

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2102 OF 2013

- 1] Shashwatkumar s/o. Vishwanathrao Kamble
Age-21 Years, Occu: Nil,
R/o. Shaktinagar, Nanded,
Tq. & Dist. Nanded
- 2] Janabai w/o. Vishwanathrao Kamble,
Age Major, Occu: Nil,
R/o. as above.

PETITIONERS

VERSUS

- 1] The State of Maharashtra
Education Department,
Through the Secretary
Mantralaya, Mumbai-32
[The copy to be served on A.G.P.
High Court at Aurangabad]
- 2] The Education Officer [Secondary],
Zilla Paishad, Nanded
Tq. & Dist. Nanded
- 3] The Headmaster
Bharat Vidyalaya High School
Shaktinagar, Nanded
Tq. & Dist. Nanded
- 4] The Rashtriya Shikshan Samiti
Nanded
Bharat Vidyalaya High School
Shaktinagar, Nanded
Tq. & Dist. Nanded
Through its Secretary

RESPONDENTS

Mr. Amol S.Gandhi, Advocate for the
Petitioners

Mr. B.V.Virdhe, AGP for the Respondent Nos.1
and 2

Mr. M.V.Ghatge, Advocate for the respondent
Nos.3 and 4

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 07.04.2016

Pronounced on : 16.04.2016

ORDER: [Per S.S.Shinde, J.]:

This Writ Petition under Article 226
of the Constitution of India, seeks direction
to the respondents to consider the
application filed by the petitioners and
appoint petitioner no.1, to any suitable post
on compassionate ground.

2] It is the contention of the
petitioners that the deceased Vishwanathrao
Kamble, who was the father of the petitioner
no.1 and the husband of the petitioner no.2,
was working as a Clerk in respondent no.3
School. He died on 21.02.2010 during the
course of employment. It is submitted that,

due to sudden death of the sole earning member of the family of the petitioners, the petitioners suffered great monetary as well as mental loss, and are facing financial crunch.

3] On 03.03.2010, petitioner no. 2 filed an application to respondent no.3 requesting him to appoint her son i.e. petitioner no. 1, on compassionate ground. It is submitted that, considering the policy of the respondents and the above-mentioned facts and circumstances, the respondents ought to have considered the application of the petitioners, and ought to have appointed the petitioners to any suitable post, but the respondents failed to do so. It is submitted that, thereafter, the petitioners filed applications on 09.04.2012 and 19.07.2012, requesting the respondents to consider their applications sympathetically, and appoint petitioner no. 1 on compassionate ground. It

is submitted that, taking cognizance of the applications filed by the petitioners, respondent no.2 by communication dated 24th July, 2012, directed respondent no. 3 to consider the application filed by the petitioners for appointment on compassionate ground.

4] It is submitted that, despite the directions by respondent no.2, respondent no. 3 did not consider the applications filed by the petitioners, therefore, the petitioners again filed applications before respondent no.3 on 27th July, 2012 and 3rd November, 2012, requesting him to consider their application sympathetically. It is submitted that, in respect of another person namely, Laxman Chintewar, respondent nos. 3 and 4 have given appointment to his adopted son on compassionate ground and forwarded the same to respondent no. 2 for sanction, by letter

dated 31st July, 2008, but did not consider the genuine claim of the petitioners.

5] The learned counsel appearing for the petitioners invited our attention to the grounds taken in the Petition and submitted that, merely filing of F.I.R. by the petitioner against the members of the Managing Committee could not be a ground to deny the appointment on compassionate ground. It is submitted that respondent no.2 has already directed respondent no. 3 to consider the application of the petitioners for appointment on compassionate ground in accordance with the Government policy.

6] Pursuant to the notices to the respondents, respondent nos. 3 and 4 have filed affidavit-in-reply. It is stated in the said affidavit-in-reply that, the application of the petitioners for appointment on compassionate ground was

placed before the School Committee on 3rd September, 2012, and the Committee unanimously resolved that, till the criminal proceedings initiated by the petitioners are pending before the Sessions Court, Nanded, the application of the petitioners for appointment on compassionate ground should not be considered. It is submitted that, the Enquiry Committee was appointed by respondent no. 4. The said Enquiry Committee framed charges against four employees including Vishwanath [deceased]. After conclusion of the enquiry, on 18th May, 2008, two increments of the deceased Vishwanath were stopped.

7] It is further submitted that, petitioner no.1 filed F.I.R. on 22nd March, 2010, under Section 306, 34 of the Indian Penal Code and section 3 and 2 [v] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989. In the said F.I.R., the members of the Managing

Committee as also the Head Master were shown as the accused. It is submitted that, since the petitioners filed F.I.R. against the members of the Managing Committee and the Headmaster, it shows the conduct and behaviour of the petitioners, and therefore, it is not desirable to consider the prayer of the petitioners for appointment on compassionate ground in the respondent School. It is submitted that, at present, there is no vacant post so as to appoint the petitioners on compassionate ground.

8] We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, and the learned counsel appearing for respondent nos. 3 and 4. With their able assistance, perused the pleadings in the petition, annexures thereto, reply filed by respondent nos. 3 and 4, and also annexures thereto, and we are of the opinion that, merely because petitioner

no.1 filed F.I.R., that cannot be a ground for respondent nos. 3 and 4 not to consider the case of petitioner no.1 for appointment on compassionate ground. It appears that, respondent no.2 has already directed respondent nos.3 and 4 to consider the request of petitioner no.1 for appointment on compassionate ground. Upon careful perusal of the letter written by respondent no.2 to respondent no.4 dated 24th July, 2012, it appears that, respondent no.2 has directed respondent no. 4 to consider the case of petitioner no.1 for appointment on compassionate ground keeping in view the Government policy and prevailing Rules. During the course of hearing, the learned counsel appearing for the petitioners has informed that, criminal case instituted on the basis of the F.I.R. filed by petitioner no.1 against respondent no.4 and other members of the Managing Committee has ended

into acquittal. We do not propose to enter into controversy about filing of the F.I.R. or its further progress. Suffice it to say, since respondent no.2 has already directed respondent no. 4 to consider petitioner no.1 for appointment on compassionate ground, as and when vacancy would arise, respondent nos. 3 and 4 should consider the case of petitioner no.1, for appointment on compassionate ground, in accordance with relevant Government policy and Rules prevailing at the time of filing an application by the petitioners. Respondent nos. 3 and 4 are directed to communicate their response to respondent no. 2 within 6 weeks from today.

9] Petition is partly allowed, and the same stands disposed of.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE