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

WRIT PETITION NO. 19203 OF 2024

1. The State of Maharashtra)
Through its Secretary, Home Department,)
Mantralaya, Mumbai)
2. The Commissioner of Police, Mumbai)
Office at Mumbai Police Commissioner,)
L.T. Marg, Opp. Crawford Market, Fort,)
Mumbai – 400001)
3. The State of Maharashtra)
Through Principal Secretary,)
General Administrative Department,)
Mantralaya, Mumbai – 400032) ...Petitioners

Versus

Shri Tanmay Sunil Gite)
Age: 19 Yrs, Occu: Student,)
Residing at Room No. 515, B-4,)
Sharadha Saburi Building No. 5)
M. P. Mill Compound, Mumbai – 400034,) .. Respondent

Mrs. Reena A. Salunkhe, Assistant Government Pleader for the Petitioner-State.

Ms. Anu C. Kaladharan i/b. Mr. Kanhaiya S. Yadav, Advocate for the Respondent

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 5th FEBRUARY 2025

JUDGMENT (Per M. M. SATHAYE, J):

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. By this petition, the Petitioner-State is challenging the Judgment and Order dated 13/07/2023 in the Original Application No. 1326 of 2022 passed by the Member, Maharashtra Administrative Tribunal, Mumbai, (for short 'the Tribunal'). By the said impugned order, the Tribunal has allowed the said Original Application filed by Respondent, thereby quashing the impugned communication dated 25/11/2022 therein and directing the Petitioner-State to consider the claim of Respondent for compassionate appointment and taking his name in the waiting list on suitable post subject to fulfillment of terms and conditions.

3. Few facts necessary for disposal of this Petition are as under. The Respondent is the son of a government servant - Late Mr. Sunil B. Gite, who was the police constable and who died on 23/04/2010. Mr. Sunil had two wives. First wife is Smt. Surekha from whom he has a daughter by name Komal. During subsistence of marriage with Surekha, Mr. Sunil married with Smt. Shivani from whom he has two children viz. the Respondent (Tanmay) and Samiksha. Respondent is born on 09/01/2003. Admittedly, the Respondent is a child born from an illegitimate marriage. At the time of the death of Mr. Sunil, the Respondent was 7 years old minor. On attaining majority on 09/01/2021, the Respondent made an application for compassionate appointment. This application is dated 30/09/2022. Alongwith the application, an affidavit of the step-mother & step sister of the Respondent i.e. Smt. Surekha and Mr. has been filed, giving consent to the

Respondent being considered for compassionate appointment.

4. The Petitioner No. 2-Commissioner of Police, Mumbai rejected the claim of the Respondent by a communication dated 25/11/2022 on the ground that the Respondent being 3rd child, born to the deceased government servant, after the cut-off date of 31/12/2001, his claim for compassionate appointment cannot be considered in view of prohibition under the Government Resolution dated 28/03/2001 (for short "*the said GR of 2001*"). This refusal of request was challenged by the Respondent in the Tribunal by filing the aforesaid Original Application, in which the impugned order is passed. In these circumstances, the Petitioner-State has filed the present Petition.

5. Mrs. Salunkhe, learned Assistant Government Pleader (AGP), submitted that the impugned order is based on the law laid down in the case of **Ms Kashibai Wagh Vs. Zilla Parishad, Nashik & Ors.**¹, in which the said GR of 2001 is quashed and set aside, declaring it unconstitutional. It is submitted that the reference to the judgment of **Union of India & Anr. Vs. V. R. Tripathi**² is not really applicable in as much as, the said judgment was about entitlement of a child born from 2nd marriage in case of compassionate appointment; however in the present case, the request is not refused on that ground but on the ground that the deceased government servant had three children. She has relied upon the judgment of the Full Bench of this Court, in **Sunita Dinesh Gaikwad & Anr. Vs. State of Maharashtra & Anr**³, in which the **Kashibai's judgment** (supra) has been restricted to facts of that case

1 Bombay High Court in Writ Petition No. 7742 of 2024 dated 03/07/2019

2 (2019) 14 SCC 646

3 Bombay High Court in Writ Petition No. 9284 of 2022 dated 27/07/2023

only, and the declaration given thereunder about Clause (e) of the said GR of 2001, has been deemed not to have been so declared for other matters. The learned AGP has invited our attention to a subsequent Government Resolution dated 21/09/2017 (for short "*the said GR of 2017*") consolidating the Government Resolutions with regard to the subject of compassionate appointment.

6. On the other hand Ms. Kaladharan, learned Counsel for the Respondent submitted that the Judgment of Full Bench in the case of **Sunita Dinesh Gaikwad (Supra)** has come on 27/07/2023 i.e. after the date of the impugned order (13/07/2023). It is submitted that therefore the change in legal position was not available for the consideration of the Tribunal at the relevant time. She has submitted that the Respondent has been considered for the claim of compassionate appointment and therefore, a lenient view be taken in the matter.

7. We have considered the rival submissions and perused the record. Perusal of the judgment of the Full Bench in **Sunita Dinesh Gaikwad (Supra)** shows that a reference was made in view of the divergent view taken by two division benches of this Court, one in **Kashibai's case (supra)** and other in **Bhagyashree Pradip Chopade vs MIDC and Others**⁴. Since, the Full Bench has ruled that the declaration in the judgement of **Kashibai** about Clause (e) of the said GR of 2001 is held not to have binding effect in perpetuity and restricted to facts of that case, the decision taken by the Tribunal in the impugned order (based on **Kashibai's** case), cannot be sustained. The Clause (e) of the said GR of 2001 reads as under:

4 Bombay High Court in in Writ Petition No. 6819 of 2021 dated 08/03/2022

“(ई) दिनांक 31 डिसेंबर 2001 नंतर तिसरे अपत्य झालेल्या कर्मचाऱ्यांच्या कुटुंबियांस अनुकंप तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही.”

[Emphasis supplied]

This same position is further reiterated in Clause 3(6) of the Appendix-A of the said GR of 2017, which consolidates the Government Resolutions about appointment on compassionate ground. It reiterates the said policy about 3rd child and its effect on entitlement of family of the concerned government servant to compassionate appointment. The policy is clearly based on the need for population control.

8. It is true that the Full Bench judgment was rendered after the impugned order is passed and therefore the learned Tribunal did not have the advantage of considering the same. However, considering that the death of the government servant in the present case has taken place long ago in April, 2010, no useful purpose will be served by relegating the parties to the Tribunal again. It will amount to unnecessary lease of life to the litigation. Hence, we deem it appropriate to consider the case on merits.

9. In view of the fact that the Clause (e) of the said GR of 2001 is clearly applicable to the facts of the present case and the Respondent being the 3rd child of the government servant born after 31/12/2001, the family members of said government servant are not entitled or eligible for appointment on compassionate ground. In our view, the aspect of Respondent being a son born from second and illegitimate marriage, has no effect in the present case, in as much as whether legitimate or illegitimate, the fact remains that the concerned government servant Mr. Sunil had three children and therefore the said angle is irrelevant, in the facts of the present case,

especially after the Full Bench view.

10. Considering that the said GR of 2001 and its Clause (e) squarely applies to the case of the Respondent, he cannot be held entitled to the compassionate appointment. Therefore the impugned communication dated 25/11/2022 rejecting the Respondent's claim is justified and as such, Original Application No. 1326 of 2022 has no merit.

11. The petition therefore succeeds and it is allowed in following terms:

(a) The impugned Judgment and Order dated 13/07/2023 passed by the Member, Maharashtra Administrative Tribunal, Mumbai, in Original Application No. 1326 of 2022 is quashed and set aside and the Original Application No. 1326 of 2022 is dismissed.

(b) Rule is made absolute in above terms with no order as to the costs.

All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)