IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10795 OF 2014

Shri Avinash Kondiram Wagh,]
Aged 31 years, Occupation Service,]
R/o. Flat No.23, Mangal Varsha CHS Ltd.,]
Kathe Lane, Dwarka, Nashik] … Petitioner.

Versus

1. The In-charge Deputy Director,]
Vocational Education & Training,]
Regional Office, Trymbak Naka,]
Old Agra Road, Nashik-2.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Higher & Technical Education Department,]
[Vocational Education], Mantralaya,]
Mumbai – 400032.] ….Respondents.

ALONG WITH

WRIT PETITION NO.10796 OF 2014

Shri Abhay Chandrakant Khond,]
Aged 36 years, Occupation Service,]
R/o. D/701,Ramchandra, Heights,]
Tisgaon, Kalyan [W], District Thane.] ….Petitioner.

Versus

1. The In-charge Joint Director,]
Vocational Education & Training,]
Regional Office, Mumbai Region,]
having Office at 49, Kherwadi,]
Bandra [E], Mumbai – 400051.]

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2. The State of Maharashtra,]
through the Principal Secretary,]
Higher & Technical Education Department,]
[Vocational Education], Mantralaya,]
Mumbai – 400032.] ….Respondents.

Mr. Narendra V. Bandiwadekar, Senior Advocate, with Mr. Vinayak R. Kumbhar with Mr. Rajendra B. Khaire, for the Petitioner in both the above Writ Petitions.
Mr. A. I. Patel, Addl. GP with Ms. Reena Salunkhe, AGP, for the State in WP No.10796 of 2014
Ms. Kavita N. Solunke, Addl. GP with Ms. Rupali Shinde, AGP for the State in WP No.10795 of 2014.

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

Reserved on : 12th October, 2026
Pronounced on : 30th October, 2026

JUDGMENT: (Per Gautam A. Ankhad, J.)

1. Rule. By consent of the parties, Rule is made returnable forthwith.

2. Both these Petitions challenge the common judgment and order dated 30th October, 2014 passed by the Maharashtra Administrative Tribunal, Mumbai ("**Tribunal**"). By the impugned judgment, the Tribunal had allowed a few identical Original Applications, but dismissed Original Application No. 1030 of 2010 filed by Shri Avinash Kondiram Wagh and Original Application No.

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1220 of 2010 filed by Shri Abhay Chandrakant Khond. Since both the Petitions raise a common issue concerning the classification of the posts for the purpose of compassionate appointment, they are being decided by this common judgment. The facts of each Petition are set out separately below.

(Facts in Writ Petition No. 10795 of 2014 (Avinash Kondiram Wagh):

3. The Petitioner's father, Shri Kondiram Wagh, was employed by the State Government as a junior clerk in a Group-C post. He died in service on 24th December, 2001. By order dated 1st December, 2004, Respondent No.1 appointed the Petitioner on compassionate grounds as a Group Instructor in the pay-scale of Rs.6,500-10,500/-. The Petitioner joined service, completed his probation and since then has been in continuous employment with the Respondents.

4. On 21st August, 2010, Respondent No. 1 issued a show cause notice alleging that the Petitioner's appointment was not in accordance with the Government Resolution dated 2nd July 2002. The notice proceeded on the basis that a post carrying the pay-

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scale of Rs. 6,500–10,500/- was classified as a Group-B, non-gazetted post, and called upon the Petitioner to show cause why his appointment should not be cancelled. The Petitioner challenged the notice before the Tribunal by filing Original Application No. 1030 of 2010. The Petitioner relied, *inter alia*, on Government Resolutions dated 22nd October 2008, 31st March 2010, 14th May 2010 and 31st August 2010, which, according to him, classified the post of Group Instructor in that pay-scale as Group-C (Technical). The Tribunal granted interim protection but finally dismissed the Original Application. By order dated 1st December 2014, this Court continued the interim protection granted to the Petitioner, who has remained in service during the pendency of this Petition.

(Facts in Writ Petition No. 10796 of 2014 (Abhay Chandrakant Khond):

5. The Petitioner's father, Shri Chandrakant Khond, was employed by the State Government as a Training Officer in the pay-scale of Rs. 6,500-10,500/-. He died in service on 7th March 2003. By order dated 31st January 2008, the Petitioner was appointed on compassionate grounds as a Junior Clerk-cum-Typist. He completed his probation and continued in service with the

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Respondents on being confirmed.

6. On 26th October 2010, Respondent No. 1 issued a show-cause notice relying on a confidential letter dated 19th May 2010 issued by the Directorate of Vocational Education and Training. The letter stated that dependents of deceased employees holding certain Group-B, non-gazetted posts, including posts carrying the pay-scales referred to therein, were not eligible for compassionate appointment and that appointments already made in such cases should be cancelled. Since the Petitioner's father had drawn the pay-scale of Rs. 6,500–10,500/-, the Petitioner was called upon to show cause why his appointment should not be cancelled. The Petitioner replied on 8th November 2010, disputing the proposed action. Apprehending termination of his service, he approached the Tribunal by filing Original Application No. 1220 of 2010. The Petitioner relied on the same Government Resolutions as the Petitioner in Writ Petition No.10795 of 2014 and contended that the post held by his father was a Group-C post notwithstanding the pay-scale attached to it. The Tribunal initially granted interim relief, but subsequently dismissed the Original Application by the impugned judgment dated 30th October 2014. This Court

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continued the interim protection on 1st December 2014, and the Petitioner has remained in service since then.

Submissions on behalf of the Petitioners:

7. Mr. Bandiwadekar, learned senior counsel appearing for both the Petitioners, submits that the posts held by their deceased fathers, carrying the pay-scale of Rs. 6,500–10,500/-, were classified as Group-C posts under the relevant Government Resolutions. In particular, the post of Group Instructor was expressly shown as a Group-C (Technical) post. He further submits that the post of Training Officer was a feeder-cadre post for promotion to Group-B, which, according to him, supports the distinction between the post held and the higher promotional post. The appointments were made by the competent authorities under the policy then in force. The same cannot be cancelled by relying solely on the Government Resolution dated 2nd July 2002 while ignoring the subsequent Government Resolutions referred to by the Petitioners. The learned senior counsel also relies on the Government Resolution dated 27th September 2021, by which the policy of compassionate appointment was extended to dependents of employees in Groups A and B as well as Groups C and D. He

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submits that, in view of the subsequent policy decision of the State and the other material on record including blemishless continued service by the Petitioners, the impugned judgment ought to be set aside.

Submissions on behalf of the State:

8. On the other hand, Ms. Solunke and Mr. Patel, the learned AGP rely on the reply affidavits dated 28th July, 2016 filed by the Respondents in the respective petitions. It is contended that compassionate appointment was, at the relevant time, available only to dependents of employees in Groups C and D. According to the learned AGP, the Petitioners' appointments resulted from an erroneous classification of their fathers' posts. Reliance is placed on the confidential letter dated 19th May 2010 issued by the Director of Vocational Education and Training, which instructed the Joint Directors to terminate the compassionate appointments of dependents of deceased employees drawing the specified pay-scales as same were found to be impermissible. The learned AGP submitted that there is no illegality in the actions of the Respondents and the Tribunal's decision warrants no interference.

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Reasons:

9. We have considered the rival submissions and examined the record. The question is whether the Respondents were justified in treating the posts held by the Petitioners' deceased fathers as Group-B posts, solely on the basis of the pay-scale attached to them, and consequently initiating action to cancel the compassionate appointment of the Petitioners.

10. After following the due process, the Petitioners were appointed by the competent departmental authorities in 2004 and 2008, respectively. Both the Petitioners completed probation and continued in service for several years before the impugned show-cause notices were issued in 2010. The notices rest on the premise that the pay-scale of Rs. 6,500–10,500/- placed the posts held by their fathers in Group B. In our view, the Government Resolution dated 2nd July 2002 and the confidential letter dated 19th May 2010, on which the Respondents rely, cannot be read in isolation from the subsequent Government Resolutions, which specifically addresses the post of Group Instructor and the staffing pattern of the Department.

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11. A perusal of the Government Resolution dated 22nd October 2008 shows that Respondents have classified the post of Group Instructor, carrying the pay-scale of Rs. 6,500–10,500, as a Group-C (Technical) post. The Government Resolution dated 31st March 2010, concerning the permanency of 80 per cent of temporary posts, similarly lists the post of Group Instructor as Group C in the same pay-scale. Schedule I to the Government Resolution dated 14th May 2010 also places the said post under Group C, and the Government Resolution dated 31st August 2010, concerning transfers of Group Instructors, continues to treat the post as Group C under the revised Sixth Pay Commission (tallying with the earlier pay-scale of Rs.6,500-10,500/-). We, therefore, find merit in the submission of Mr. Bandiwadekar, that when read together, the aforesaid Government Resolutions identify the post of Group Instructor as a Group-C post. We may note that the Respondents have not shown that any of these Government Resolutions are withdrawn, superseded or set aside. The departmental letter dated 19th May 2010 does not address or reconcile these specific classifications. No explanation is forthcoming from the learned AGP as to why the aforesaid Government Resolutions were not considered by the Respondents. We also find that the Tribunal has

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not considered the aforesaid four Government Resolutions, which has a material bearing on this case. Hence in our view, the action proposed against Shri Avinash Wagh, the Petitioner in Writ Petition No. 10795 of 2014, to set aside the compassionate appointment on the basis of the Government Resolution dated 2nd July, 2002 cannot be sustained in the eyes of law.

12. The facts in Writ Petition No. 10796 of 2014 also do not support the proposed termination of service. The Respondents have admitted that the Petitioner's father was employed in a Class-III post at the time of his death. The Petitioner was appointed on a compassionate basis as a Junior Clerk-cum-Typist, a post which is also classified in Group C. The Respondents have not established a valid basis to treat the father's post as Group B. Hence, for the same reasons as aforesaid, the action proposed against Shri Abhay Khond, the Petitioner in Writ Petition No. 10796 of 2014 cannot be sustained in law.

13. On the material before us, we are satisfied that the posts held by the Petitioners' deceased fathers were correctly treated as Group-C posts for the purpose of appointing the Petitioners. The proposed cancellation of their compassionate appointments is

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without consideration of several Government Resolutions referred to above and would cause serious and disproportionate prejudice to the Petitioners. Apart from merits of the case, as discussed above, the claim of the Petitioners also weighs strongly on the principle of equity and fairness against the drastic action of unsettling their employment after such a long period of service. There was no laches or delay on the part of the Petitioners in seeking compassionate appointment. The Petitioners have served continuously for approximately two decades. No fraud, misrepresentation or other misconduct on their part has been alleged. The Petitioners have also now crossed the usual age limits for entry into Government employment. As such, termination of their service at this stage would expose them and their family members, to grave and disproportionate hardship.

14. In ***Md. Zamil Ahmed v. State of Bihar***[1], the Hon'ble Supreme Court has held in similar circumstances that the compassionate appointment could not be terminated. The relevant paragraphs read as under:-

> "14. In our considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for

[1] (2016) 12 SCC 342

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giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread-earner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare State to help the family of the deceased at the time of need of the family.

15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State."

15. We may also note that by Government Resolution dated 27th September 2021, the State has extended the policy of compassionate appointment, previously applicable to dependents of Group-C and Group-D employees, to dependents of employees

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in Groups A and B as well. We do not treat this later policy as retrospectively determining the classification of the posts or as the source of the Petitioners' entitlement. However, it demonstrates that the policy restriction on which the Respondents rely has since been widened.

16. It is well settled that appointment on compassionate grounds is an exception to the ordinary rule of recruitment. It is a beneficial measure adopted by the State to alleviate the financial hardship and provide immediate assistance by providing employment to a family member of a deceased employee. This enables the family tide over the sudden financial crisis caused by the untimely death of the employee. In the present case, both the Petitioners had completed their probation and were confirmed in service by Respondent No.1. Having thus acquired the status of confirmed employees, the Petitioners have acquired a right to continue in service, subject to the applicable service rules. Such appointment and right to continue in service cannot be taken away except in accordance with law. The Petitioners have been in service for almost two decades. Therefore, any attempt to remove them from service in this matter, at this belated stage, would not only run

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contrary to the very object of compassionate appointment, but the same would also be contrary to relevant Service Rule. In the facts and circumstances of the present case, we are of the view that the process adopted by the Respondents was not in accordance with law.

17. For all the above reasons, the impugned judgment, insofar as it dismisses their Original Applications, cannot be sustained. The impugned judgment and order dated 30th October 2014, insofar as it dismisses Original Application No. 1030 of 2010 filed by Avinash Kondiram Wagh and Original Application No. 1220 of 2010 filed by Abhay Chandrakant Khond, is set aside. Both the Writ Petitions are allowed in terms of prayer clauses (a), (b), (c) and (d). Needless to add that this order is passed in peculiar facts and circumstances of the case and shall not be treated as a precedent for other matters.

18. Rule is made absolute in the above terms. There shall be no order as to costs.

(GAUTAM A. ANKHAD, J.) (SUMAN SHYAM, J.)

BHARAT DASHARATH PANDIT

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