

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

WRIT PETITION NO. 5459 OF 2016

Sheetal w/o. Sarang Ghayatadak .. Petitioner
Age. 32 years, Occ. Nil,
R/o. Mirajgaon, Tq. Karjat,
Dist. Ahmednagar.

Versus

- 1) Samaj Prabodhan Sanstha, .. Respondents
Karjat, Tq. Karjat,
District – Ahmednagar,
Through its President.
- 2) Samartha Madhyamik Vidyalaya
Karjat, Tq. Karjat,
District – Ahmednagar.
Through its Head Master.
- 3) Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
- 4) The State of Maharashtra
Through Education and
Sports Department,
Mantralaya, Mumbai – 32.

Mr.L.V. Sangit, Advocate for the petitioner.
Mr.Abhijit S. More, Advocate for respondent Nos. 1 & 2.
Mr.C.S.Kulkarni, AGP for respondent Nos. 3 and 4.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

**RESERVED ON : 16.01.2018
PRONOUNCED ON : 14.03.2018**

JUDGMENT [PER : S.M. GAVHANE, J.] :-

. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsel appearing for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for writ of mandamus, order or direction in the nature of mandamus, directing respondent Nos.1,2 and 3 to appoint her on the post of Peon on compassionate ground with immediate effect as well as to grant other benefits including payment of salary as per relevant pay-scale attached to the said post by granting approval to the said appointment by respondent Nos.3 and 4 with immediate effect.

3. According to the petitioner, her husband —

Sarang Sadashiv Ghayatadak was appointed as Peon with respondent No.2 – School on 10.06.2000 and approval was granted to his appointment. While on duty, her husband met with an accident on 25.11.2011 and died on the spot. The First Information Report came to be registered in respect of said accident with Karjat Police Station.

4. The petitioner further contends that she is educated up to 10th standard in March, 2000 successfully. She belongs to Scheduled Caste category. After death of her husband, she is required to maintain herself and her minor daughter – Pratina, aged six years. She is not having any source of income to pull on her day to day life. Immediately after death of her husband, within two months, she applied to respondent Nos.1 to 3 to appoint her on compassionate ground. Her first application was made on 13.01.2012 to respondent Nos.1 and 2 and thereafter on 17.01.2012, 01.03.2013 and 13.09.2013. She also made representation/application to respondent No.3 dated 13.01.2012, 17.01.2012 and 13.09.2013. However,

respondent No.3 vide communication dated 26.12.2014 directed respondent Nos.1 and 2 to consider application of the petitioner for appointment on compassionate ground, in view of Government Resolution and the educational qualification and submit the proposal for approval in approval camp. Accordingly, proposal was submitted to the Education Officer by respondent Nos.1 and 2 along with necessary documents and Schedule "A" & "B". The petitioner also obtained heirship certificate on 11.07.2002 from the Tahsildar. However, respondent No.2 replied to the petitioner that there is no vacant post available in their school in Class IV category and therefore as and when the post would be available, the petitioner's claim would be considered.

5. The petitioner further contended that as her husband was permanent in service and working since the year 2000, she applied for family pension to respondent Nos.1 to 3. Respondent No.3 by communication dated 15.11.2014 replied that as the school received 100% grant

from March, 2007 and the employee of the school which has received 100% grant-in-aid after 01.11.2005 is not eligible for pension/family pension as per the Pension Scheme, 1982, Amendment 01.11.2005.

6. According to the petitioner, respondent No.4 – the State of Maharashtra, published Government Resolution dated 26.10.1994 for appointment of candidates like the petitioner on compassionate ground. Said Government Resolution is made applicable to the Educational Institutions by issuing modified Government Resolution on 31.12.2002. It is specifically stated in the Schedule "A" of the said Government Resolution that the candidate shall be appointed on compassionate ground as per his/her educational qualification. Sub-Clause 6-A of Schedule "A" specifically states that if the post is not available in the concerned school, the candidate can be considered in other school run by the institution or if no post is available in other school, then the schools run in the entire district where the post is available.

7. Affidavit-in-reply is filed only on behalf of respondent No.3 of Ramdas s/o. Piraji Khedkar, Dy. Education Officer (Secondary), Zilla Parishad, Ahmednagar. In the said affidavit it is not disputed that husband of the petitioner was working as Peon in respondent No.2-School and he expired on the spot in the accident on 25.11.2011, that the petitioner has to maintain herself, her mother-in-law and her daughter, that the Education Officer directed respondent Nos.1 and 2 to consider application of the petitioner for appointment on compassionate ground in view of Government Resolution and respondent No.2-School Head Master communicated the petitioner on 17.06.2015 that there is no vacant post available in their school in class IV category and therefore when the post will be available, the petitioner's claim will be considered.

8. As regards pension it is stated in the affidavit that the State Government after careful deliberation took

policy decision of closing the old pension scheme and introducing the defined contributory pension scheme/new pension scheme w.e.f. 01.11.2005. The said scheme is made applicable to the Government servants as well as the employees of the recognized aided educational institution and Zilla Parishad, who were recorded on or after 01.11.2005. The Government of Maharashtra in Finance Department vide Government Resolution dated 31.10.2005 had resolved to make similar DCP Scheme applicable to the employees appointed in the service of the State of Maharashtra on or after 01.11.2005.

9. The cut-off date of 01.11.2005 is providing that only such employees, who are working on 100% aided school prior to 01.11.2005 are entitled to the benefit of old scheme. However, the petitioner's husband was working in private school which was brought on 100% grant-in-aid basis after 01.11.2005 i.e. in March, 2007 and thus, the petitioner will get benefit of new pension contribution scheme and not family pension under old pension scheme.

Lastly, it is stated that there is no merit and substance in the writ petition and that it be dismissed with costs.

10. We have heard the learned advocate appearing for the petitioner, learned advocate for respondent Nos.1 and 2 and learned AGP for respondent Nos.3 and 4. We have perused the pleadings in the petition, reply affidavit filed on behalf of respondent No.3 and the documents produced by the petitioner.

11. There is no dispute that the husband of the petitioner was appointed as a peon with respondent No.2-school on 10.06.2000 and he died in the accident on 25.11.2011 while in the service. In paragraph 7 of the petition, the petitioner has stated that respondent No.3-Education Officer (Secondary), Zilla Parishad, Ahmednagar vide communication dated 15.11.2014 informed the petitioner that her claim for family pension is rejected, as the employee, who is eligible to receive 100% grant-in-aid after 01.11.2005, is not eligible for

pension/family pension. Said letter dated 15.11.2014 of respondent No.3 to the Head Master of respondent No.2-School also shows that proposal of family pension of the petitioner was rejected for above said reason. In such circumstances and when the petitioner has not claimed any directions in the petition in respect of family pension, we do not find it necessary to consider the entitlement or otherwise of the petitioner to family pension as per pension scheme prior to 01.11.2005, in detail.

12. Now coming to the relief claimed by the petitioner to appoint her on the post of peon on compassionate ground, on perusal of Government Resolution dated 31.12.2002 regarding appointment on compassionate ground, it appears that said Government Resolution is applicable to the teachers and non-teaching staff in private (aided/unaided) schools. Schedule "A" of the said Government Resolution shows that application for appointment on compassionate ground has to be made within three months from the date of death or premature

retirement of the concerned employee as per clause 5-A of Schedule "A", so also, as per clause 6-A of the said schedule in office of every Education Officer, the Education Inspector has to maintain list as per seniority of the application received for appointment on compassionate ground and while doing so, separate lists are to be maintained for class III and class IV posts. As per clause 6-B of the Schedule "A" the Education Inspector/Education Officer (Primary/Secondary), after scrutiny of the applications received as per seniority to consider the eligible candidates for appointment as per his qualification to appoint in the same school, other school of the same institution, in-case in the same school or in the same institution or other school of the same institution, there is no post available, the concerned candidate may be considered for appointment in school of other institution in the same district etc. As per clause 6-C of the Schedule "A" by the end of 31st December, the Education Officer has to send information of all the applications received, strength of candidates

on wait list and strength of actually appointed candidates to the Education Officer (Primary/Secondary) up to 1st January every year. As per clause 8 of Schedule "A", while making appointment on compassionate ground, it is not necessary to consider roster. So also as per clause-13 of the Schedule "A", at the time of appointment on compassionate ground, the district is presumed as unit.

13. In the present case according to the petitioner she applied to the Education Officer (Secondary), Zilla Parishad, Ahmednagar on 17.01.2012, after death of her husband on 25.11.2011. Thus, it appears that she filed application within three months of death of her husband for appointment on compassionate ground. There is no dispute that on 17.06.2015 by letter, the Head Master of respondent No.2-School informed the petitioner that at that moment, there was no vacant post of class IV employee in their school and as and when the post would be available, they are ready to appoint her on

compassionate ground. Copy of said letter was given to the Education Officer (Secondary) and President of respondent No.1-institution. From this letter, it can be said that there was no post of Class IV category available with respondent No.2-School for giving appointment to the petitioner on compassionate ground. In the affidavit submitted on behalf of respondent No.3-Dy.Education Officer (Secondary), Zilla Parishad, Ahmednagar, has not stated about the vacancy position of Class IV posts in the district as per clause 6-A of Schedule "A", so as to say that there was vacancy of class IV post in other school of same institution or in the school of other institution in the District, but the petitioner was not appointed by respondent Nos.1 to 3. In these circumstances, instead of giving directions to respondent Nos.1 to 3 to appoint petitioner on compassionate ground, it is necessary to issue certain directions to respondent No.3-Education Officer (Secondary) to consider case of the petitioner for appointment on compassionate ground.

14. In the light of above discussion, we direct respondent No.3-Education Officer (Secondary), Zilla Parishad, Ahmednagar to consider the request of the petitioner as per her applications/representations dated 13.01.2012, 17.01.2012 and 13.09.2013 in the light of Government Resolution dated 31.12.2002 and Schedule "A" given in the said Government Resolution and more particularly in the light of clauses 6,8 and 13 to appoint the petitioner on the post of peon on compassionate ground in respondent No.2-School of respondent No.1 institution or in any other school of the said institution or other school of other institution in the same district, as early as possible and accordingly communicate the same to the petitioner. Respondent No.3 is further directed to process proposal for approval to appointment of petitioner after her appointment without delay.

15. Rule made absolute in above terms. The writ petition is disposed of. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]