

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 22 OF 2025
IN WP/3287/2024

Ramhari S/o Govind Sontakke,
Age; 40 years, Occu: Labour,
R/o. Khadgaon Road, Latur,
Tq. & Dist. Latur.

..Applicant

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Department, Maharashtra State,
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,
Nanded Range, Nanded.
3. The Superintendent of Police,
Latur, Dist. Latur.

..Respondents

...
Advocate for Applicant : Mr. Kiran Salunke h/f Mr. Mahesh Kale
AGP for Respondent/State : Mr. S.R. Wakale

...
**CORAM : Y.G. KHOBRAGADE &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : APRIL 04, 2025

PRONOUNCED ON : MAY 08, 2025

ORDER : (PER S.G. CHAPALGAONKAR, J.)

1. Heard Mr. Kiran Salunke learned advocate appearing for applicant and learned AGP for respondents/State.
2. Notice made returnable forthwith. Learned AGP waives for respondents.
3. By consent of parties, review application is heard finally.

4. The applicant/original respondent seeks review of judgment and order dated 21.08.2024 passed by this Court in Writ Petition 3287 of 2024.

Brief facts giving rise to present review petition can be stated as under.

5. The applicant instituted Original Application No.580 of 2022 before Maharashtra Administrative Tribunal, Bench at Aurangabad seeking direction against respondent authorities for his appointment on compassionate ground, as his father, who was holding post of PSI died in harness. Tribunal allowed his application relying upon judgment of this Court in case of Ms. ***Kashabai Seshrao Wagh Vs. The Zilla Parishad, Nashik and Others*** decided on 03.07.2019, wherein this Court declared that Clause (E) of Government Resolution dated 28.03.2001 is unconstitutional. The clause (E) of GR prohibits compassionate appointment of family member of deceased employee, who had more than two children, particularly when excess child was born after 31.12.2001. Accordingly, under order of Tribunal, despite the father of applicant had more than two children, the applicant was held entitled for appointment on compassionate ground.

The order passed by Maharashtra Administrative Tribunal was subjected to challenge by State of Maharashtra before this court vide Writ Petition No.3287 of 2024. This Court relying upon the

decision of Coordinate Bench in case of ***Bhagyashree Pradeep Chopade Vs. Maharashtra Industrial Development Corporation***¹, after referring to Full Bench decision in case of ***Sunita Dinesh Gaikwad Vs. State of Maharashtra***², allowed writ petition and set aside judgment and order dated 15.11.2022 passed by learned Maharashtra Administrative Tribunal in O.A. No.580 of 2022 vide order dated 21.08.2024, which is sought to be reviewed on behalf of applicant/original respondent.

6. Mr. Kiran Salunke, learned advocate appearing for applicant invites our attention towards Judgment of Division Bench of this Court dated 04.08.2022 in case of ***Firdous Mohammad Yunus Patel Vs. The State of Maharashtra and Ors*** in Writ Petition No.2721 of 2021 and submits that, in case of Firdous (supra), this Court had occasion to interpret scheme under Government Resolution dated 28.03.2001, in particular Clause (E). This Court took a view that rule does not contemplate a situation where the employee separately contracts a marriage with another person and has children by that other marriage. This Court observed that Clause (E) must be read to include an immediate family of an employee, a sole spouse and no more than two children by that marriage. The disqualification attaches because of number of children of the employee from that spouse. In concluding para, this Court observed that interpretation of

1 2022 SCC Online Bom 11772

2 2023 (5) Mh.L.J. 40

clause (E) with Rule 6 of the Maharashtra Civil Services (Declaration of Family) Rules, 2005, being a pronouncement on law, must continue as a binding decision. That interpretation cannot be restricted to the facts of this case.

7. Mr. Salunke would further submit that Full Bench of this Court in case of Sunita Gaikwad (supra) concluded that declaration made in case of Kashabai (supra) as to unconstitutionality of Clause (E) of the Government Resolution dated 28.03.2001 shall not be applied in other matters and its effect shall be restricted to the facts of the that case only. He would therefore submit that Full Bench had no occasion to interpret Clause (E) hence, law laid down by this Court in the case of Firdous (supra) would still govern the case of applicant. Mr. Salunke would further submit that the judgment in the case of Firdous (supra) could not be brought to the notice of this Court as advocate appearing for applicant advanced his submissions limited to prayers in Civil Application No.7339 of 2004 seeking for vacating of interim relief. Mr. Salunke would further submits that judgment in the case of Firdous (supra) was annexed with affidavit in reply filed in writ petition for ready reference of this Court, but the same doesn't find reference in order under review.

8. Learned AGP however submits that this Court decided writ petition relying upon the judgment of Full Bench in case of Sunita (supra). Therefore, even it is assumed that Division Bench

judgment in case of Firdous (supra) missed attention of this Court that would not vitiate the ultimate decision rendered in writ petition.

9. We have considered submissions advanced by learned advocates appearing for respective parties. *Prima facie*, we find that judgment in case of Firdous (supra) elaborately considers and decides the issue as to interpretation of Clause (E) of Government Resolution. Further stipulates that said judgment would continue as binding decision as to interpretation of said clause. This Court was not apprised with the said decision at the time of hearing of writ petition, as such it missed consideration while passing the order under review.

10. In so far as submission of learned AGP that this Court relied upon Full Bench decision in case of Sunita (supra), it can be observed that Full Bench has rendered decision on issue that was referred to for consideration. The issue referred reads thus :

‘whether, clause E can be said to have been declared unconstitutional for all purposes and in it’s entirety’.”

11. Ultimately, Full Bench held that declaration in case of Kashabai (supra) as to unconstitutionality of Clause (E) of Government Resolution dated 28.03.2001 shall be restricted to the facts of that case only and clause (E) shall not be treated as unconstitutional on the basis of such declaration. Thus, Full Bench has not rendered any decision as to interpretation of Clause (E).

Prima facie, it appears that there are conflicting views of two Coordinate Benches of this Court as to interpretation of same clause. Firstly, there is decision in the case of Bhagyashree (supra) wherein relying upon Clause (E) of Government Resolution dated 28.03.2001, the claim for appointment on compassionate ground was declined, observing that deceased employee had more than two children and in such cases, under Clause (E) compassionate appointment is prohibited. Conversely, in case of Firdous (supra), Clause (E) is interpreted in different manner holding that in case excess children was born from different spouse or marriage, disqualification under Clause (E) would not attract. In aforesaid circumstances, we believe that reference to earlier Division Bench judgment in case of Firdous (supra), which is latter on affirmed by Hon'ble Supreme Court, was necessary while rendering judgment under review since it has direct bearing on interpretation of clause (E) of GR dated 28.03.2001.

12. Hence, we allow review application, recall order dated 21.08.2024 and restore Writ Petition No.3287 of 2024 for hearing afresh.

13. Rule made absolute in above terms.

(S.G. CHAPALGAONKAR, J.)

(Y.G. KHOBRADE, J.)