

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11407 OF 2016

Akash s/o Gajendra Biradar,
Age-20 years, Occu:Education,
R/o-Arasnal, Post-Devarjan,
Tq-Udgir, Dist-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32,
- 2) The Chief Executive Officer,
Zilla Parishad, Jalna.

...RESPONDENTS

...
Mr. Dhanaji S. Kudale Advocate for Petitioner.
Mr. P.K. Lakhotiya, A.G.P. for Respondent No.1.
Mr. A.D. Aghav Advocate for Respondent No.2.

...

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

DATE OF RESERVING JUDGMENT : 18TH JANUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 24TH JANUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

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

2. This Petition under Article 226 of the Constitution of India is filed with following prayers:

"B) By a writ of certiorari or any other appropriate writ or direction in the like nature, the letter dated 13.11.2014 issued by the Respondent No.2 at Exhibit "D" may kindly be quashed and set aside.

C) By a writ of mandamus or any other appropriate writ or direction in the like nature, the Respondent No.2 may kindly be directed to appoint the

Petitioner on compassionate ground."

3. It is the case of the Petitioner that he is having H.S.C. qualification and his date of birth is 17th December, 1995. The father of the Petitioner, namely, Gajendra Nivratirao Biradar was in permanent employment with Primary School run by Zilla Parishad, Jalna, as Assistant Teacher. The Petitioner's real mother, namely Nilawati w/o. Gajendra Biradar was the first wife of Gajendra Biradar. The Petitioner and his sister namely Snehalata are children of the said Nilawati and their permanent residence was Lohara, Taluka-Udgir, District-Latur.

4. It is the case of the Petitioner that thereafter on 7th March, 1998 the real mother of the Petitioner expired when the Petitioner and his sister were of very tender age. Thereafter, maternal grandfather of the Petitioner maintained them. It is further the case of the Petitioner

that, thereafter father of the Petitioner again married with another lady, and it seems that the Petitioner's father named the said second wife as 'Nilawati i.e. similar to the name of real mother of the Petitioner. The father of the Petitioner after second marriage never cared and maintained the Petitioner and his sister. The Petitioner's father while in service as Assistant Teacher in Primary School at Kodoli, Taluka-Bhokardan, District-Jalna, run by Zilla Parishad, Jalna, died on 23rd March, 2011. It is further the case of the Petitioner that at the time of death of his father, the Petitioner was minor and therefore he could not apply for compassionate employment immediately or within further prescribed period till attaining the age of majority. The Petitioner attained the age of majority on 17th December, 2013. Thereafter, on 26th May, 2014, the Petitioner made an application to Respondent No.2 for employment on compassionate ground, within six months from attaining the age of majority. It is

the case of the Petitioner that he made the said application within limitation prescribed as per the Government Resolutions dated 26th October, 1994 and 11th September, 1996 issued by the General Administration Department, Government of Maharashtra.

5. It is further the case of the Petitioner that Respondent No.2 by wrongly relying upon clause 2 (3) of the Government Resolution dated 22nd August, 2005 issued by the General Administration Department, Government of Maharashtra, wherein limitation to apply for compassionate employment is prescribed as one year from death of the employee, rejected the claim of the Petitioner. Being aggrieved by the said decision, the Petitioner made representations dated 20th January, 2015 and 6th September, 2016, requesting Respondent No.2 to reconsider the claim of the Petitioner for employment on compassionate ground. However, Respondent No.2 has not paid any

heed to the said request of the Petitioner. Hence this Petition.

6. Learned counsel appearing for the Petitioner submits that though in the Government Resolution dated 26th October, 1994 the time limit to apply for employment on compassionate ground was within five years from the date of death of concerned employee, however, the said Government Resolution was amended on 11th September, 1996 and the said condition was modified and it was stipulated that if the legal heir of the deceased employee is minor at the relevant time, he shall apply for employment on compassionate ground within one year after attaining the age of majority. After attaining the age of majority, within six months, the Petitioner has made application to the concerned authority. However, by ignoring the Government Resolution dated 11th September, 1996 and only relying upon the provisions of Government Resolution dated 22nd

August, 2005, Respondent No.2 has rejected the application made by the Petitioner for employment on compassionate ground. Learned counsel further submits that the earlier Government Resolution dated 11th September, 1996 was not superseded by the subsequent Government Resolution dated 22nd August, 2005. Therefore, he submits that, the Petition deserves to be allowed.

7. On the other hand, learned A.G.P. appearing for the State and the learned counsel appearing for Respondent No.2 submit that Respondent No.2 has rightly rejected the application of the Petitioner for employment on compassionate ground relying upon the provisions of the Government Resolution dated 22nd August, 2005, wherein it is specifically stipulated that for appointment on compassionate ground, the heir of the deceased employee shall apply within one year from the date of death of the deceased employee. Therefore, it is submitted that the

Petition may be rejected.

8. We have carefully considered the submissions of the learned counsel appearing for the Petitioner, learned A.G.P. appearing for the State and learned counsel appearing for Respondent No.2. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto and the relevant Government Resolutions. We have carefully perused the Government Resolution dated 22nd August, 2005, the provisions of which are relied by Respondent No.2 while rejecting the request of the Petitioner to appoint him on compassionate ground. Upon perusal of the said Government Resolution dated 22nd August, 2005, it is crystal clear that there is no reference at all in respect of the earlier Government Resolution dated 11th September, 1996. Therefore, by no stretch of imagination it can be concluded that Government Resolution dated 22nd August, 2005 has superseded the provisions of

earlier Resolution dated 11th September, 1996. Therefore, though the subsequent Government Resolution of 2005 is made applicable by the State Government, the earlier Government Resolution of 1996 is also in existence which provides that the heir of the deceased employee, who is minor, shall apply within one year from the date of attaining the age of majority. The provisions for appointment of the heirs of deceased employee on compassionate ground are the beneficial provisions which are being implemented by the State Government to overcome the financial crisis/crunch faced by the family members of the deceased employee, and therefore the same deserves to be construed reasonably.

9. It appears that along with the Petition, the Petitioner has annexed the copy of his school leaving certificate, wherein his date of birth is mentioned as 17th December, 1995. Thus, the Petitioner attained the age of majority on 17th

December, 2013. Immediately within six months after attaining the age of majority, i.e. on 26th May, 2014, the Petitioner applied for employment on compassionate ground. Thus, it is clear from the documents placed on record that the decision taken by Respondent No.2 on 13th November, 2014 thereby rejecting the application of the Petitioner for employment on compassionate ground is arbitrary, and the same is in ignorance of the provisions of the earlier Government Resolution dated 11th September, 1996, and therefore the same deserves to be quashed and set aside.

10. In the light of discussion herein above, we pass the following order:

O R D E R

(I) The impugned letter/ communication dated 13th November, 2014 issued by Respondent No.2 is quashed and set

aside.

(II) We direct Respondent No.2 to formally verify the fact that, the Petitioner has made an application within one year from the date of attaining majority. We further direct Respondent No.2 to re-consider the claim of the Petitioner for appointment on compassionate ground, on its own merits in accordance with the provisions of law, the relevant provisions of the Government Resolutions and the relevant Policy of the State Government.

(III) Respondent No.2 shall consider the claim of the Petitioner on its own merits and shall not reject the same on the same grounds as mentioned in the impugned communication/letter dated

13th November, 2014.

(V) Rule made absolute in above terms.

The Writ Petition stands disposed of
accordingly.

[S.M. GAVHANE, J.]

asb/JAN18

[S.S. SHINDE, J.]