

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 6823 OF 2014.**

Chaya Baliram Bhore,
age 39 years, Occu. Service.
r/o Jamb, Tq. Bhoom,
Dist. Osmanabad.

... PETITIONER.

V/S

1. The State of Maharashtra,
School Education and Sports Department,
(Through its Secretary),

2. Jai Jawan Jai Kisan Shikshan Sanstha,
Anala, Tq. Paranda,
Dist. Osmanabad,
(Through its Secretary).

3. New High School Jamb,
Tq. Bhoom,
Dist. Osmanabad,
(Through the Head Master),

4. The Education Officer,
(Secondary),
Zilla Parishad, Osmanabad,
Tq. Dist. Osmanabad.

... RESPONDENTS.

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Advocate for Applicant : Mr. Dharurkar Chaitanya V.
AGP for Respondents No.1 & 4: Mr. D.V. Tele.
Advocate for R.Nos.2 & 3: Mr. R.V. Gore.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

RESERVED ON : 30.03.2015.

PRONOUNCED ON : 01.04.2015.

JUDGMENT: [PER SHINDE, J]

1. Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

The learned Counsel for the petitioner has tendered across the Bar a compilation of documents, which is taken on record and marked as "X" for identification purpose.

2. This petition has been filed with following prayers:

"B. The order dated 24.11.2010 (**Exhibit-A**) passed by the respondent No.4 Education Officer refusing grant of approval to the petitioner's appointment as Peon may kindly be quashed and set aside and instead the respondent No.4 may kindly be directed to grant approval to the petitioner's appointment w.e.f. 01.02.2010.

C. The respondent no.4 may kindly be directed to pay to the petitioner her regular salary and also release the arrears of salary payable to her w.e.f. 01.02.2010.”

3. The case of the petitioner in brief, as disclosed in the petition, is as under:

The petitioner's husband was appointed as peon with the respondent No.3 school in the year, 1994. His appointment was on a clear, permanent, sanctioned, vacant post. The respondent No.4 by an order dated 4.7.1998 granted approval to the appointment of the petitioner's husband. In the year, 2009 petitioner's husband met with an accident and lost his life. Thereafter, the respondents No.2 and 3 appointed the petitioner on compassionate ground in place of her husband by order dated 1.2.2010.

4. The respondent No.3 forwarded a proposal on 10.2.2010 to respondent No.4 Education Officer for grant

of approval to the petitioner's appointment. The respondent No.4 Education Officer pointed out certain deficiencies in the proposal submitted. The respondent No.3 removed those deficiencies and final proposal was forwarded on 11.10.2010 to respondent No.4. By communication dated 24.11.2010, the respondent No.4 expressed inability to grant approval to the petitioner's appointment as Peon. The respondent No.4 indicated that in view of the provisions of Government Resolution dated 25.11.2005, the post on which the petitioner was appointed is not a sanctioned post and therefore, approval cannot be granted.

5. It is case of the petitioner that the petitioner's appointment is on a post that was once served by her deceased husband. It is a clear, permanent, vacant, sanctioned post. It is not a newly created post as contemplated in the Government Resolution dated 25.11.2005. The petitioner as well as respondent No.3 have addressed representations during the period from 2011 to 2014 praying to revoke the letter dated

24.11.2010. However, there is no response. Hence, this petition has been filed with the afore mentioned prayers.

6. The learned Counsel for the petitioner submits that the post held by the petitioner is the one which was once held by her deceased husband. The petitioner was appointed on compassionate ground and absorbed on the same post on account of untimely death of her husband. The petitioner's post is not a newly created post. The provisions of the Government Resolution dated 25th November, 2005 are not applicable to the petitioner's case. It is submitted that the reason given by the respondent No.4 for refusing approval to petitioner's appointment is far from correct. The petitioner's appointment is on compassionate ground in place of her deceased husband. The post on which the petitioner's husband was working was a clear, sanctioned, permanent, vacant post and therefore, the petitioner's appointment cannot be termed as fresh appointment on newly carved out post. It is further submitted that in an identical fact situation, this High Court held that if the appointment is on sanctioned vacant post, the provisions

of Government Resolution dated 25th November, 2005 cannot be set in to play. The learned Counsel for the petitioner, in support of said contention, invited our attention to the judgment dated 3rd May, 2014 passed by this Court in case of ***Smt.Sangita w/o Manohar Ingle vs The State of Maharashtra and others in writ petition No.6586 of 2011.***

7. On the other hand, learned AGP appearing for the State, relying upon the affidavit-in-reply filed on behalf of the respondents No.1 and 4, submitted that the respondent No.2 is running two secondary schools which are on grant-in-aid basis, there are classes from 5th 10th standards. As per the staff approval for the year, 2005-06, four posts of Class IV employees have been sanctioned. It is further submitted that husband of the petitioner namely late B.B. Bhore was working as class IV employee in the respondent No.2's institution. As per the Government Resolution dated 25th November, 2005, the norms are laid down for sanctioning posts of Class IV

employees. In respondent No.2's New High School, Jamb, there are classes from 5th to 10th standards and in all six divisions have been sanctioned. Therefore, as per the aforesaid Government Resolution, only two posts of Class IV employees are applicable. It is further submitted that at present in respondent No.2 institution there are three Class IV employees working. The respondent No.2 had appointed the petitioner on compassionate ground. Including the petitioner, there are four employees working in respondent No.2 institution. However, as per the the Government Resolution dated 25th November, 2005, only two posts of Class IV employees are admissible. Therefore, approval to the petitioner cannot be considered till vacancy of class IV post.

8. We have heard the learned Counsel for the petitioner, learned AGP appearing for respondents No.1 and 4 and learned Counsel for respondents No.2 and 3. We have carefully perused the Government Resolution dated 25th November, 2005 issued by the School

Education and Sports Department, Mantralaya, Mumai and also the Annexure (प्रपत्र - अ) to the said resolution. It appears that, in all there are four sanctioned posts of peon. Since there was sanctioned and vacant post, proposal was forwarded by the respondent – institution for approval to the respondent No.4 Education Officer. Upon perusal of the letter addressed by the Education Officer (Secondary), Zilla Parishad, Osmanabad to the Head Master, New High School, Jamb, Taluka Bhoom, Dist. Osmanabad, it clearly appears that the total sanctioned posts of peon for the years 2007-08, 2008-09 were 4 and the appointment of the petitioner was in the year, 2010. We have also perused the compilation of documents tendered across the Bar by the learned Counsel petitioner which shows that even for the years, 2010-11, 2012-13 and 2013-14 four sanctioned posts of peon have been shown.

Since the post on which the petitioner was appointed on compassionate ground had become vacant due to death of her husband, and that post was also a

sanctioned post, the respondents No.2 and 3 have rightly appointed the petitioner. In the peculiar facts and circumstances of this case, since the petitioner is working w.e.f. 1.2.2010 and her appointment was made on compassionate ground as demonstrated on a clear, vacant and sanctioned post, in our opinion, the reasons assigned by the respondent No.4 Education Officer for refusing approval cannot sustain.

9. In the result, we set aside the impugned order 24.11.2010 passed by the respondent No.4 Education Officer. We direct the respondent No.4 Education Officer to grant approval to the petitioner's appointment as a peon, as expeditiously as possible and in any case, on or before 10th May, 2015. Rule is made absolute in the above terms.

[P.R. BORA, J]

[S.S. SHINDE, J]

Kadam.