

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3856 OF 2025

Shailendra Devidas Kedare.
Age- 26 years, Occ-Nil,
R/at- Darhane, Near Indira Nagar college,
Darhane, Nashik-423301. ... Petitioner.

Versus

1. The State Of Maharashtra
through the Secretary
Department Of Education
And Sports Mantralaya,
Mumbai-400001
2. The Chief Executive Officer
Zilla Parishad Nashik. ... Respondents.

Mr. Sanjeev B. Deore a/w. Ms. Suchita J. Pawar, Mr. Arman Ansari, Mr.
Aditya S. Deore, Advocate for Petitioner.
Mr. Sachin H. Kankal, AGP for Respondent/State.
Ms. Chaitrali Deshmukh, Advocate for Respondent No. 2.

CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.
RESERVED ON 04th DECEMBER, 2025.
PRONOUNCED ON 18th DECEMBER, 2025.

JUDGMENT : (PER ASHWIN D. BHOBE, J)

1. Heard Mr. Sanjeev B. Deore, learned Advocate for the
Petitioner, Mr. Sachin H. Kankal, learned AGP for Respondent No.1-

State and Ms. Chaitrali Deshmukh, learned Advocate for Respondent No. 2.

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

3. Petitioner by the present Petition filed under Article 226 of the Constitution of India, assails the Order dated 19.08.2022 passed by the Respondent No. 2, rejecting the request of the Petitioner seeking appointment on compassionate ground.

4. The material facts of the case are that Petitioner's father Devidas Prabhakar Kedare (in short 'Devidas') was working with the Respondent No. 2 as a Health Assistant at the Primary Health Center, Village Kanshi and Saptashrungi Gad, Taluka Kalwan, District Nashik. Devidas was married to Smt. Malati Kedare (in short 'Malati').

5. Devidas went missing since 20.03.2013. Malati filed Regular Civil Suit No. 508 of 2020 before the Court of the Civil Judge, Senior Division, Nashik, seeking declaration of Civil Death of Devidas. By Judgment and Decree dated 17.11.2021, Civil Court, Nashik allowed

the Regular Civil Suit No. 508 of 2020 thereby declaring Devidas as a dead person and termed his death as '**Civil Death**'.

6. Devidas is survived by his widow Malati and three children which includes the Petitioner. Petitioner vide his application dated 01.07.2022 addressed to Respondent No. 2, sought appointment on compassionate ground.

7. By order dated 19.08.2022, Respondent No. 2 rejected the said application dated 01.07.2022 on the ground that Devidas had three children at the time of his death, thus the Petitioner not being entitled to appointment on compassionate ground, in view of the Government Resolution dated 28.03.2001.

8. Mr. Sanjeev Kumar Deore, learned Advocate for the Petitioner submits that Respondent No. 2, on a wrong interpretation of the Government Resolution dated 28.03.2001, has rejected the Petitioner's application seeking appointment on compassionate ground. He submits that the third child of Devidas was born on 29.01.2002, thus according to him, the Petitioner would be eligible for consideration of appointment on compassionate ground. He relies on the decision of this

Court in the case of Amol Hiralal Telrandhe v/s. The State of Maharashtra & Ors.¹.

9. Ms. Chaitrali Deshmukh, learned Advocate for the Respondent No. 1 relies on Clause 2 (E) of the Government Resolution dated 28.03.2001 to support the order dated 19.08.2022. She submits that the said Government Resolution introduced a disqualification for having a third child.

10. From the rival contentions, the question that falls for determination is whether the Government Resolution dated 28.03.2001 would apply to the case of the Petitioner for denying him a compassionate appointment ?

11. The State of Maharashtra issued Government Resolution dated 28.03.2001 in relation to eligibility for compassionate appointment. Clause 2 (E) of the said Government Resolution reads as follows :

"(इ) दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचाऱ्यांच्या कुटुंबीयास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही."

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Bench,

Writ Petition No. 2349 of 2023 decided by the High Court of Bombay Nagpur Nagpur on 1.07.2024.

Translated version of the said clause 2 (E) of the said Government Resolution is:-

“Family members of a deceased employee, who had more than two children and the excess child was born after 31.12.2001, would not be eligible for compassionate appointment.”

12. Records of the case bear out that Devidas was working with Respondent No. 2 from 05.09.1995. Devidas was declared ‘Civil Dead’ with effect from 20.03.2013. Devidas and Smt. Malati were blessed with their third child on 29.01.2002, i.e. after 10 months and 1 day, from the issuance of the Government Resolution dated 28.03.2001 which prescribed the cut-off date as 31/12/2001.

13. The Full Bench of this Court in the case of *Subhash Sajesingh Gavit v/s. The Returning Officer, ZP, Nandurbar & Ors.*² while considering the effect of the disqualification clause (having more than 2 children) introduced by way of an amendment on 13.09.2000 in the Maharashtra Zilla Parishad and Panchayat Samities Act, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act and the Maharashtra Village Panchayat Act, in paragraph Nos. 25 to 28 has observed as follows :

“25. In this backdrop the second proviso to clause (j-1)

² Writ Petition No. 6993 of 2008 decided by the High Court of Bombay at Aurangabad (Full Bench) on 17.10.2019.

can only be interpreted to protect such a person who had already conceived on the date of commencement and it was beyond his / her control to avoid a delivery. We are, therefore, terming such conception on the date of the commencement of the Act as being a preordained pregnancy.

26. *In view of the above, it would not be open to any citizen to plan the birth of a child after the commencement date, knowing fully well that such person would be protected from disqualification only if the number of children already had would not increase. Any argument that a candidate having more than two children on the date of commencement can still plan a child and give birth to such a child within a period of one year under the second proviso to clause (j-1), will have to be negated as it would defeat the intent and object of introducing the disqualification clause.*

27. *The above provisions, therefore, leave no room for doubt that there has been no postponement of the date of commencement of the disqualification provision introduced on 13.9.2000, which is commonly termed as the cut off date. The period of one year set out under the proviso in the three Acts is only to take care of a preordained pregnancy and is not aimed at permitting any couple to plan and increase the number of children (beyond two) as on the date of the commencement of the Act. The second proviso, therefore, would cover only a preordained pregnancy. For easy understanding, we would record that if a couple has two or more children on the date of the commencement of the Act, the period of one year mentioned in the second proviso would not render any such couple eligible or to plan an additional child or increase the number of children knowing well that the mandate is that the number of children, from two or more than two, on the date of the commencement, shall not be increased by a planned conception. A delivery within one year, knowing that the couple cannot plan an additional child after the cut off date on the mistaken belief that one more year is granted for increasing the number of children, cannot be permitted unless the conception has already occurred.*

28. It is for biological reason that a conception of a child on the date of the introduction of the amendment would take a mother atleast nine months and nine days to deliver a full term child. Since this period of nine months and nine days would be a bit uncertain, that the Legislature may have thought it appropriate to allocate the period of one year. We interpret this provision to mean that it would not be a license to a couple, who already have two or more children, to plan an addition to their number of children any further on the basis of such proviso.”

14. Considering the position of law as settled by the Full Bench of this Court, conceiving a third child after the date of issuance of the Government Resolution dated 28.03.2001, would not be “preordained pregnancy”.

15. In the case of *Amol Hiralal Telrandhe (supra)* the co-ordinate bench of this has declared that the date in clause (E) of the Government Resolution dated 28.03.2001 be construed as 28.03.2002 i.e. one year from the issuance of Government Resolution. Said view is on the basis of the conclusion arrived in paragraph Nos. 20, 21, 27 and 28 which are as under :

“20. If we presume a first day of woman’s menstrual cycle of last period before conception (pregnancy) as 28/03/ 2001 (i.e. the date of commencement of the Government Resolution) and calculate a due date as per above calculator in 2 steps then the result would be as follow (i.e. due date)

(Based on 30 days average menstrual cycle of a woman)
 $28/03/2001 + 7 = 04/04/2001$ $04/04/2001 + 9 \text{ months} = 04/01/2002$.

Therefore, even if minimum period of gestation as 9 months is taken into consideration, the due date is beyond the cut-off date.

The report also says that there are delivery, varies from woman to woman depending upon duration of varies menstrual cycle (as woman as varying normal average menstrual cycle from 21 days to 40 days.) Accordingly, due date also calculated. Thus, considering the normal pregnancy calculator also, the cut-off date 31/12/2001 is unjustified and without any foundation or rational.

21. *In view of the Section 112 of the Evidence Act, if child is born within 280 days after the dissolution of marriage, it is conclusive proof that the child is legitimate child of that man. The further period, over and above this period of 9 months is to provide notice of introducing such disqualification. Moreover, by the time, woman get knowledge that she has been conceived fetus would might be of 4 to 6 weeks. Even if, she get knowledge of bar in view of the Government Resolution dated 28/03/2001, i.e. date of issuance of Government Resolution, she could not terminate the pregnancy unless there is medical contingency. In normal pregnancy, the termination of the pregnancy is not allowed by law. As such, the protection of one year is all these enactment is having some rational and medical loss.*

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23. ...

24. ...

25. ...

26. ...

27. *After going through the material made available by the parties, which is based on various journals research and after considering the various judgments and various similar provision in other statute, there is no doubt that maximum period of one year is provided in almost all legislation and the persons having third child during that period i.e. from the date of issuing Notification, till further one year is protected. The only reason for prescribing such a period of one year is to get the knowledge of issuance of Notification to the person*

and to grant some appropriate leeway. The cut-off date as prescribed in the amendment provision grant exactly 9 months i.e. from issuance of Government Resolution dated 28/03/2001 till 31/12/2001. Thus the prescribed cut off date is erroneous and not based on any discernible principle. Thus purpose of granting protection itself is defeated.

28. *As learned Counsel for petitioner is not challenging constitutional validity but only seeking to construe the said period given in the Government Resolution to be one year. In our considered opinion, it appears that while stipulating cut-off date, the State has not taken into consideration the provisions in other enactments granting protection in case of third child, nor it appears that any medical expert opinion is taken. In our considered opinion, it is nothing but the error committed by the draftsman as held in Zile Singh (supra), the word “after” have to be interpreted so as to carry out legislative intent and not to make capital out of the draftsman’s folly. By not granting protection as provided by the State Government in other legislation, the petitioner is excluded for no reason, which is against the rule of equality and also to the public policy. The public policy is to provide succor to the needy and ensure general welfare and well being of the citizen. If the cut-off date is not even giving normal gestation period and the period to get notice/knowledge of the notification, the purpose of the provision would defeat. Therefore, it has to be considered as one year from the date of issuance of Notification by giving it purposive interpretation. If it is not construed in such of fashion, this Court would be committing the mistake of doing the technical justice and not a substantive justice.”*

16. Apparently the law as propounded by the Full Bench of this Court in the case of *Subhash Sajesingh Gavit (supra)* was not brought to the notice of the coordinate bench in the case of *Amol Hiralal Telrandhe (supra)*. Nevertheless, the said Division Bench has also concluded that, “*Therefore, even if minimum period of gestation as 9 months is taken*

into consideration, the due date is beyond the cut-off date”.

17. The Hon’ble Supreme Court in the case of *State of Uttar Pradesh & Ors. v/s. Ajay Kumar Sharma & Anr.*³. in paragraphs 13 and 14 has observed as under :

13. Time and again this Court has emphatically restated the essentials and principles of “precedent” and of stare decisis which are a cardinal feature of the hierarchical character of all common law judicial systems. The doctrine of precedent mandates that an exposition of law must be followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. That is to say that a smaller and a later Bench has no freedom other than to apply the law laid down by the earlier and larger Bench; that is the law which is said to hold the field. Apart from Article 141, it is a policy of the courts to stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon’ble Chief Justice to constitute a larger Bench.

14. If binding precedents even of coordinate strength are not followed, the roots of continuity and certainty of law which should be nurtured, strengthened, perpetuated and proliferated will instead be deracinated. Although spoken in a totally different context, we are reminded of the opening stanza of the poem “The Second Coming” authored by William Butler Yeats. The lines obviously do not advert to the principle of precedent but they are apposite in bringing out the wisdom of this ancient and venerable principle.

*“Turning and turning in the widening gyre
The falcon cannot hear the falconer;*

*Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world.”*

18. In view of the above position of law, we are unable to endorse the view taken by the Division Bench of this Court in *Amol Hiralal Telrandhe (supra)*, in the light of the judgment delivered by the Full Bench in *Subhash Sajesingh Gavit (supra)*, which was unfortunately not brought to the notice of the Division Bench.

19. Consequentially, we do not find any infirmity or illegality in the impugned order. **This Writ Petition is, therefore, dismissed.** Rule is discharged..

20. No order as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)