

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11180 OF 2016

Anand Jalinder Chavan
Age Major, Occ : Education/
Unemployment, R/o A/P Tanang,
Taluka Miraj, District Sangli .. Petitioner

Versus

- 1 State of Maharashtra through
through the Secretary of
Education Dept, Mantralaya
Mumbai.
- 2 The Collector, Sangli,
A/P District Sangli.
- 3 The Chief Executive Officer,
Zilla Parishad, Sangli,
District, Sangli
- 4 The Education Officer (Secondary)
Zilla Parishad Sangli,
District Sangli
- 5 The Chaitanya Education Society
Through it is President
Having Office A/P Miraj,
Taluka Miraj, District Sangli
- 6 The Head Master,
New English School (Secondary)
Miraj Pandharpur Raod,
A/P Miraj – 416410.

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Mr. Nagesh Y. Chavan for the petitioner.

Mrs. Rupali M. Shinde, AGP for the State.

Mr. N. Bandiwadekar I/b Sagar Ashok Mane for respondent nos. 4 and 5.

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

RESERVED ON: 28th NOVEMBER 2018

PRONOUNCED ON 22nd DECEMBER, 2018

JUDGMENT (Per BHARATI H. DANGRE, J)

1 Heard by consent.

2 Rule. Rule returnable forthwith.

3 The petitioner, has approached this Court seeking direction to the respondents to consider his application seeking an appointment on compassionate ground in terms of the policy of the State Government contained in the Government Resolution. The said direction is sought against the respondent no. 5 Chaitanya Education Society where the father of the petitioner was serving as a Senior Clerk.

The case of the petitioner is that he is resident of Taluka Miraj, District Sangli and is the son of Shri Jalinder

Shankar Chavan. The said Jalinder was serving as a Senior Clerk in the respondent no.6 High School which is run by respondent no.5 Management and he was recruited in the said capacity since 1st August 1986. He died in harness on 22nd January 2014 due to *chronic ailment*, leaving behind two children and one widow.

4 The petitioner preferred an application seeking appointment on compassionate ground in light of the policy of the State Government granting such an appointment to the next *kith and kin* or dependent of the deceased employee who were working in Private (Aided/Non-aided) Educational Institution in a contingency where an employee expired before attaining age of 55 years or on account of some chronic illness (long term ill-health) and opting for voluntary retirement. The Government Resolution dated 31st December 2002 is placed on record. The petitioner also relies on the subsequent Government Resolution dated 22nd March 2012 imposing certain restrictions on the appointment to be effected on compassionate ground. In the backdrop of the policy of the

State Government, the petitioner who possess the qualification of B.Sc (Chemistry) preferred an application on 25th January 2014 and the said application to the respondent no.5 Society was accompanied with the death certificate of his father and also an affidavit deposing that he is the legal heir of deceased Jalinder Shankar Chavan who was an employee of respondent no.6. The petitioner also claims that the other employees of the respondent no.6 High School also made representation to the respondent no.5 and sought the appointment of the petitioner on compassionate ground as dependent of Jalinder Chavan. The petitioner has then placed on record a series of letters which he had addressed to the respondent no.6 Management as well as the various authorities i.e. the Education Officer, Collector etc seeking appointment on compassionate ground in the School run by respondent no.5. The representation addressed to the Education Officer (Secondary) Zilla Parishad, Sangli has also been placed on record. This representation resulted into the respondent no.4 issuing a letter on 1st July 2015 to the respondent no.6 Head Master, directing him to take necessary steps regarding his appointment. Thereafter, the

petitioner forwarded several reminders to the respondent nos.5 and 6 along with several recommendation letters from the Member of Legislative Assembly, President of the Maharashtra State Shikshan Prasarak, District Thane etc. The petitioner, thus made all possible attempts to bring his request before the respondent no.5 to appoint the petitioner on compassionate ground in the respondent no.6 school. The legal notice came to be issued, but did not yield any result.

The claim of the petitioner is that he is qualified in terms of the policy of the Government to be appointed on compassionate ground and since his entire family is dependent on this appointment and has been left with no other source of income, making it difficult for the entire family to sustain, the petitioner has approached this Court seeking a writ in the nature of mandamus directing the respondent no.5, the educational institution to grant appointment to the petitioner and a direction is also sought to the respondent nos.1 to 4 to initiate appropriate steps against the respondent no.5 for not complying with the mandate as contained in the policy of the State Government for issuing appointments in favour of the

destitute members of the family who are left in a state of penury on the death of their near *kith and kin*.

5 The respondent nos.1 to 4 has responded to the petition by filing an affidavit through Deputy Education Officer (Secondary), Zilla Parishad, Sangli. The affidavit filed on 2nd December 2016 proceeds to state that no doubt there is a policy in place for effecting appointment on compassionate ground in the recognized non-government, Secondary, Primary, Secondary and Higher Secondary Schools and in terms of the said policy decision, the cases regarding appointments on Compassionate ground are required to be referred to the Director of Education, Maharashtra State through the Regional Deputy Director of Education. The affidavit further proceeds to state that respondent no.5 is the competent authority to grant appointment to the petitioner and in fact, the communication was addressed to the Management to take action for appointment of petitioner on compassionate ground on the available vacancy, if the petitioner is found to be eligible for the appointment. It is however disputed that the petitioner is

entitled to be appointed as a Senior clerk, since the post of Senior clerk is a promotional post and he cannot be given appointment on the said post directly. On the contrary, he will have to be considered for appointment on the post of peon by taking into consideration the availability of the post and the eligibility of the petitioner for such an appointment. The affidavit further proceeds to state that the petitioner is also not eligible for appointment on the post of Shikshan Sevak since he does not possess the requisite qualification i.e. D.Ed/B.Ed which is essential for occupying the said post. A categorical statement is however made at the end of the affidavit that considering the representation preferred by the petitioner, the name has been included in the list of cases regarding appointment on compassionate grounds to be made in the recognized Secondary schools in Sangli district which is to be forwarded through the Director of Education, Maharashtra State, Pune through the Deputy Director of Education, Kolhapur Region, Kolhapur. A solemn statement is then made that further action in the matter will be initiated as per the direction from the Director of Education.

Then, we also have an affidavit filed on behalf of respondent nos.5 and 6 before us. The said affidavit filed by the Chair Person of the respondent no.5 Society makes an interesting reading. The said affidavit does not dispute the existence of any policy of the Government prescribing the guidelines for appointment of employees in Private Schools on compassionate grounds. However, affidavit proceeds to rely on the technicalities to deny the benefit of the said policy to the petitioner. The affidavit proceeds to state that the Government Resolution dated 31st December 2002 which contains a stipulation for effecting appointment on compassionate ground prescribes the manner in which the application has to be preferred in form of Annexure 'B' which contain the details, information and documents while seeking compassionate appointment. It is then stated that the petitioner has not at all made any application in the prescribed format and that the case of the petitioner was not recommended to the Education Officer for grant of compassionate appointment. The affidavit further proceeds to state that the petitioner has not mentioned his date of birth. However, from the pension proposal of the deceased

employee available on record, date of birth appears to be '10th April 1993'. The entitlement of the petitioner is then sought to be denied on the ground that at present, there is no vacancy in the cadre of Junior Clerk available in the Respondent No.6 School. It further states that there are two posts of Junior Clerk sanctioned and both the said posts are filled in. There is one post of Senior Clerk which is vacant, however, the said post of Senior Clerk is a promotional post and therefore, petitioner cannot be appointed in that post on compassionate basis. It is further stated that there is one post of petitioner. That is also filled and as such, there is no vacant post of Clerk in which the petitioner can be appointed on compassionate basis.

6 Another excuse for not appointing the petitioner is then found in paragraph no.6 of the affidavit which states that the State Government has imposed a ban on recruitment of non-teaching post by issuing Government Resolution from time to time such as 5th June 2010, 29th November 2010 and 22nd March 2012. It is then stated that the ban has been relaxed to some extent for recruitment for non-teaching employees, but

the said relaxation was only limited for effecting appointment of the candidates who were on the waiting list for such appointment upto 31st December 2011. However, there is no further relaxation and the ban on recruitment still continues.

7 In short, the respondent nos.5 and 6 raise every possible objection for considering the request of the petitioner on compassionate ground in its school. The attempt is to state that the name of the petitioner is included in the waiting list by respondent no.4 Education Officer and therefore, he would be granted appointment on compassionate basis as per his placement in the said waiting list.

8 With the assistance of the learned counsel for the petitioner, Mrs.Rupali Shinde, Shri Bandiwadekar appearing for respondent nos.4 and 5 and the learned AGP for the State, we have perused the petition along with the annexures and affidavits. The policy for compassionate appointment as evolved by the State Government is contained in the resolutions issued by it from time to time. The Government Resolution

dated 31st December 2002 issued by the School Education Department stipulates the procedure to be followed for effecting appointment on compassionate ground in case of the per-mature death/per-mature retirement of any employee working in private (receiving aid and non-receiving aid) on the teaching and non-teaching post. The said Government Resolution is accompanied with Appendix A and Appendix B. Perusal of the said policy decision would make it clear that the petitioner is entitled for being considered for compassionate appointment in view of the fact that his father who was working as a Senior Clerk in the respondent no.6 School has expired on account of a chronic illness and he was of 56 years at the time of his death and his appointment was on an approved and vacant post. On his death, on 22nd January 014, the petitioner preferred an application within a period of six months and to be precise on 25th January 2014 itself. In the said application addressed to the respondent no.5, he had categorically stated that his father Jalinder Shankar Chavan, resident of Taluka Miraj, District Sangli was working on the said post of Senior Clerk with effect from 1st August 1986 in

New English School (Secondary), Miraj and he died on account of prolonged illness on 22nd January 2014. He further narrated his agony that for treatment of his father, he had obtained loans and this had landed his family no tremendous financial difficulties. He further made a categorical statement that there is no other earning member in the family and therefore, he sought an appointment on compassionate ground. The said application was accompanied by a death certificate, an affidavit and the documents relating to his educational qualifications. The petitioner kept on re-iterating his request with all possible authorities including the higher officials in the Education Department and also the office of the Collect orate on the Revenue Side. The Head Master of New English School (Secondary) Miraj also recommended his case to the respondent no.5 by his communication dated 24th August 2015. In the said letter, the Head Master has stated that the petitioner had preferred an application seeking compassionate appointment and the Education Officer (Zilla Parishad) Sangli by his letter dated 1st July 2015 has directed that appropriate action on the application of the petitioner should be taken at

the end of the management. This is followed by another communication issued by the Head Master. However, the respondent no.5 did not act and till date, no action has been taken for consideration of the application of the petitioner on compassionate ground. The management on the other hand, files an affidavit before this Court in the month of April 2017 and raises all possible technical objections. If the management had any doubt about the eligibility of the petitioner or his competency to apply, it was duty bound to inform the petitioner about the lacunae in his application and what it had stated before us, could have been very well communicated to the petitioner. However, the application of the petitioner was not even taken cognizance of for almost 4 years as on today and the management has audacity to place before us all the technical objections stating that the application was not in a proper format. We can only express our anguish insofar as what we have observed is that the management is acting in a completely irresponsible manner without any compassion towards its own employees. The father of the petitioner served the respondent no.6 School for approximately two decades and when such an

employee dies an unfortunate death, the management instead of showing any compassion, has rather preferred to adopt a technical stand to deny any employment to the family member of its employees who is totally dependent on them. We can only deprecate such an attitude of the management and we say nothing more.

9 When we examined the merits of the matter, we are in agreement with the learned counsel for the petitioner that the petitioner falls within the parameters of Appendix A of the Government Resolution dated 31st December 2002. Perusal of the said Appendix would reveal that the petitioner has preferred an application within the period stipulated in it and on the causes set out in the said appendix. The Education Officer has categorically made a statement before us in the affidavit that the name of the petitioner has been included in the list of cases regarding appointment on compassionate ground. This stand of the Education Officer is further reiterated in the affidavit of the management. However, it appears from the affidavit of the respondent management that

there is no vacancy in the said School. When we have perused the policy contained in Appendix A of the Government Resolution dated 31st December 2002, we have take note of clause no.6 of the said Appendix. By virtue of the said clause, it is imperative on the part of the Education Officer to maintain the seniority list of all the appointees seeking appointment on compassionate ground for appointment to Class III post. The said policy also enumerates that the candidates from the said seniority list who are found to be eligible and qualified are to be appointed in the School or the Society in which their kith and kin are working. However, in absence of any vacancy in the school or in the society, they should be accommodated in any other school or any Society in the same district and the appointment should be effected in terms of the management rules. It also further stipulates that once the Education authority has allotted a candidate to be appointed in any Institute on compassionate ground, the said Educational Institute would issue an appointment order in favour of the candidate within a period of 7 days and in absence of such compliance, appropriate steps would be taken.

Thus, what we find is that the policy for effecting compassionate appointment is in place. The only difficulty is about its implementation. The Policy is intended to assist the family who has to meet sudden crisis. True, that it is not a source of recruitment but is an exception to the usual mode of recruitment by following due procedure. It ensures some relief to family who is in need of assistance and when one of the members of the family comes forward and offers himself for filling up a post commensurating his educational qualification, then it is expected that the educational authorities and management of various educational institutions to be sensitive towards such a relief being sought. The policy of the State Government contemplates that the appointment has to be effected either in the same school or other school of the same management and if not possible, then any other school in the same district. We see no difficulty in implementing the said policy. The petitioner necessarily may not be appointed as a Shikshan Sevak or Senior Clerk as he desires to be, but he can be appointed on any Group 'C' or Group 'D' post

commensurating with his educational qualification and strictly in terms of the policy decision of the State Government as contained in its various resolutions. In any contingency, the petitioner's insistence is not that he should be appointed as Shikshan Sevak but what he needs at present is a job in hand which would provide him and his family a means of sustenance.

10 For the aforesaid reasons and circumstances, we are of the clear opinion that failure on part of respondent no.5 and 6 and also on behalf of the education authorities to discharge their duty for effecting an appointment on compassionate ground, calls for issuance of writ in the nature of mandamus in favour of the petitioner, thereby directing the respondent authorities to issue an order of appointment to the petitioner for consideration of his application for appointment of petitioner.

It is hereby directed that the Education Officer should immediately consider the application of the petitioner and issue an appointment order in his favour within a period of one month by assessing the vacancy position in the respondent

no.5 management or respondent no.6 school and if there is no vacancy, then, issue an appointment order in any other Educational Institution in the Sangli District.

11 The entire exercise should be carried out, in any case, within a period of three months from the date of receipt of this order.

12 Rule is made absolute in terms of prayer clause (a)
No order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)