

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7507 OF 2016

Smt. Samita Sameer Desai and Anr. ... Petitioners

Vs

The State of Maharashtra through Secretary
and Anr. ... Respondents

Mr.N.V. Bandiwadekar i/b Mr.Sagar Ashok Mane for the Petitioners.

Ms.S.D. Vyas, “B” Panel Counsel for the State-Respondent Nos.1 and 2.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

TUESDAY, 11TH DECEMBER, 2018

P.C. :

1 Heard both sides.

2 Rule. Respondents waive service. By consent, rule is made
returnable forthwith.

3 We have perused the Writ Petition and the annexures
thereto so also the affidavit-in-reply and rejoinder.

4 It is common ground that the husband of petitioner No.1, Shri Sameer Mohan Desai was working as a Peon in petitioner No.2-School. During the course of his service, he expired on 2nd November, 2011.

5 In his place, petitioner No.1-his widow came to be appointed. That was to enable her to tide over the financial crisis caused by the sudden demise of her husband. There was a minor daughter aged 4 years and minor son aged 6 years and this widow was left behind, as legal heir and with no other source of income, but the salary of the deceased employee.

6 That is how, the application was made on 6th February, 2012 for appointment on compassionate ground and with reference to Government policy enunciated in Government Resolution dated 31st December, 2002.

7 This application was considered by the School Committee in its meeting held on 26th March, 2012 and it resolved to appoint petitioner No.1 on compassionate basis. That was in place of her deceased husband and that appointment order is dated 29th May, 2012.

8 Now the reasonable expectation of the petitioners was that just as the appointment of the husband as a Peon was approved by the State and Authorities, In-charge of Primary and Secondary Education, even the appointment of the widow will be approved. That was questioned in the sense the approval is not forthcoming. This caused institution of Writ Petition No.3505 of 2015 by the first petitioner. After it was disposed of with a direction to decide a proposal to grant approval to the appointment of petitioner No.1, the impugned action has been taken. The order dated 16th February, 2016, copy of which is at Exhibit 'I' to the Petition, proceeds to hold that petitioner No.1 was appointed in place of her husband. However, when that appointment was approved, there was no embargo in either making the appointment or granting the approval. However, when the appointment of petitioner No.1 was made, there was a Government Resolution in force dated 2nd May, 2012, which imposed a ban on making appointments in Secondary Schools. That is how the appointment of petitioner No.1 was not permissible. Then the next reason, is the appointment has been made although in the sanctioned staffing pattern for 2013-2014, the post in question was not included therein. On both the counts, therefore, the approval to the appointment was refused.

9 It is common ground that the appointment is sought by petitioner No.1 on compassionate ground. The very object and purpose of such employment and conferring a power to make appointment on compassionate ground is that the employer assists the family to tide over the financial crisis caused by the loss of bread winner. It is an assistance to the family and which is in distress. In the circumstances, this is not a fresh appointment or an appointment which ordinarily requires the approval. All that would suffice is an intimation from petitioner No.2 that the husband of petitioner No.1 was already appointed as a Peon and that post was permanent and duly sanctioned. Having appointed him, it was revealed that he died suddenly on 2nd November, 2011. In his place, in terms of Government policy, compassionate appointment was sought and it is that appointment which has been made. There is no post created nor is there any question of an appointment being made through recruitment process which was covered by the ban. The ban, thus, could not have covered this appointment.

10 The argument of Ms.S.D. Vyas, learned “B” Panel Counsel appearing for the respondents and relying upon the affidavit-in-reply is

that when the appointment of petitioner No.1 was made, the ban was in force. To that extent, therefore, the refusal to approve the appointment was justified. She also submits that there is another reason assigned for refusing approval and that would definitely be a germane and relevant factor.

11 We are unable to accept her contentions and for more than one reason. In para 7 of the affidavit-in-reply it is stated that the appointment of petitioner No.1, who is the widow of the deceased employee is per say illegal as no prior approval was sought before making such appointment. The decision dated 26th March, 2012 to appoint petitioner No.1 was taken by the Management, but the appointment was effective from 1st June, 2012. It is clear that the appointment was reported for the first time on 7th August, 2012 and thus, all these actions were taken during the period when there was a ban on the recruitment. Pertinently, this affidavit-in-reply only highlights this reason assigned in the impugned order. The essential reliance is on this policy imposing a ban. The relaxation referred to in the affidavit-in-reply does not apply to the instant appointment is the another reason assigned.

12 However, in the Writ Petition as also in the affidavit-in-rejoinder, it is reiterated that it is impossible to sustain this ground of refusal. The appointment on compassionate basis is made in terms of a Government circular dated 31st December, 2002. That has not been superseded by this subsequent Government Resolution and particularly, the one imposing ban dated 2nd May, 2012. In fact, such appointments were kept out of the purview of the general ban imposed on recruitment. The very object in all such appointments enables the State Government to carry forward its earlier policy despite the overall ban on recruitment and appointment. It is evident that the husband of petitioner No.1 expired on 2nd November, 2011 and the application was made to appoint her in his place on 6th February, 2012, which application was considered and it was resolved on 26th March, 2012 to appoint petitioner No.1 as a Peon on compassionate basis, then, merely because the appointment order was dated 29th May, 2012 and the appointment was with effect from 1st June, 2012 does not mean that the ban covers this appointment. It is for administrative reasons and convenience that petitioner No.1-Peon was directed to take charge from the date when academic sessions commenced. It is after she reported for duty that the formal proposal seeking approval to her appointment

was submitted by the Headmaster. That is dated 7th August, 2012. However, once the decision to appoint was taken much prior to the ban and even otherwise assuming that such ban applies to the compassionate appointment, still it was much prior to that being in force. Once such is the factual position, then, on the assumption that the ban covers the appointment on compassionate basis, still the refusal to approve petitioner No.1's appointment cannot be sustained.

13 Once we find that this is how the matter proceeded and purely on facts, then, without addressing the larger issue, we can allow the Writ Petition by quashing and setting aside the impugned order. It is accordingly quashed and set aside. It is declared that petitioner No.1's appointment as a Peon on compassionate basis in the place of her deceased husband would be effective from 1st June, 2012 and that she would be entitled to all the benefits, salary, emoluments etc. attached to that post. The appointment stands approved accordingly. The formal order to that effect shall be issued by the concerned authorities within a period of four (4) weeks from the date of communication of this order.

14 The Rule is made absolute in these terms with no order as to costs.

15 In the event, any arrears of salary have to be released and the Management is able to do so, then, the Education Officer shall release the grants so as to enable the Management to release the arrears equally within this period directed by us.

[SMT. BHARATI H. DANGRE, J.] [S.C. DHARMADHIKARI, J.]