



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3287 OF 2024
WITH
CIVIL APPLICATION NO. 7339 OF 2024

1. The State of Maharashtra, ... **Petitioners**
Through its Secretary,
Home Department, Mantralaya,
Mumbai 32
2. The Special Inspector General of Police,
Nanded Range, Nanded
3. The Superintendent of Police,
Latur, Dist. Latur

VERSUS

Ramhari s/o Govind Sontakke
Age 38 years, Occu: Labour,
R/o Khadgaon Road, Latur,
Tq. & Dist. Latur

... **Respondent**

Mr. M. M. Nerlikar, Addl. GP for the Petitioners
Mr. Kiran Salunke h/for Mr. M. P. Kale, Advocate for the Respondent

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRADE, JJ.
RESERVED ON : 09.08.2024
PRONOUNCED ON : 21.08.2024

JUDGMENT (Per: Y. G. Khobragade, J.)

1. Rule. Rule made returnable forthwith. With the consent of
both the sides, heard finally at the stage of admission.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioners - Employers have put forth prayer clause-B as under:

“B) Quashed and set aside the impugned judgment and order dated 15.11.2022 passed by learned Member of Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad, in Original Application No.580 / 2022 and accordingly the Original Application No.580 / 2022 filed by the respondent may kindly be dismissed.

3. Petitioner Nos. 1 to 3 are original Non-applicant Nos. 1 to 3 and the Respondent is the Original Applicant in O. A. No. 580 of 2022. The facts giving rise to this Petition are that the Respondent instituted O. A. No. 580 of 2022 before the learned Maharashtra Administrative Tribunal, Bench At Aurangabad and alleged that his father was initially appointed as a Police Constable with Petitioner No.3- Superintendent of Police, Latur and subsequently he was promoted to the post of Police Naik. On 11.04.2017, his father died while in service. At the time of death, his father was temporarily promoted to the post of PSI. After death of his father, he submitted an application dated 31.08.2017 with Petitioner No.3 and prayed for grant of appointment on compassionate ground. However, on 24.11.2017, Petitioner No.3 issued a communication informing the Respondent about dis-entitlement for

appointment on compassionate basis as per circular dated 09.09.2011 because his father was Group 'B' employee. The Respondent had assailed said order before the learned Tribunal in Original Application No. 672 of 2018, however, said Original Application was dismissed by the Tribunal vide order dated 25.09.2019. Being aggrieved by said order, the Respondent had filed Writ Petition No. 13166 of 2019 before this Court. On 25.10.2021, the Co-ordinate Bench of this Court allowed said Writ Petition with observation that the Petitioners should consider the Respondent's application for appointment on compassionate ground on its own merit and shall not reject on the ground on which it was earlier rejected. However, on 22.03.2022, Petitioner No.3 again turned down Respondent's request because of the Respondent's father (deceased employee) having more than 2 children and the third child was born after the cut-off date 31st December, 2001 as per G.R. dated 28.03.2021.

4. Therefore, Respondent again filed O. A. No. 580 of 2022 before the learned Tribunal. After hearing both the sides, on 15.11.2022, the learned Tribunal accepted the plea of the Applicant and passed the impugned order holding that as per view taken by Division Bench of this Court the case of ***Ms. Kashabai Seshrao Wagh Vs. The Zilla Parishad, Nashik & others*** decided on 03.07.2019, the condition as

about 3rd child on the basis of which the request of the Respondent has been rejected by the Petitioners, has been held unconstitutional and consequently present Petitioner No. 3 is directed to consider and give compassionate appointment to the Respondent/original Applicant in accordance with law. Being dissatisfied with the said order, the Original Non-applicants/Petitioners have filed present Petition.

5. Mr. Nerlikar, the learned Addl. GP canvassed in vehemence that the State Government issued a G.R. dated 28.03.2001 for providing appointment on compassionate basis to small family consisting wife and two children. The Respondent's father expired on 11.04.2017 while working as a Police Sub Inspector with Petitioner No.3. Earlier, on 06.07.2017, the Respondent's application was rejected in tune with circular dated 09.09.2011 issued by the Government. However, as per order dated 25.10.2021, passed by Division Bench of this Court in Writ Petition No. 13166 of 2019, the claim of the Respondent No.3 was again examined and rejected on 22.03.2022 in tune with G.R. dated 28.03.2001 on the ground that the Respondent's father was having three children after the cut-off date 31.12.2001. To buttress these submissions the learned AGP relied on case of ***Sunita Dinesh Gaikwad***

and another Vs. The State of Maharashtra and another, 2023 (5) Mh. L.J.40.

6. Per contra, the learned counsel appearing for the Respondent/original applicant canvassed that the father of the Respondent died on 11.04.2017 while in service, therefore, the Respondent is entitled for appointment on compassionate grounds as per GR dated 21.09.2017 issued in reference to GR dated 26.10.1994 and as per view taken by this Court in *Ms. Kashabai Seshrao Wagh* decided on 03.07.2019 (Supra). Therefore, the impugned Judgment/order passed by the learned Tribunal is not faulted, hence, prayed for dismissal of the Petition.

7. It is not in dispute that, late Shri Govind Sontakke, the Respondent's father, died on 11.04.2017, while in service. After death of his father, the Respondent submitted an application on 31.08.2017 and prayed for grant of appointment on compassionate grounds. As per GR 28.03.2001, the State Government framed a scheme for small family of the employee and if the deceased employee is having more than two children, born after the cut-off date, the survivor would be dis-entitled for appointment on compassionate grounds. On 1st July, 2005, the State Government issued a circular and provided specific format for submission of small family declaration.

8. It is apparent on face of record that on 22.03.2022, Petitioner No.3 passed an order holding that the deceased employee Shri Govind Sontakke had a first wife Smt.Vimal (Nirmala) who died on 28.01.1997 and subsequently, the deceased employee performed second marriage with Smt. Sunita on 30.05.2002. Present Respondent Ramhari Govind Sontakke was born from first wife of deceased employee Govind on 01.05.1984. The other two children (i) Gangadhar Govind Sontakke and (ii) Ms. Aarti Govind Sontakke are born on 09.03.2003 and 30.06.2006 respectively out of second marriage of the deceased employee. On 12.07.2017, Smt. Sunita wd/o Govind Sontakke submitted an application in Form No. 12 under Rule 136 (3) (a), (b) and 144 (2) (b) (i) (c) (iii) and (d) (i) of the Maharashtra Civil Services (Pension) Rules, 1982 and provided information regarding birth dates of above named children of the deceased employee. Therefore, as per Clause-E of GR dated 28.03.2001, the Respondent is dis-entitled for appointment on compassionate grounds because the third child is born to the deceased employee after the cut-off date 31st December, 2001.

9. Needless to say that on 15.11.2022, the learned Tribunal passed the impugned judgment/order holding that the Respondent is the only son of the first wife of deceased employee, therefore, the ratio laid down in the case of **Ms. Kashabai Sheshrao Wagh (supra)** would squarely be applicable to the case of the Respondent. However, in case

of *Sunita Dinesh Gaikwad -Vs- State of Maharashtra, 2023 (5) Mh. L.J. 40*, the Full Bench of this Court concluded that the view taken in *Kashabai Sheshrao Wagh (supra)* cannot be endorsed as a correct view and the view taken in *Bhagyashre Pradeep Chopde (supra)* is the correct view. The Full Bench of this Court further held that the GR dated 28.03.2001 prohibits appointment on compassionate ground, if the deceased employee is having more than 2 children and third child is born after 31.12.2001.

10. The impugned judgment and order passed by the learned Tribunal has taken into consideration the view of **Kashabai Sheshrao Wagh (supra)**, which is not endorsed by the Full Bench in case of **Sunita Dinesh Gaikwad (supra)**. As such the deceased employee Govind Sontakke, father of the Respondent having three children and third child born on 30.06.2006 i.e. after the cut of date 31.12.2001. The Respondent has not countered the fact of two wives of his father and having blessed with three children. Therefore, taking into consideration the law laid down in case of *Sunita Dinesh Gaikwad (supra)*, the Respondent is dis-entitled for the appointment on compassionate basis. Therefore, the impugned order 15.11.2022 passed by the learned Tribunal in Original Application No. 580 of 2022 is not sustainable in the eyes of law, hence, it needs to be quashed and set aside.

11. In view of the above discussion **the Writ Petition is allowed.** Rule is made absolute in terms of prayer Clause “B” quoted above in Para 2. The impugned judgment and order dated 15.12.2002 passed by the learned Tribunal in Original Application No. 580 of 2022 is hereby quashed and set aside.

12. The **Civil Application No. 7339 of 2024 also stands disposed off.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan