

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

**CIVIL APPLICATION NO.12463 OF 2016
IN
CIVIL APPILCATION(REVIEW) ST.NO.25984 OF 2016
IN
WRIT PETITION NO.9302 OF 2015**

The Chief Executive Officer
Zilla Parishad, Parbhani

**..Petitioner/
ori.resp.no.2**

VERSUS

1. Sangita Balaji Daware
Age 33 yrs, Occ Nil
r/o. Sant Goroba society,
Nanded road, Latur,
Tq. and Dist. Latur.
2. The State of Maharashtra
Through its Secretary
Education Dept.
Mantralaya, Mumbai.
3. The Education Officer (Primary)
Zilla Parishad, Parbhani
4. The Headmaster
Zilla Parishad Primary School
Dighol Centre, Narwadi
Tq. Sonpeth Dist. Parbhani

**..Resp/R-1/Orig
petitioner
R-2 to R-4/Ori
resp nos.1,3&4**

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...

Mr.Vivek Bhavthankar, Advocate for the
applicant

Mr.T.M.Venjane, Advocate for respondent no.1

Mr.S.G.Karlekar, AGP for Respondent Nos.2 to
4 / State

...

**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 21.02.2017
Pronounced on : 01.03.2017

ORDER: (Per S.S.Shinde, J.):

1. Heard the learned counsel appearing for the applicant. Civil Application No. 12463/2016 is filed praying for condonation of delay.

2. The prayer for condonation of delay is vehemently opposed by the learned counsel appearing for the non-applicants i.e. original petitioner. However, for the reasons stated in the application, the application for condonation of delay is allowed and the same stands disposed of.

3. The Review Application is filed by the applicant-respondent no.2, seeking review of the judgment and order dated 1st March, 2016 passed by this Court in Writ Petition

No.9302/2015. The learned counsel appearing for the applicant (respondent no.2) submits that, this Court was pleased to allow the Writ Petition, by the judgment and order dated 1st March, 2016, observing that there is no mention of provision of disqualification for claiming compassionate appointment, if there is third child born to the deceased employees i.e. petitioner, after cut of date i.e. after 31st December, 2001 in the Government Resolution dated 22nd August, 2005. It is submitted that in fact the Government Resolution dated 28th March, 2001, issued by the General Administration Department, Government of Maharashtra speaks about disqualification for getting compassionate appointment to the legal heirs of deceased employee, who is having third child after cut of date i.e. 31.12.2001. It is submitted that by way of issuing Government Resolution dated 22nd August, 2005, by the General

Administration Department, Government of Maharashtra, has made certain additions to existing provisions as per clause no.2 in the Government Resolution dated 28th March, 2001. In view of the said addition in the Government Resolution issued on 22nd August, 2005, the family members of the Government employee in Grade C & D, who are permanently disabled to perform duty due to Cancer, Paralysis and accident are not entitled to get compassionate appointment. In view of addition of clause 2 (2) candidate below the age of 40 years would be qualified to claim compassionate appointment and after crossing 40 years of age, his name will be deleted from waiting list. As per the clause 2 (3) of the said Government Resolution, the application for compassionate appointment can be filed within one year from the death of employee.

4. It is further submitted that only

afore-mentioned changes have been made in addition to earlier scheme of compassionate appointment laid in the Government Resolution dated 28th March, 2001. However, this Court while passing the impugned order has not considered the provisions of clause 2 and clause 3 of the Government Resolution dated 22nd August, 2005, and arrived at erroneous conclusion that the condition of cut of date of third child of the deceased employee is not appearing in the Government Resolution dated 22nd August, 2005. Therefore, the learned counsel appearing for the applicant submits that there is error apparent on the face of record inasmuch as the Government Resolution dated 28th March, 2001, is not superseded by the Government Resolution dated 22nd August, 2005, and the said Resolution was in continuation of the earlier scheme for the appointment on compassionate ground laid down in Government Resolution dated 28th March,

2001. The learned counsel invites our attention to both the Government Resolutions and submits that the Review Application deserves to be allowed.

5. On the other hand, learned counsel Mr.T.M.Venjane, appearing for the original petitioner (respondent no.1) submits that, while considering the prayer of the petitioner in Writ Petition this Court has not only considered the afore-mentioned Government Resolutions, but even considered the relevant provisions of the Maharashtra Civil Services Rules. He submits that this Court has granted discretionary and equitable relief, and therefore, relying upon the pleadings in the Petition and grounds therein he submits that the Review Application may be rejected.

6. We have considered rival submissions of the learned counsel appearing for the

parties. With their able assistance, we have carefully perused the contents of both the Government Resolutions mentioned herein above. It appears that while deciding the Writ Petition on merits, it was argued by the learned counsel appearing for the petitioner that the General Administration Department, Government of Maharashtra has issued Government Resolution dated 22nd August, 2005 and earlier Government Resolution dated 28th March, 2001, has undergone review. It was submitted that grounds mentioned by respondent no.2 i.e. third child born to the deceased employee, after cut of date i.e. after 31st December, 2001, is not appearing in the Government Resolution dated 22nd August, 2005, though the said provision was in the Government Resolution dated 28th March, 2001. Therefore, relying upon the aforesaid arguments, this Court quashed and set aside the order passed by respondent no.2,

rejecting the application for appointment on compassionate ground.

7. It appears that while disposing of the Writ Petition, this Court held thus:

5) Upon careful perusal of the Government Resolution dated 22nd August, 2005, it appears that, same was issued after taking review of the provisions of the Government Resolution dated 28th March, 2001. It appears that, reliance has been placed by the Deputy Chief Executive Officer, Zilla Parishad, Parbhani on Government Resolution dated 28th March, 2001, while rejecting the claim of the petitioner. As already observed, same Government Resolution has been reviewed and in the said Government Resolution dated 22nd August, 2005, condition that, the

legal heirs of the employee who has given birth to third child after 3.12.2001, are not eligible / entitled for appointment on compassionate ground, has not been mentioned...

8. Upon careful perusal of the Government Resolution dated 22nd August, 2005, it appears that, the said Government Resolution though takes review of the earlier Resolutions including the Government Resolution dated 28th March, 2001, nevertheless it was issued so as to make improvements and additional provisions and it was not in supersession of the Government Resolution dated 28th March, 2001, as it is apparent from clause 3 of the Government Resolution dated 22nd August, 2005, which reads as under:

3. वरील सुधारणांव्यतिरिक्त अनुकंपा नियुक्तीच्या योजनेतील प्रचलित इतर तरतुदी यापुढेही कायम राहतील.

9. In that view of the matter, we are of the view that, while passing the order dated 1st March, 2016 in Writ Petition No. 9302/2015, this Court did not notice aforementioned clause in the Government Resolution dated 22nd August, 2005. In that view of the matter, the case is made out for recalling the order dated 1st March, 2016 passed by this Court in Writ Petition No.9302 of 2015. Accordingly, the order dated 1st March, 2016 stands recalled. Review Application is allowed and same stands disposed of accordingly.

10. Writ Petition No.9302/2015 is restored to its original file. Registry to place the Writ Petition before appropriate bench for hearing, the same pertaining to the year of 2015.

11. We make it clear that since we have restored Writ Petition No.9302/2015 to its original file, all the contentions on merits including interpretation of the provisions of both the Government Resolutions are left open to be agitated by the parties.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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