



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9685 OF 2023

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| 1. Vidya Sunil Ahire |] |
| 2. Manish Sunil Ahire |] .. Petitioners |
| <i>Versus</i> | |
| 1. The Commissioner of Police, Thane |] |
| 2. The Principal Secretary, Home Department,
Mantralaya, Mumbai |] |
| 3. Director General of Police, Mumbai |] |
| 4. The State of Maharashtra |] .. Respondents |

Mr. Dinesh P. Adsule, Advocate for the Petitioners.

Mr. S.P. Kamble, Assistant Government Pleader for the Respondent-State of Maharashtra.

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 28TH JUNE, 2024.

PC. :

1. Heard.
2. The challenge raised in this Writ Petition is to the judgment dated 13th October 2020 passed by the learned Member, Maharashtra Administrative Tribunal, Mumbai, thereby dismissing the Original Application preferred by the petitioners. In the Original Application, the petitioners had challenged the communication dated 11th January 2019, whereby the petitioners' claim for seeking appointment on compassionate ground came to be rejected.

3. The husband of the petitioner no.1 and father of petitioner no.2 died in harness on 11th February 2013. The petitioner no.1 sought appointment of petitioner no.2 on compassionate ground. By the communication dated 11th January 2019, the petitioners were informed that since the family of the deceased had more than two children and benefit of Government Resolution dated 28th March 2001 could not be granted, no appointment on compassionate ground could be made. The Tribunal considered the challenge as raised to the aforesaid communication. It held that prior publication of the said Government Resolution dated 28th March 2001 was not mandated in view of the fact that there was no such practice to publish a Government Resolution. It further held that the entitlement of the petitioners was to be considered under the Government Resolution dated 28th March 2001 and not the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 – *for short “Rules of 2005”*. On this premise, the Original Application was rejected.

4. The learned counsel for the petitioners has reiterated the aforesaid contentions that were raised before the Tribunal and considered against the petitioners. Placing reliance on the decisions in *Harla Vs. State of Rajasthan, 1951 SCC 936* and *ITC Bhadrachalam Paper Boards and Anr. Vs. Mandal Revenue Officer, Andhra Pradesh and Ors., JT 1996 (8) 67*, it

was submitted that the Tribunal erred in denying relief to the petitioners. Since the third child was born on 7th August 2002, which was prior to enforcement of the Rules of 2005, the claim of the petitioners could not have been denied by relying upon the Government Resolution dated 28th March 2001. It was thus prayed that the judgment of the Tribunal be set aside and the petitioners' claim be allowed.

5. Mr. S.P. Kamble, the learned Assistant Government Pleader supported the judgment of the Tribunal. Placing reliance on the judgment of the Full Bench (Aurangabad Bench) in *Sunita Dinesh Gaikwad and Anr. Vs. The State of Maharashtra and Anr., Writ Petition No.9284 of 2022, decided on 27th July 2023*, it was submitted that the validity of the Government Resolution dated 28th March 2001 had been upheld. Since the requirements of Government Resolution dated 28th March 2001 were not satisfied, the Tribunal rightly dismissed the Original Application.

6. Having considered the rival submissions and having perused the judgment of the Tribunal, we do not find that there is any case made out to interfere in exercise of writ jurisdiction. The contentions urged herein have been rightly considered by the Tribunal inasmuch as prior publication of the Government Resolution is not shown to be mandatory. The decisions relied upon by the learned counsel for the petitioners relate to publication of statutory rules wherein the procedure for publication has been

mandated. In the present case, we are concerned with applicability of a Government Resolution for which it is not necessary to have it published. Similarly, reliance placed on the Rules of 2005 is misplaced since the issue is governed by the Government Resolution dated 28th March 2001. We therefore do not find that the Tribunal committed any jurisdictional error for this Court to interfere in exercise of writ jurisdiction.

7. The Writ Petition therefore stands dismissed with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]