

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10765 OF 2022

Shri Sagar S/o Sunil Savale,
Age: 29 years, Occu.: Nil,
R/o: At Post Kingaon,
Tq. Yawal, District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai - 32.
2. The Divisional Commissioner,
Nashik Division, Nashik.
3. The Chief Executive Officer,
Zilla Parishad, Jalgaon, District Jalgaon,
4. The Deputy Chief Executive Officer,
Zilla Parishad, Jalgaon, District Jalgaon.

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Advocate for the Petitioner : Mr. Yogesh B. Bolkar
AGP for Respondent/State : Mr. S.B. Pulkundwar
Advocate for Respondent Nos.3 & 4 : Mr. V.V. Gujar

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**CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATED : JANUARY 06, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the petitioner, learned AGP for the State and learned counsel for the contesting respondents.
3. The facts of the case in brief were that the petitioner is a first son of deceased Sunil Savale, who admittedly died on

26.12.2006. At that time, the petitioner was minor. He attained majority on 10.10.2010. Thereafter, on 08.08.2011 i.e. within a year, after attaining majority, he applied to the Zilla Parishad for compassionate appointment. Admittedly, the petitioner was listed in the wait-list of the appointment on compassionate ground. Thereafter, the list was revised and again, the name of the petitioner was included in the wait-list. However, by the impugned order dated 06.07.2022, it has been communicated to the petitioner that since his father had three children after 31.12.2001, he is not entitled to be appointed on the compassionate ground.

4. Learned counsel for the petitioner has vehemently argued that this decision is *prima facie* illegal. The respondent/authority has misinterpreted the law and incorrectly applied it to the petitioner. On facts, he would submit that the third child was born on 28.01.1997 and after the cut-off date, the fourth child was born on 18.05.2003.

5. To bolster his argument, he relied on the case of Firdous Mohammad Yunus Patel Vs. State of Maharashtra and Others, 2022 SCC Online Bom 1645. He has pressed into service the law laid down by the Principal Seat at Bombay considering the term 'small family' particularly clause (E) of the Government Resolution dated 28.03.2001. He would submit that since before cut-off date there was no law in existence about the 'small family', the petitioner is entitled to get compassionate appointment.

6. Learned counsel for the contesting respondents would submit that the facts of the case of Firdous Mohammad (cited supra) are altogether different. The term 'small family' has been considered in the peculiar facts and circumstances of the case. The petitioner in the said case was the second wife of the deceased, who had two children. Therefore, it has been held that that it is a small family and she is entitled to compassionate appointment. The facts of this case are altogether different. It was not the case of second wife having two children. On the contrary, the deceased employee had a single wife, who had delivered four children. The cause of action arose after the death. On the date of cause of action, the law relating to 'small family' was in force. Hence, the provisions of law existing on the date of cause of action would apply. Therefore, it cannot be said that the deceased had a small family. He supported the impugned decision of the authority and prayed to dismiss the petition.

7. The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 were applied to the employees. Rule 3 speaks of the necessity of declaration of 'small family'. As per this Rule, the employees regulating recruitment to Group A, B, C or D post in Government Service, the declaration of small family shall be an additional essential requirement for an appointment to Group A, Group B, Group C or Group D post in any Government service. It has been further provided that, a person having more than two children

on the date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement does not increase. It has been further provided that a child or more than one child born in a single delivery within the period of one year from the date of such a commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

8. Government Resolution dated 28.03.2001 has also imposed certain clauses defining a small family. Clause (E) which has been relied upon by the petitioner in the context of the judgment of Firdous Mohammad (cited supra), reads thus :

"(E) Family members of employees having third child after 31.12.2001 shall not be considered eligible for appointment on compassionate basis."

9. This rule is very specific about the compassionate appointment. Admittedly, after the cut-off date i.e. 31.12.2001, the deceased had fourth child. The small family means a wife, a husband including two child. The definition is very specific that a wife should not deliver children more than two to make the claim legal for the compassionate appointment. In this case, admittedly the deceased had four children and it was violation of the Government Resolution dated 28.03.2001. The law laid down in the case of Firdous Mohammad (cited supra) is based upon peculiar facts. The facts of

that case are altogether different. Hence, would not assist the petitioner. Therefore, we are of the opinion that the petitioner is not entitled for compassionate appointment and the impugned communication/order is legal and proper. For the above reasons, the writ petition stands dismissed.

10. No order as to costs.

11. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)