



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

930 WRIT PETITION NO. 13731 OF 2023

Ashok Vijay Birari,
Age : 33 Years, Occ. Nil,
R/o. Patonda,
Taluka Amalner, Dist. Jalgaon.

.. Petitioner
(Ori. Applicant)

VERSUS

1. State of Maharashtra,
Through its Additional Chief Secretary,
Home Department, Mantralaya Mumbai.
 2. The Superintendent of Police,
Jalgaon
 3. The Deputy Superintendent of Police,
Economics Crime Branch, Additional Office of
Deputy Superintendent of Police (Mukhyalaya)
Taluka and District Jalgaon
- .. Respondents
(Ori. Non Applicants)

...
Advocate for the Petitioner : Mr. Vinod Prakash Patil
AGP for Respondent Nos. 1 to 3 : Mr. S. R. Lonikar
...

**CORAM : S. G. MEHARE AND
SANDIPKUMAR C. MORE , JJ.**

DATED : MARCH 18, 2025

JUDGMENT (PER S. G. MEHARE, J) :-

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. A small issue is involved in this matter, whether Clause 'E' of the Government Resolution dated 28th March 2001 is unconstitutional.

Admittedly, the petitioner was son of the deceased from the first wife. His compassionate appointment has been rejected in view of Clause 'E' which provides that the employee, who has children more than two, after 31st December 2001, would not be entitled to the compassionate appointment. The petitioner approached the learned Maharashtra Administrative Tribunal which, by the impugned judgment and order dated 6.6.2022, rejected the petition. The entire case revolves around the constitutionality of the said clause. Earlier there were different views about its constitutionality. The petitioner has relied upon the case of ***Ms. Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and others in Writ Petition No. 7742 of 2014*** delivered at Principal Seat, on 13 July 2019. The Co-ordinate Bench upheld the claim of the petitioner, considering the family background and no support to the family to survive.

3. The learned counsel for the petitioner also relied on the order in the case of ***State of Maharashtra and others Vs. Firdous Mohammad Yunus Patel in Writ Petition No. 2721 of 2021*** of Co-ordinate Bench at Principal Seat dated 4th August 2022. In this case, once again the Co-ordinate Bench held Clause 'E' unconstitutional. The learned counsel for the petitioner would submit that the law was settled by the consistent judgments and view that Clause 'E' of the Government Resolution dated 28th March 2001 is unconstitutional. The learned Maharashtra Administrative Tribunal could not have taken different

view. Therefore, the petition deserves to be allowed.

4. The learned A.G.P would refer to the judgment of Full Bench of this Court in the case of **Sunita Dinesh Gaikwad Vs. The State of Maharashtra, 2023(5) Mh.L.J. 40.** In this case, the Full Bench held Clause 'E' of the Government Resolution dated 21.03.2001 is constitutional. This judgment was taken since the issue was referred to Larger Bench to have a concrete judgment against the conflicting opinions. In this case, the Hon'ble Full Bench recorded the finding of Kashabai (supra) case that the said judgment has to be restricted to the peculiar facts of the case and further stated on the observation rendered in the case.

5. The learned A.G.P would submit since the Full Bench has answered the reference, holding Clause 'E' of Government Resolution dated 28th March 2001 constitutional, there is no mistake in the impugned judgment and order. Resultantly, the petition deserves to be dismissed.

6. The case revolves around the constitutionality of Clause 'E' of the Government Resolution dated 28th March 2001. Perusal of the judgment of the Co-ordinate Bench in Firdos as well as Kashabai, it has been mentioned clearly that Clause 'E' has been interpreted pursuant to the peculiar circumstances and those are restricted to those cases only. In other words, those were not the binding

precedents. It has also been argued that the case of the Firdos was not referred to in the Full Bench judgment of Sunita. Though that case is not referred to, we are of the opinion that the issue referred to the Full Bench was identical. The Hon'ble Full Bench has answered the reference holding that Clause 'E' of the Government Resolution dated 28th March 2001 is constitutional. Though the case of Firdos has been confirmed by the Hon'ble Supreme Court, reference was made on the constitutionality of Clause 'E' of the Government Resolution dated 28.03.2001. The judgment of the Full Bench binds us. We are not satisfied with the argument of learned counsel for the petitioner that since the earlier views were in favour of the petitioner, the petitioner may be given benefit. In view thereof, we dismiss the Writ Petition. No order as to costs.

(SANDIPKUMAR C. MORE)
JUDGE

(S. G. MEHARE)
JUDGE

Y.S.K.