Versus-

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| <ol style="list-style-type: none">1. State of Maharashtra, through its Secretary, General Administration Department, Mantralaya, Mumbai.2. Municipal Commissioner, Nagpur Municipal Corporation, Civil Lines, Nagpur. | Respondents |
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Mr. R. S. Charpe, counsel for the petitioners.
Mr. M.K.Pathan, AGP for respondent No.1.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 7TH JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

The petition challenges Clause-E, para-2 of Government Resolution dated 28/03/2001 as unreasonable, arbitrary and violation of Article 14 of the Constitution of India and direction to appoint petitioner No.1 on compassionate ground.

2. The father of petitioner Nos.1 to 3 and 5 and husband of petitioner No.4, Vikas Meshram was working as a cleaner in Fire Brigade Department of respondent No.2. He died in harness on 10/07/2016. The petitioner Nos.1 to 4, the dependent of the deceased, had applied for appointment on compassionate ground of petitioner No.3. The petitioner No.5, who is also a son of deceased Vikas Meshram from his first wife had also applied for appointment on compassionate ground. Due to rival claims by the petitioner Nos.1 to 4 on

one part and petitioner No.5 on other part, the dispute arose. However, by compromise dated 26/10/2020 between petitioner Nos.1 to 4 and petitioner No.5, the petitioner No.1 was allowed to apply for compassionate ground. The respondent No.2 vide communication dated 05/07/2021 rejected the claim for compassionate appointment on the ground that the deceased employees had got third child after 31/12/2001 and therefore, the petitioner 1 is not eligible for appointment on compassionate ground. Feeling aggrieved by the rejection of the claim on Clause-E, para-2 of the Government Resolution dated 28/03/2001, the present petition came to be filed.

3. We have heard the learned counsel for the respective parties.

4. Indisputably, the deceased Vikas Meshram died leaving behind petitioner Nos.1 to 3-sons and petitioner No.4-widow as well as the petitioner No.5-son from first wife. There is also no dispute that the petitioner No.3 was born as a fourth child of deceased Vikas Meshram after 31/12/2001.

5. We have given due consideration to the submissions canvassed by the learned counsel for the petitioner that Clause-E, para-2 of the Government Resolution dated 28/03/2001 is unreasonable and arbitrary. The learned AGP appearing for respondent No.1 brought to our notice the decisions dated 08/03/2022 of Coordinate Bench in *Writ Petition No.3227 of 2022 (Musadique Ahmad Khan s/o Muqaddar Khan v. The State of Maharashtra, through its Secetary and others)*. In these decisions, the validity of Clause-E, para-2 of the Government Resolution dated 28/03/2001 has been considered. It would be necessary to reproduce the relevant portion of the decision in *Writ Petition No.3227 of 2022 (Musadique Ahmad Khan s/o Muqaddar Khan v. The State of Maharashtra, through its Secetary and others)*, which reads as under -

“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.”

6. Since, the Coordinate Bench in the case of *Bhagyashree Pradeep Chopade* and *Musaddique Ahmad Khan s/o Muqaddar Khan* (supra) has already considered the issue and upheld the validity of Clause-E, para 2 of Government Resolution dated 28/03/2021, there is no reason for us to take a different view and we have no hesitation in agreeing with the view which is articulated in the decisions supra. Ultimately, it is the policy decision of the State Government. The appointment on compassionate ground is not a vested right, but is an exception to the rule that every recruitment to the public post must satisfy the test of Articles 14 and 16 of the Constitution of India. The State Government is justified in incorporating the condition in the policy for

appointment on compassionate ground that benefit shall not be available to the dependent of deceased employee to whom third child was born after the relevant date. We find nothing unreasonable or arbitrary in such condition.

7. In view of above, we do not find any merit in the argument of the learned counsel for the petitioners, Therefore, the petition fails and the same is dismissed.

8. Rule stands discharged. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)