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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15433 OF 2023

The State of Maharashtra & Ors.

.. Petitioners

Versus

Vikram Hona Shelke

.. Respondent

Mr.B.V. Samant, Addl.G.P a/w Mr.M.M. Pable, AGP a/w Ms.Kavita N.Solunke, AGP for the petitioners-State.

Mr.Bhushan A. Bandiwadekar i/by Ms.Gayatri G. Bandiwadekar for the respondent.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE : 7th February 2024

PC:-

. Rule. Rule made returnable forthwith. Shri Bandiwadekar waives service of notice for the respondent.

2. The challenge raised in this writ petition is to the judgment dated 13th July 2023 passed by the learned Member, Maharashtra Administrative Tribunal in the Original Application preferred by the respondent.

3. By the said judgment, the communications dated 2nd April 2019 and 27th April 2019 issued by the petitioners rejecting the claim as made for appointment on compassionate basis have been set aside.

4. The respondent's father was employed with the Government Printing Press as Class-IV employee. During his lifetime, he was married to one Savitri and had two children from the said wedlock. The said Savitri expired on 5th November 2007. Thereafter the respondent's father performed second marriage on 4th February 2008 with one Kalpana. A son was born from the second wedlock on 23rd March 2009. After the respondent's father expired on 25th June 2015, the present respondent who was born from the first wedlock moved an application seeking appointment on compassionate basis on 20th July 2015. The said application has been rejected on the ground that the respondent's father had more than two children.

5. The Maharashtra Administrative Tribunal has observed that the Government Resolution dated 28th March 2001 which was basis for denying appointment had been held unconstitutional by a co-ordinate Bench in case of *Ms.Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and Ors.* decided on 3rd July 2019 in Writ Petition No.7742 of 2014. On that premise, it was held that the respondent could not be denied his claim for compassionate appointment.

6. The learned Additional Government Pleader for the petitioners submits that shortly after the Tribunal decided the Original

Application, the Full Bench of this Court on 27th July 2023 in case of ***Sunita Dinesh Gaikwad Vs. The State of Maharashtra*** Writ Petition No.9284 of 2022 considered a reference in the context of the aforesaid Government Resolution dated 28th March 2001. It was held the declaration as granted in case of *Ms.Kashabai Sheshrao Wagh (supra)* that clause (e) of the said resolution was unconstitutional was restricted to the facts of that case and was not applicable for other matters. He therefore, submits that the decision of the Tribunal is liable to be set aside on this count.

7. On the other hand, learned counsel for the respondent supports the order passed by the Tribunal and submits that since the respondent was the first child of his father, he could not have been denied the compassionate appointment.

8. We find that the Tribunal has based its decision principally on the adjudication in case of *Ms.Kashabai Sheshrao Wagh (supra)* by holding that as clause (e) of the Government Resolution dated 28th March 2001 had been declared as unconstitutional, the respondent's claim was liable to be allowed.

9. In view of the decision of the Full Bench in case of *Sunita Dinesh Gaikwad (supra)*, we are of the view that the Original

Application requires reconsideration by the Tribunal. The Full Bench held that the Government Resolution dated 28th March 2001 and clause (e) thereof being declared as unconstitutional was restricted to the case of *Ms.Kashabai Sheshrao Wagh (supra)*. It would therefore be necessary for the Tribunal to consider the effect of this adjudication and thereafter decide the said Original Application afresh on merits.

10. For the aforesaid reasons, the judgment of the Tribunal dated 13th July 2023 as passed in Original Application No.233 of 2023 is set aside. The proceedings are restored before the Tribunal for being decided afresh in accordance with law. All points raised by either parties are kept open to be raised before the Tribunal. In the facts of the case, the proceedings before the Tribunal shall be expedited.

11. The writ petition is disposed of in aforesaid terms. Rule is made absolute. No order as to costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.