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

**WRIT PETITION NO. 13152 OF 2025**

Ansari Mohammed Faizan

Mohaamed Mustafa

Age – 24 yrs., Occ. - Service

R/at – Ghar No. 201, Hudco Colony,

Malegaon, Nashik – 423 203.

... Petitioner

Versus

1. The State of Maharashtra

Through The Secretary

Department of Education And Sports

Mantralaya, Mumbai – 400 001.

2. Administrator

Municipal Corporation Education Department,

Malegaon, Nashik.

3. Dy. Director (Education)

Nashik Division.

... Respondents

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Mr. Sanjeevkumar Babu Deore a/w Mr. Aditya Sanjeev Deore and  
Mr.Arman Ansari i/b Ms. Suchita J. Pawar for the Petitioner.

Mr. O.A. Chandurkar, Addl. G.P. a/w Ms. Nisha Mehra, AGP for  
Respondent, State.

Mr. Rahul S. Kate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE AND  
HITEN S. VENEGAVKAR, JJ.**

**DATE : 28<sup>th</sup> APRIL, 2026**

**ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :**

1. Rule. Rule made returnable forthwith and heard finally, by  
the consent of the parties.

2. By this Petition, the Petitioner has questioned the refusal of the Municipal Corporation to allot the Shalarth ID to the Petitioner, though he has an approval for his appointment on compassionate basis.

3. The Petitioner's father passed away on 11<sup>th</sup> May 2015, in harness. He was working as an Assistant Teacher with a school operated by the Corporation. The Petitioner was a minor when his father passed away. After he became an adult on 1<sup>st</sup> July, 2019, he applied for compassionate appointment, on 21<sup>st</sup> February, 2022. By an order dated 25<sup>th</sup> April, 2022 he was appointed on compassionate basis as a Shikshan Sevak, by the Administrator of the Corporation. He claims to be working even till today. Apparently the application was time barred having been made 2 years and 7 months, post attaining adulthood.

4. The Corporation has filed an affidavit in reply dated 24<sup>th</sup> April, 2026 through Shri. Tanaji Karbhari Ghongade, the present Administrative Officer, Municipal School Board, Malegaon Municipal Corporation. He points out that, the then Administrative Officer Shri. Francis Chavan, issued an appointment order thereby appointing the Petitioner as a Shikshan Sevak on compassionate basis, on 25<sup>th</sup> April, 2022, with a stipend of Rs.6,000/- per month. Subsequently, Shri.Chavan was instrumental in granting the approval to the appointment of the

Petitioner. It was noticed in October 2024, that there were several irregularities and illegalities indulged into by Shri.Francis Chavan and, therefore, by an order dated 1<sup>st</sup> October, 2024, the Commissioner suspended the then Administrative Officer Shri.Francis Chavan. It was noticed that there were 20 such appointments made by Shri. Francis Chavan, de-hors the rules.

5. It is further stated in the affidavit that when the Petitioner's case was being scrutinized for grant of Shalarth ID, which is normally granted after a candidate gets approval to his appointment, it was noticed that the Petitioner is the eldest sibling amongst the 4 biological children of the deceased, born on 1<sup>st</sup> July, 2001. He has three siblings namely, Mr.Ansari Farahnaaz Mohd. Mustafa, born on 14<sup>th</sup> March 2004, Mr.Ansari Taherim Sadaf Mohd. Mustafa, born on 29<sup>th</sup> April, 2006 and Mr. Ansari Mohd. Usman Mohd. Mustafa, born on 3<sup>rd</sup> April, 2012. It was, thus, revealed that the deceased had four children, born after 31<sup>st</sup> December, 2001. In view of the Government Resolution dated 28<sup>th</sup> March, 2001, any employee who has a third child born after 31<sup>st</sup> December, 2001, by which, the number of the children has increased beyond two or any number of children born prior to 31<sup>st</sup> December, 2001, none of the dependents/legal heirs, would be entitled for compassionate appointment.

6. The learned Advocate for the Petitioner has placed reliance upon a judgment delivered by the Hon'ble Supreme Court in ***Dr. M.S. Mudhol And Another vs. S.D. Halegkar And Others***<sup>1</sup>. We find that the said judgment is on a different set of facts. The concerned Principal of the Higher Secondary School had worked for more than 12 years and his qualification was questioned after putting in 12 years in employment. The Hon'ble Supreme Court did not find fault with the qualifications and on the count of whether the service of the said Principal could be brought to an end, it was concluded that the authority concerned was precluded from questioning the appointment on the principle of equity and acquiescence, after 12 years.

7. The learned Advocate for the Petitioner has relied upon a judgment delivered by the Hon'ble Supreme Court in ***Radhey Shyam Yadav and Another vs. State of Uttar Pradesh and Others***<sup>2</sup>. Even this judgment is on a different set of facts. Paragraph No. 17 of the said judgment reads thus :-

*17. What is important to notice is, nothing has been mentioned as to how the appellants, who were applicants from the open market, were in any way responsible. There is no reference to any material whatsoever that had been unearthed either in the departmental inquiry launched or in the criminal investigation. On a pointed query to the counsel for the*

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1 (1993) 3 Supreme Court Cases 591

2 (2024) 11 Supreme Court Cases 770

*State as to whether the appellants were arrayed as accused in that criminal case, she candidly replied that they were not. On being further asked as to whether any action has been taken against the School, she replied that no action has been taken. The School continues to function with grants-in-aid. She submitted that the only action taken was to file an F.I.R. against the Manager of the School, which F.I.R. has since resulted in a charge-sheet.*

8. In ***Radhey Shyam Yadav and Another*** (supra), it was noticed that three posts of Assistant Teachers were shown to be sanctioned by the Management in collusion with the Appellants, factually when, only two posts were sanctioned. Since an inquiry was held behind the Appellants and no finding of collusion or blameworthiness was established against them and since their names were not mentioned in the FIR and no finding of guilt was arrived at against them, the punishment of withholding increment and stoppage of pay was interfered with by the Court.

9. The case before us has to be considered purely in the backdrop of the Government Resolution dated 28<sup>th</sup> March, 2001 and considering the judgment of the Full Bench of this Court dated 6<sup>th</sup> July, 2023 delivered in Writ Petition No. 9284 of 2022 at the Aurangabad Bench (***Sunita Dinesh Gaikwad and Another vs. State of Maharashtra and CEO Zilla Parishad, Nanded***), which has interpreted the said GR and has upheld its legality and validity.

10. The Full Bench considered **Sunita Dinesh Gaikwad** (supra) in peculiar facts and circumstances. A Writ Petition No. 7742 of 2014 filed by **Kashabai Sheshrao Wagh vs. The Zilla Parishad, Nashik and Ors.**, had reached the Division Bench of this Court at the Principal Seat. The total number of children of the deceased Sheshrao Wagh, born out of his first and second marriage, took the tally of children beyond the permissible limit as on 31<sup>st</sup> December, 2001. By the judgment dated 3<sup>rd</sup> July, 2019, this Court concluded that the condition set out in the Government Resolution dated 28<sup>th</sup> March, 2001 applying the bar on the growth of children beyond two or the existing number as on 31<sup>st</sup> December, 2001, was arbitrary.

11. A case filed by **Bhagyashree Pradip Chopade vs. MIDC & Ors.**, Writ Petition No. 6819 of 2021, reached the Division Bench of this Court at the Principal Seat. The Division bench [Coram : Shri. Dipankar Datta (as His Lordship then was) and Shri. M.S. Karnik, JJ], held in Paragraph Nos. 5 to 10, as under :-

*5. Government Resolution dated March 28, 2001 (hereafter "relevant GR") ordains that compassionate appointment cannot be claimed by a dependent of an employee dying-in-harness, who is otherwise qualified, if such employee has more than two children. In the present case, the deceased employee had 4 (four) children during his lifetime; but since his second and third daughters were twins, they were counted as 1 (one) child. Based on the terms of the relevant GR, the*

*petitioner's application was rejected.*

*6. In order to wriggle out of the rigours of the relevant GR, two contentions have been raised by Mr. Udane, learned advocate appearing for the petitioner. First is that the petitioner's brother, Atharva, has been given in adoption and, therefore, he cannot be counted as part of the family of the deceased employee. Secondly, the relevant GR being applicable only to employees of the State Government, its terms ipso facto are not applicable to the employees of MIDC; therefore, an illegality was committed in refusing the petitioner's prayer for compassionate appointment based on such GR.*

*7. We find both the contentions of Mr. Udane to be without substance.*

*8. The plea of adoption has been raised by the petitioner to paint the picture that the family of the deceased employee comprises of his widow and 3 (three) daughters of whom the last 2 (two) are twins. However, nothing turns on such adoption even if it were in accordance with the extant provisions of law. The underlying object of the relevant GR is to ensure that the employees who are bound thereby, namely the Government employees, do not have more than 2 (two) children. If in case a third child is born to a Government employee, such an employee would not be entitled to certain benefits which includes an appointment on compassionate ground if such a situation were to arise. As is well-known, compassionate appointment being an exception to the rule of equal opportunity in the matter of public employment, it is well within the powers of the employer to attach reasonable conditions on the fulfillment whereof such benefit of compassionate appointment can be availed of. The condition that the relevant GR brought about being in the nature of a policy decision, which has led to rejection of the petitioner's application, is neither unreasonable nor violates any right of an employee. That apart, the disqualification for having an appointment on*

compassionate ground having occurred once the son, Atharva, was born to the deceased employee and the petitioner's mother, it is absolutely irrelevant for the purpose of the present case whether Atharva was given in adoption lawfully or whether giving Atharva in adoption could make the terms of the relevant GR inapplicable. We are of the view that the Government policy embodied in the relevant GR cannot be read in such a manner that it gives scheming parties the chance to defeat it by taking recourse to adoption. Suffice it to record, the contingency on the occurrence whereof appointment on compassionate ground could be refused having set in with the birth of Atharva, we see no reason to hold the impugned rejection to be arbitrary or illegal.

9. Turning to the second contention, we have learnt from Ms. Gadre, learned advocate for the respondents that MIDC has no independent scheme or policy for appointment of dependents of employees dying-in-harness on compassionate ground and it is the policy of the Government, applicable to its employees, that is followed by MIDC. If Mr. Udane's submission were to be accepted that the relevant GR applies only to the employees of the State Government and not to employees of MIDC and, consequently, would also not apply to the petitioner, by applying the same logic it has to be held that the scheme or policy for compassionate appointment of the State Government does not apply to MIDC and, thus, MIDC is under no obligation to make appointment on compassionate ground. In such a case, the petitioner would have no semblance of a right to claim appointment on compassionate ground on the death of her father in view of the settled law that there can be no such appointment without a scheme/policy. Hence, this contention advanced by Mr. Udane is a self-defeating one and cannot be accepted; accordingly, it is overruled.

10. Having considered the materials that have been furnished by way of additional compilation by Ms. Gadre, we are of the considered opinion that the petitioner while seeking compassionate appointment

tried to deceive MIDC and its officers. Any attempt on the part of an aspirant for public employment, which is deceitful, has to be sternly dealt with. This is a fit and proper case where the writ petition ought to be dismissed with exemplary costs. However, considering the submission of Mr. Udane that the petitioner has disabled siblings, we refrain from imposing costs.

[Emphasis is supplied by us]

12. Considering the effect of the two judgments in **Kashabai Sheshrao Wagh** (supra) and **Bhagyashree Pradip Chopade** (supra), a Full Bench was constituted in **Sunita Dinesh Gaikwad** (supra). The Full Bench considered the law laid down by the earlier Full Bench in **Kamleshkumar Ishwardas Patel vs. Union of India and Others**<sup>3</sup> which had relied upon numerous judgments delivered by the Hon'ble Supreme Court and observed in Paragraph No. 9 in **Sunita Dinesh Gaikwad** (supra), as under :-

9. In *Kamleshkumar Ishwardas Patel vs. Union of India and others*, 1994 (2) Mh. L.J. 1669, Full Bench, it was held that when the High Court is confronted with two contrary decisions of the Supreme Court emanating from Benches of co-equal strength, the High Court is not necessarily bound to follow the decision which is later in point of time, but must follow the one which, in its view, is better or more accurate in the light of the provisions of law. It was noted in paragraphs 14 and 15 as under:-

“14. It has been pointed out by one of us, while speaking for a Special Bench of the Calcutta High Court in *Bholanath v. Madanmohan* on the question as to the course to be followed by the High Court when

<sup>3</sup> 1994 (2) Mh. L.J. 1669, Full Bench

confronted with contrary decisions of the Supreme Court emanating from Benches of co-equal strength, as hereunder :-

"..... When contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. This in fact is a course which was recommended by our ancient Jurists - "Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalapate" - in case there are two contrary precepts of the Sruties or the Smritis, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts - "Prayoge Hi Virodha Syat". But when such contrary decisions of co-ordinate Benches cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow."

"One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength, the later would rule and shall be deemed to have overruled the former. P. B. Mukharji, J. (as his Lordship then was) in his separate, though concurring, judgment in the Special Bench decision of this Court in *Pramatha Nath v. Chief Justice*, took a similar view, S. P. Mitra, J. (as his Lordship then was) also took such a view in the Division Bench decision of this Court in *Sovachand Mulchand v. Collector, Central Excise*, AIR 168 Cal 174 at p. 186, para 56. To

*the same effect is the decision of a Division Bench of the Mysore High Court in New Krishna Bhavan v. Commercial-Tax Officer, AIR 1961 Mys 3 at p. 7 and the decision of the Division Bench of the Bombay High Court in Vasant v. Dikkaya. A Full Bench of the Allahabad High Court in U.P. State Road Transport Corpn. V. Trade Transport Tribunal has also ruled to that effect. The view appears to be that in case of conflicting decisions by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old law shall change yielding place to new."*

*"The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J. in the Full Bench decision of the Punjab & Haryana High Court in Indo-Swiss Time Ltd. v. Umarao took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in Govinda Naik v. West Patent Press Co., the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J. also took the same view (supra, at p. 95) and in fact the same has been referred to with approval by Sandhawalia, C.J. in the Full Bench decision in Indo-Swiss Time (supra)."*

*"This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declared - Dharmashastra Virodhe Tu Yuktivyukta Vidhe Smrita - that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his Constitutional Law of India, which has also been quoted with approval by Sandhawalia, C.J. in Indo-Swiss Time (supra, at p. 220) and the learned Jurist has observed that "judgments of the Supreme Court, which cannot stand together, present a serious problem to the High*

*Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgment."*

*"It appears that the Full Bench decision of the Madras High Court in R. Rama Subbnarayalu v. Rengammal, would also support this view where it has been observed (at p. 452) that "where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one". According to the Nagpur High Court also, as would appear from its Full Bench decision in D. D. Bilimoria v. Central Bank of India, AIR 1943 Nag. 340 at p. 343, in such case of conflicting authorities, "the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other."*

*"Needless to say that it would be highly embarrassing for the High Court to declare one out of the two or more decisions of the Supreme Court to be more reasonable implying thereby that the other or others is or are less reasonable. But if such a task falls upon the High Court because of irreconcilable contrary decisions of the Supreme Court emanating from Benches of co-ordinate jurisdiction, the task, however uncomfortable, has got to be performed."*

*"We are inclined to think that a five-Judge Bench of the Supreme Court in Atma Ram v. State of Punjab, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that when a Full Bench of three Judges*

*was inclined to take a view contrary to another Full Bench of equal strength, perhaps the better course would have been to constitute a larger Bench, it has, however, been observed that for otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding on them. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority, the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task "of preferring one view to another".*

*".... We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated herein before, and as has also been indicated by the Supreme Court in Atma Ram (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction."*

*The law as enunciated in that Special Bench decision, as quoted hereinabove, has our unqualified concurrence.*

*15. Our attention has been drawn by Mrs. Ranjana Desai to the Full Bench decision of the Allahabad High Court in Ganga Saran v. Civil Judge where also a similar view has been taken by the three Judge Bench (at p. 118). With respect, this can be the only reasonable solution and the only way out, when we are confronted with contrary decisions of the Supreme Court emanating from co-equal Benches. Both being binding on us by reason of their authority, we cannot but have the unpleasant task of choosing that one which appears to have better authority of reasons.*

*During the preparation of this judgment our attention has also been drawn to the Division Bench of this High Court in Manasing Surajsingh (1968) 70 Bom LR 654 at 669) where Tarkunde, J., speaking for the Bench, has also taken the same view after referring to, with approval, the following observations in Salmond on Jurisprudence, 12th Edition Page 153 :-*

*"Where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic court itself. The lower court may refuse to follow the later decision on the ground that it was arrived at per incuriam, or it may follow such decision on the ground that it is the latest authority. Which of these two courses the court adopts depends, or should depend, upon its own view of what the law ought to be."*

*It may also be noted that the same view was taken by one of us (Bhattacharjee, C.J.) in Gopal Chandra Kalay v. State (1981 Lab IC 422) and in Union of India v. Ashok (AIR 1983 Sikkim 19) and also by a learned single Judge of this Court in Special Land Acquisition Officer v. Municipal Corporation. We may, however, note that the Full Bench of the Allahabad High Court in Ganga Saran (supra) has failed to notice an earlier Full Bench decision of that Court itself in U.P. State Road Transport Corporation (AIR All 1) which laid down a contrary proposition."*

13. On the aspect of the doctrine of 'Acceptance Sub-Silentio', the Full Bench in **Sunita Dinesh Gaikwad** (supra) recorded in Paragraph Nos. 11 to 13 as under :-

*11. In Municipal Corporation of Delhi vs. Gurnam Kaur, 1989 (1) SCC 101, it was concluded by the Hon'ble Supreme Court in paragraphs 11 and 12 as under:-*

*“11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:*

*A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*

*12. In Gerard v. Worth of Paris Ltd. (k)., [1936] 2 All E.R. 905 (C.A.), the only point argued was on the*

question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. V. Bremith Ltd.*, [1941] 1 KB 675. The Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons or the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

12. In *Arnit Das vs. State of Bihar*, 2000 (5) SCC 488, it was held in paragraph 20 as under:-

"20. A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined. (See *State of U.P. Vs. Synthetics & Chemicals Ltd.* 1991 (4) SCC 138, para 41)."

13. In *State of U.P. and others vs. Jeet S. Bisht and another*, 2007 (6) SCC 586, the Honourable Supreme Court referred to *Gurnam Kaur (supra)* and concluded in paragraphs 18, 19 and 22 as under:-

“18. No doubt in the aforesaid decision various directions have been given by this Court but in our opinion that was done without any discussion as to whether such directions can validly be given by the Court at all. The decision therefore passed *sub silentio*. The meaning of a judgment *sub silentio* has been explained by this Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur* (1989) 1 SCC 101 (vide paras 11 and 12) as follows :- .....

“19. The principle of *sub silentio* has been thereafter followed by this Court in *State of U.P. & Anr. Vs. Synthetics & Chemicals Ltd. & Anr.* (1991) 4 SCC 139, *Arnit Das Vs. State of Bihar* (2000) 5 SCC 488, *A-One Granites Vs. State of U.P. & Ors.* (2001) 3 SCC 537, *Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr.* (2003) 7 SCC 197 and *State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr.* (2004) 11 SCC 26.”

“22. In *Municipal Committee, Amritsar vs. Hazara Singh*, AIR 1975 SC 1087, the Supreme Court observed that only a statement of law in a decision is binding. In *State of Punjab vs. Baldev Singh*, 1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In *Delhi Administration vs. Manoharlal*, AIR 2002 SC 3088, the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In *Divisional Controller, KSRTC vs. Mahadeva Shetty*, 2003 (7) SCC 197, this Court observed as follows:

“..The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a

*subsequent Judge is the principle, upon which the case was decided.”*

14. Considering the various judicial pronouncements, the Full Bench in **Sunita Dinesh Gaikwad** (supra) recorded its conclusions on the conflict between the above two judgments, in Paragraph Nos. 14 to 19 as under :-

*“14. We are conscious of the task entrusted to this Full Bench and more so, when the issue is as regards whether the conclusion drawn by the Division Bench in Kashabai (supra), could be restricted to the facts of the said case. It is often said that reasons are the heart and soul of a decision. If a decision is bereft of reasons, an attempt to supplant reasons cannot be countenanced.*

*15. It does not call for any debate that unless a conclusion in the facts and circumstances of that case, does not lay down a law, it would not be a precedent. It is only a decision with reasons, upon due appreciation of the pleadings and the law applicable, that can be said to have laid down a principle of law, amounting to be a precedent.*

*16. In Delhi Administration vs. Manohar Lal, 2002 (7) SCC 222, the Honourable Supreme Court noted that a mere direction without laying down any principle of law, is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty, 2003 (7) SCC 197, the Honourable Supreme Court recorded that the decision delivered, is a decision ordinarily on the case (facts of the case) before the Court, while the principle underlying the decision would be binding as a precedent to cases with similar facts which come up subsequently for decision. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.*

17. As is held in *Gurnam Kaur (supra)*, such pronouncements which are not part of the ratio decidendi, are classed as obiter dicta and are not authoritative. The view taken in *Jamna Das vs. Delhi Administration* in Writ Petition No.981-82 of 1984, was held to be not binding on the Court as it was delivered without any arguments and without any exposition on the subject before the Court.

18. In *State of U.P. vs. Synthetics and Chemicals Limited*, 1991 (4) SCC 139, the Honourable Supreme Court has concluded that a decision not expressed, nor accompanied by reasons and not proceeding on a conscious consideration of an issue, cannot be deemed to be a law declared to have a binding effect as is contemplated under Article 141 of the Constitution of India. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio.

19. In view of the above, we are unable to accept the contention of the Petitioner that the declaration in *Kashabai (supra)* would have a binding effect in perpetuity. The said conclusion would, at best, be restricted only to the facts of the said case. For the reasons recorded herein above, in the light of the law crystallized by the Honourable Supreme Court, the declaration in *Kashabai (supra)* that clause E of the Government Resolution dated 28.03.2001 is unconstitutional, shall not be deemed to have been so declared for other matters and would be restricted to the facts of the said case. We answer the issue addressed to us, accordingly.”

15. The learned AGP relies upon few more judgments delivered by this Court in ***Shailendra Devidas Kedare vs. The State of Maharashtra And Anr.***<sup>4</sup> and ***Subhash Sajesingh Gavit vs. The Returning Officer ZP Nandurbar and Ors.***<sup>5</sup>

<sup>4</sup> Writ Petition No. 3856 of 2025

<sup>5</sup> Writ Petition No. 6993 of 2008

16. In view of the above, the law is crystalized that if any Employee (male or female) becomes a parent of a third child after 31<sup>st</sup> December, 2001 and with the addition of the said child the number of children had increased beyond the permissible limit after the cut-off date, his/her legal heir dependent on such deceased Employee, would not be entitled to compassionate employment. The learned Advocate for the Corporation submits that because the then Administrative Officer Shri. Francis Chavan had indulged in several such irregularities and illegal appointments, he has been suspended and a Departmental Enquiry has been initiated against him. All such illegal cases are now being reopened.

17. The learned Advocate for the Petitioner has vehemently canvassed that he is in employment for more than four years. He claims that equities are created in his favour and he has a legitimate expectation of being regularised in employment. We are afraid, that the learned Advocate cannot persuade us to believe that equities are created in favour of an illegal appointee or that legitimate expectation could overbear an illegality. Legitimate expectation against the law, is unconscionable. The person who was instrumental in appointing the Petitioner is now under suspension and is facing an enquiry for his misdeeds. The affidavit in reply filed by the Corporation makes a

reference to a fraud being played by the candidates in connivance with the then Administrative Officer.

18. Be that as it may, we need not go into the above stated issues. What is relevant is that the Petitioner somehow was successful in getting an employment despite the fact that he had three more siblings and the third and fourth siblings were born on 29<sup>th</sup> April, 2006 and 3<sup>rd</sup> April, 2012. The deceased fathered a second child on 14<sup>th</sup> March, 2004, which is not objectionable. The birth of the third and the fourth child in 2006 and 2012, disqualify the Petitioner from getting compassionate employment.

19. In these circumstances, merely because the Petitioner was successful in getting an employment and is in service for four years, does not create any equities in his favour. The settled position of law will have full applicability and would always operate with full force.

20. In view of the above, this **Petition is devoid of merits and is dismissed. Rule is discharged.**

21. The learned Advocate for the Petitioner submits that the Corporation was not paying him any stipend ever since he was inducted

on probation as a Shikshan Sevak. He prays for his unpaid stipend. The learned Advocate for the Corporation submits that since the Petitioner had worked during the probation period on a particular stipend, the Corporation would verify from its records and if there are any dues to be paid to the Petitioner for the period he has been working, such stipend would be calculated and would be paid to the Petitioner within a period of 45 days. The said statement is recorded.

**(HITEN S. VENEGAVKAR, J.)**

**(RAVINDRA V. GHUGE, J.)**