



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

WRIT PETITION NO. 15727 OF 2023

Shubham s/o Sanjay More
Age: 24 yrs., Occu.: Nil,
R/o. Aaditya Nagar, Patnadevi Road,
Chalisingaon, Tal. Chalisingaon,
Dist.: Jalgaon

...Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary,
Rural Development Department and
Panchayat Raj Department,
Mantralaya, Mumbai – 32
2. The Chief Executive Officer,
Zilla Parishad, jalgaon
3. Block Development Officer,
Panchayat Samiti, Chalisingaon,
Dist.: Jalgaon

... Respondents

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Mr. D. D. Pande, Advocate for Petitioner
Mr. P. K. Lakhotiya, AGP for Respondent No.1
Mr. V. V. Gujar, Advocate for Respondent Nos. 2 and 3

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 03.01.2024

ORAL JUDGMENT (Per – Ravindra V. Ghuge, J.):-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The Petitioner seeks appointment on compassionate basis in place of his father, who was a Village Development Officer at Panchayat Samiti, Chalisgaon and passed away on 20.09.2017. The legal impediment is that the deceased has three children and the third child is born on 10.09.2002, after the cut-off date 31.12.2001 prescribed by the Government Resolution dated 28.03.2001. The Petitioner has an elder brother and a younger sister. The mother of the Petitioner has received Rs.5,52,720/- (Rupees Five Lakh Fifty Two Thousand Seven Hundred Twenty), towards the service benefits on account of her husband's demise. She is receiving Rs.9870/- per month as pension. The father of the Petitioner has three children, namely Ravindra Sanjay More, Shubham Sanjay More (Petitioner) and Anushka Sanjay More.

3. The learned Advocate for the Petitioner places reliance upon a notification dated 28.03.2005 issued by the Deputy Secretary,

State of Maharashtra, to support the contention that the said notification requires a declaration of small family as one of the essential qualifications for recruitment on posts in group A, B, C and D in the Government Department. It prescribes the cut-off date and children more than two, born after this date i.e. 28.03.2005, would alone disqualify the Petitioner. However, as the third child of the deceased born on 10.09.2002, the bar on having more than two children prior to the date of the notification, would not be an impediment for the Petitioner to seek compassionate appointment.

4. We have considered the notification threadbare and it pertains only to recruitment in the Government Department for posts falling in Groups A to D. It does not apply to cases seeking compassionate appointment.

5. The State of Maharashtra issued a Government Resolution (G.R.) dated 28.03.2001, specifically pertaining to appointment on compassionate basis. Clause-E categorically lays down that the third child born after 31.12.2001 would dis-entitle the legal representative from seeking compassionate appointment. It does not call for any debate that this provision was known to the

deceased father of the Petitioner who has passed away on 20.09.2017. The third child is born on 10.09.2002. The notification dated 28.03.2005, is neither in conflict with the G.R. dated 28.03.2001, nor can it overbear the G.R. It is a notification which specifically pertains to new recruitments on posts falling in Groups A to D in the Government service and does not apply to the process of making appointments on compassionate basis.

6. The Full Bench of this Court in *Sunita Dinesh Gaikwad and another Vs. State of Maharashtra and another, 2023 (5) Mh.L.J. 40*, lays down the law that the view taken by this Court in *Kashabai Sheshrao Wagh Vs. Zilla Parishad, Nashik and others – 2019 Mh.L.J. OnLine 220*, does not lay down the law that clause E of the G.R. dated 28.03.2001 is set aside or is arbitrary. The Full Bench has concluded that the said order passed in *Kashabai* is restricted only to the facts of that case and the view taken by this Court in *Bhagyashree Pradip Chopade Vs. MIDC and others, 2022 Mh.L.J. OnLine 89*, is the correct view which upholds Clause E of the said G.R.

7. So also, a coordinate Bench of this Court has passed an order on 28.09.2022 in Writ Petition No.82 of 2017 (Pushpabai Vitthal Warkad Vs. the State of Maharashtra and another) concluding that the G.R. dated 22.08.2005 only deals with certain provisions effected vide the said resolution and in no manner whatsoever does it delete Clause E of the G.R. dated 28.03.2001.

8. In view of the above, we conclude that the Petitioner is not entitled to compassionate appointment on account of the third child having been born after the cut-off date.

9. **This Petition is devoid of merit and stands dismissed.**
Rule is discharged.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS