

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6595 OF 2004

Miss. Komal Padmakar Bhangale
Age : 20 years, Occu.: Nil,
R/o.: Plot No.5, Sadobanagar,
Near Hira Pipe, Jalgaon

PETITIONER

VERSUS

1. Education Officer (Sec.),
Zilla Parishad, Jalgaon
2. Kashibai Ukhaji Kolhe,
Vidyalaya, Jalgaon,
through its Headmaster,
Vithal Peth, Near Neri Naka,
Jalgaon
3. Joint Secretary,
School Committee,
Kashibai Ukhaji Kolhe Vidyalaya,
Vithal Peth, Near Neri Naka,
Jalgaon
4. State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai-32

RESPONDENTS

Mr. Sushant V. Dixit, Advocate holding for
Mr. V.J. Dixit, Senior Advocate for the Petitioner
Mrs.P.V. Diggikar, A.G.P. for respondent Nos.1 and 4
Mr. Hemantkumar Pawar, Advocate for respondent Nos.2 & 3

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : 16th JUNE, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

The petitioner has challenged the communication dated 5th November, 2003 made by the Education Officer (Secondary), Zilla Parishad, Jalgaon, refusing approval to the petitioner's appointment on compassionate ground to the post of Junior Clerk.

2. Heard the learned counsel for the petitioner, the learned A.G.P. for respondent Nos.1 and 4 and the learned counsel for respondent Nos.2 and 3.

3. The petitioner's mother was working as an Assistant Teacher in respondent No.2 – School. She died on 13th October, 2000. The petitioner applied for appointment on compassionate ground. Accordingly, she was appointed as Junior Clerk as per the order dated 24th August, 2002. She actually joined on 2nd September, 2002. The proposal for grant of approval to the appointment of the petitioner was sent to respondent No.1 – Education Officer. He refused to extend approval on the ground that as per the Government Resolutions dated 1st March, 2000, 10th March, 2003 and 1st August, 2003, there was ban for filling up the non-

teaching posts at the relevant time.

4. The learned counsel for the petitioner submits that there is clarification to the circular dated 1st March, 2000 as per the Government Resolution dated 29th June, 2000, issued by the Finance Department wherein it has been made clear that the circular dated 1st March, 2000 would not be applicable to the appointments made on compassionate ground. He submits that the circular dated 10th March, 2003 and the letter dated 19th April, 2003 can not be made applicable with retrospective effect to the appointment of the petitioner which was made on 24th August, 2002.

5. The learned A.G.P. tried to justify the impugned communication on the basis of the above-mentioned circular and letters.

6. As clarified in the Government Resolution dated 29th June, 2000, the circular dated 1st March, 2000 would not be applicable to the appointments made on compassionate ground. The another circular dated 10th March, 2003 as well as the letter dated 19th April, 2003 cannot be given retrospective effect so as to make them applicable to the appointment of the

petitioner vide order dated 24th August, 2002. The appointment on compassionate ground is made as a special case to give solace to the family of the deceased employee because due to untimely death of such an employee, his/her family members are put to suffer a great hardship due to loss of earning hand. The circulars referred to above certainly cannot be made applicable to such appointment. In the circumstances, the impugned communication, which is against the very concept behind appointment on compassionate ground, cannot sustain. Respondent No.1 was not at all right in refusing approval to the appointment of the petitioner on the basis of the above-referred circulars/letter. The impugned communication is, therefore, liable to be set aside. Hence, we pass the following order.

O R D E R

- (i) The Writ Petition is allowed.
- (ii) The communication dated 5th November, 2003 issued by the Education Officer (Secondary), Zilla Parishad, Jalgaon – Respondent No.1 is quashed and set aside.

- (iii) Respondent No.1 shall reconsider the proposal for approval to the appointment of the petitioner on its own merits expeditiously and in any case within three months from today.
- (iv) Respondent No.1 shall not reject the proposal for approval to the appointment of the petitioner on the ground on which it was rejected vide the impugned communication.
- (v) Rule is made absolute in the above terms.
- (vi) No costs.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE