

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

WRIT PETITION NO.12225 OF 2015

Smt.Indu d/o. Shivaji Batanpurkar,
Age : 32 years, Occ. Service,
r/o. Hanmantwadi, Latur,
Tq. and Dist. Latur

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary
School Education and Sports
Department, Mantralaya,
Mumbai

2. The Education Officer (Secondary)
Zilla Parishad, Latur,
Tq. and Dist. Latur

3. Pratibha Niketan High School,
Hanmantwadi,
Tq. and Dist. Latur,
Through its Headmaster

..Respondents

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Mr.V.D.Gunale, advocate for petitioner

Mr.A.V.Deshmukh, AGP for respondent nos.1 and 2

Ms.Supriya L. Pansambal, Advocate for respondent
no.3

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

**RESERVED ON : JULY 15, 2016
PRONOUNCED ON : JULY 20, 2016**

JUDGMENT (PER SANGITRAO S. PATIL, J) :

Heard. Rule, returnable forthwith. Heard finally with consent of the learned Counsel for the parties and the learned AGP.

2. The petitioner has impugned the order/communication dated 03.12.2015 (Exhibit – I) passed by respondent no.2 – Education Officer (Secondary), Latur, whereby the proposal sent by respondent no.3 seeking approval to the appointment of the petitioner to the post of Assistant Teacher came to be rejected.

3. The father of the petitioner namely, Shivajirao Shravan Batanpurkar (hereinafter referred to as "late Shivajirao") was working as Head Master with respondent no.3. He died in harness on 08.02.2014 leaving behind him, his widow, three daughters (inclusive of the petitioner) and one son. Though the petitioner is

married, her husband has deserted her since before two years of filing of this Writ Petition. Other two sisters of the petitioner are married, they are residing at their respective matrimonial houses. The brother of the petitioner namely, Prashant could not prosecute his studies due to the sad demise of Shivajirao. The educational qualification of the petitioner is M.A., B.Ed. Her mother, brother and other two sisters gave 'no objection' for appointment of the petitioner as an Assistance Teacher with respondent no.3 on compassionate ground consequent upon the sad demise of Shivajirao. Accordingly, the petitioner applied for appointment on compassionate ground to the post of Assistant Teacher. She undertook to maintain the other family members of late Shivajirao i.e. the mother and brother of the petitioner.

4. Respondent no.2 appointed the petitioner on compassionate ground as an Assistant Teacher

vide order dated 15.02.2014. Accordingly, the petitioner joined the said post on 17.02.2014. On the same day, respondent no.3 submitted a proposal to respondent no.2 with necessary documents, seeking approval to the appointment of the petitioner as an Assistant Teacher on compassionate ground. Respondent no.2 rejected the said proposal on the sole ground that the petitioner, being a married daughter of late Shivajirao, is not entitled to be appointed on compassionate ground in view of the Government Resolution dated 31.12.2002 issued by the School Education Department, Government of Maharashtra.

5. The learned Counsel for the petitioner submits that in view of the judgment in (i) **Aparna Narendra Zambre Vs. Assistant Superintendent Engineer, Krishna-Koyna Upsa Sinchan Project Board, 2011(5) Mh.L.J.290** and (ii) unreported judgment of this Court delivered on **27.10.2015** in

Writ Petition No.7482 of 2015 in the matter of **Smt. Kamalnayana w/o. Santosh Londhe Vs. The State of Maharashtra and ors.**, a married daughter of the deceased employee also has been held to be entitled to get appointed on compassionate ground on executing undertakings by her husband and herself to maintain other family members of the deceased employee. He further submits that consequent upon the judgment in the case of **Aparna Narendra Zambre** (supra), Government Resolution dated 26.02.2013 came to be passed by the General Administration Department, Government of Maharashtra, making married daughter of the deceased employee eligible for being considered for appointment on compassionate ground on giving undertakings by her husband and herself to maintain other family members of the deceased employee. He, therefore, submits that the ground, on which the approval has been refused by respondent no.2 to the appointment of the

petitioner as an Assistant Teacher on compassionate ground, is not at all legal and sustainable. He, therefore, prays that respondent no.2 may be directed to extend approval to the appointment of the petitioner as an Assistant Teacher on compassionate ground.

6. The petition has been opposed by respondent no.2 by filing affidavit-in-reply. He tried to justify his decision to refuse approval to the appointment of the petitioner as an Assistant Teacher on compassionate ground with respondent no.3 in view of the Government Resolution dated 31.12.2002. It is stated that the Government Resolution dated 26.02.2013 is not applicable to the facts and circumstances of the present case. On the strength of the averments made in the reply, the learned AGP supports the impugned order passed by respondent no.2 and prays that the Writ Petition may be dismissed.

7. In the case of **Aparna Narendra Zambre** (supra), the question for consideration was whether, being married daughter of the deceased employee, she would become ineligible for appointment on compassionate ground. It was held that Clause 3(a) of the Government Resolution dated 26.10.1994 issued by General Administration Department, Government of Maharashtra, which excludes married daughter from consideration for being appointed on compassionate ground, is discriminatory, arbitrary and unconstitutional.

8. In the similar fact-situation, a married daughter of the deceased employee was directed to be considered for appointment on compassionate ground after the demise of her father in the case of **Smt. Kamalnayana w/o. Santosh Londhe** (supra).

9. In view of the above settled position of law, the petitioner, who is married daughter of late Shivajirao, cannot be discriminated and

denied the opportunity of appointment on compassionate ground. The mother, brother and two married sisters of the petitioner have given 'no objection' for her appointment on compassionate ground. The petitioner has undertaken to maintain her mother and brother. She has been deserted by her husband. Therefore, there is no question of seeking undertaking from her husband. In the circumstances, the impugned communication/order passed by respondent no.2 refusing to extend approval to the appointment of the petitioner as an Assistant Teacher with respondent no.3 on compassionate ground cannot be said to be legal and valid. It is liable to be quashed and set aside.

10. In the result, we pass the following order :-

(i) The impugned communication/order dated 03.12.2015 issued by respondent no.2 refusing to

grant approval to the appointment of the petitioner as an Assistant Teacher on compassionate ground with respondent no.3 is quashed and set aside.

(ii) Respondent no.2 is directed to reconsider the proposal sent by respondent no.3 for approval to the appointment of the petitioner on compassionate ground and take appropriate decision thereon on its own merits, as expeditiously as possible, and within a period of six weeks from today, without rejecting the proposal on the ground, which has been mentioned by him in the impugned communication/order dated 03.12.2015 and communicate the decision to respondent no.3 and the petitioner.

(iii) Rule is made absolute in the above terms.

(iv) The Writ Petition stands disposed of accordingly.

(v) No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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