



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13301 OF 2024

Chandrasangh Sahebrao Khare
Age : 27 years, Occu. : Labour,
R/o. House No. 164, Padmanam Nagar,
Sakri Road, Dhule, Dist. Dhule

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai

2] The Commissioner of Police,
Nashik, Dist. : Nashik

3] Superintendent of Police,
Nashik Rural, Nashik,
Dist. : Nashik

.. Respondents

...
Advocate for petitioner : Mr. Mahesh K. Bhosle
Addl. GP for the respondent – State : Mr. M.M. Nerlikar
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 9 DECEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate for the petitioner and the learned
A.G.P.

2. The petitioner is seeking appointment on compassionate
ground with the respondent no. 3 in place of his deceased father who
was serving as Police Peon who died on 09-05-2020, in harness.

3. The petitioner is challenging the order dated 09-10-2021 whereby his request has been rejected by the respondent no. 3 on the ground that the deceased had two wives through whom three children were born and one of them was born on 09-05-2003, and by referring to the government resolutions dated 21-09-2017, the third child having been born after 31-12-2001, he was not entitled to seek any appointment.

4. Learned advocate for the petitioner would submit that the basic circular pursuant to which the government resolution dated 21-09-2017 was issued, was of the year 2005, whereas the petitioner's father was appointed in the year 1991. By this circular dated 28-03-2005, for the first time, it was decided that no one would be given appointment in the government having more than two children and definition of 'small family' was introduced. Since the petitioner's father was appointed in the year 1991, neither of these government resolutions / circular could have been applied retrospectively. He would also refer to the decision of a division bench in the matter of ***Kashabai Sheshrao Wagh V. Zilla Parishad and others; 2019 SCC OnLine Bom 13294.***

5. Learned AGP Mr. Nerlikar would submit that the petitioner's father had died in the year 2020 and had never raised any objection even if it is assumed that the service conditions were altered to his disadvantage while being in the employment. He would submit that it is a right of an employee which is regulated by the aforementioned government resolutions / circular. Being a matter of compassionate appointment, the petitioner does not have any right to put up a challenge to the government resolutions / circulars. His request has been considered on its own merits. No fault can be found with the order when admittedly, the deceased had the third child born after the cut-off date i.e. 31-12-2001.

6. Mr. Nerlikar would further submit that ***Kashabai*** (supra) cannot be followed as a precedent in the light of the Full Bench decision in the matter of ***Sunita w/o Dinesh Gaikwad and another V. State of Maharashtra and another*** (writ petition no. 9284 of 2022 decided on 27-07-2023).

7. We have considered the rival submissions and perused the papers.

8. Suffice for the purpose, at the outset, to observe that ***Kashabai*** (supra) ought not to have been cited in the wake of the observations of the Full Bench decision in ***Sunita Gaikwad*** (supra),

which expressly declares that the decision in ***Kashabai*** would be restricted to that case and the law declared therein would not apply to the other matters.

9. Be that as it may, the provision for compassionate appointment under any scheme of the government, would be an incident of an employment. Meaning thereby that it would regulate and apply to the employment of the government servant, for, a right to seek compassionate appointment by dependents of the deceased government employee, would accrue and arise only after his death.

10. Assuming for the sake of arguments that government resolutions / circular dated 28-03-2005, 31-12-2001 and 21-09-2017 adversely affected the service conditions of the petitioner's deceased father during his lifetime, he had never raised any objection or taken exception to any of these government resolutions / circular. In our considered view, when the individual government employee does not seek to take exception to such subsequent government resolutions / circular, affecting his service conditions adversely, the persons like the petitioner who are seeking compassionate appointment, cannot be allowed to rake up this issue about right of the deceased to object to such change in the service conditions to his disadvantage.

11. Precisely for this reason, in our considered view, the petitioner has no *locus standi* and cannot seek to take exception to clause no. 6 of Annexure 'A' to the government resolution dated 21-09-2017, whereby, pursuant to the government resolution dated 28-03-2001, it was decided that the dependents of the deceased government employee having third child born after 31-12-2001, cannot be appointed on compassionate ground.

12. There is no merit in the petition and it is dismissed.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/