



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

WRIT PETITION NO. 7742 OF 2014.

Ms.Kashabai Sheshrao Wagh

.. Petitioner

Vs

The Zilla Parishad, Nashik and others

.. Respondents

Mr.R.N.Gite, for the Petitioner.

Mr.A.R.Kapadnis, for Respondent No.1.

Mr.M.M.Pabale – Addl. Government Pleader, for Respondent Nos.2 and 3.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M.JAMDAR, J.***

Date : 3 July, 2019.

P.C. :

1. Heard learned counsel for the parties.

2. At the outset we record our displeasure to the fact that in the counter affidavit filed by Respondent No.3 in paragraph 6 a false statement of fact has been pleaded that there is a family dispute amongst the family of Sheshrao Trambak Wagh, an Assistant teacher under the first Respondent -Zilla Parishad, Nashik who died in harness, on 22 June 2007.

3. From his first pre-deceased wife he was blessed with two children. From the wedlock with the Petitioner a third child was born.

4. Under the policy of appointment on compassionate basis the Petitioner sought appointment which has been declined to her on the reason that the policy of the State Government prohibits public employment to a person who has begotten a third child after the cut-off date i.e 31 December 2001. The policy decision concerning appointment on compassionate basis is dated 28 March 2001 and it also contains a stipulation that appointment on compassionate basis would not be granted to the dependent of deceased a government servant who had more than three children.

5. Aforesaid facts bring out that as regards the Petitioner she gave birth to only one child. Her deceased husband had two children from the previous wedlock.

6. The conditions in the policy decisions for grant of appointment on compassionate basis contains an embargo to the applicant being disentitled on the fact of the deceased government servant having 3 children.

7. Notwithstanding there being no prayer to quash the said

condition as unconstitutional, we declare the same to be unconstitutional. For the reason in a given set of facts, as in the instant case, the Petitioner who has only one child would suffer the brunt of public employment being denied on the reasoning that her deceased husband was blessed with two children from the previous marriage. The intention behind the policy is to control the exploding population and not to prohibit remarriages. The Petitioner was the second wife of the deceased employee of Zilla Parishad and as far as she was concerned, she bore only one child.

8. Declaring the Petitioner to be eligible to be considered for grant of appointment on compassionate basis, we direct the Respondents to consider her entitlement as per policy, meaning thereby, the Respondents would consider whether the Petitioner is in such state of penury that she needs an appointment on compassionate basis so that she and her family can survive.

9. Necessary decision shall be taken within four weeks.

N.M.JAMDAR, J.

CHIEF JUSTICE