

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

WRIT PETITION NO. 5279 OF 2014

Ahmednagar Education Society,
Vishrambag, Ahmednagar,
through its General Secretary,
Smt. Chayya wd/o Ashok Firodiya,
Age-63 yrs., Occu.- Business
& Social Work, R/o Shobha Sadan,
Near D.S.P. Office Chowk,
Ahmednagar, Dist. Ahmednagar.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Education and Sports
Department, Mantralaya, Mumbai –
32.(Copy to be served on A.G.P.
High Court, Bench at
Aurangabad.)
2. The Dy. Director of Education,
Pune Region, Pune-1.
3. The Education Officer
(Secondary) Zilla Parishad,
Ahmednagar.
4. Smt. Mandakini Thakur,
The Principal, Ahmednagar
Education Society's Junior
College of Education, Satbhai
Mala, Ahmednagar.
5. Smt. Vimal wd/o Devidas Kadam,
Age-44 yrs., Occu.-Service,
R/o-Vidya Vihar Colony,
Behind Balikashram, Ahmednagar.
6. Shri B. D. Fadtare,
Age-Major, Occu.- Dy. Director
of Education Balbharti, Near
Chitrawani, Pune.
7. A.N. Sadavarte,
Age- Major, Occu.-Retd.
Education Officer,
R/o-Near Deshpande Blood Bank,

Ward. No.7, Morge Vasti,
Shrirampur, Dist. Ahmednagar.

... Respondents

...

Mr. A.M. Gholap, for the Petitioner.

Mr. S.P. Tiwari, AGP for respondent Nos.1 to 3.

Mr. R.R. Karpe, for Respondent No.4.

Mr. L.V. Sangit for Respondent No.5.

...

**CORAM : T. V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATE: : 06th March, 2019

JUDGMENT (Per SUNIL K. KOTWAL, J.):

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally.

2. By filing this writ petition, the petitioner which is an Education Institution has sought quashment of the order dated 06.03.2014 passed by the respondent No. 2 and remand of the matter for reconsideration to respondent No. 2. Respondent No. 1 is the State of Maharashtra, Education and Sports Department. Respondent No. 2 is Deputy Director of Education, Pune Division, Respondent No. 3 is the Education Officer (Secondary) Zilla Parishad, Ahmednagar, Respondent No. 4 is Principal of Junior College of Education, run by the petitioner. Respondent No. 5 is the widow of

deceased employee of the petitioner. Respondent No. 6 is the Director of Education, Balbharti and Respondent No. 7 is the then, now retired Education Officer.

3. Heard Mr. A.M. Gholap learned counsel for petitioner, Learned AGP for respondent Nos. 1 to 3, Mr.R.R. Karpe for respondent No. 4 and Mr. L.V. Sangit learned counsel for respondent No. 5.

4. Learned counsel for petitioner submits that the husband of respondent No. 5 was in employment of the petitioner committed suicide on 22.11.2001 and therefore, as per Government Resolution dated 28.03.2001 which was in operation at that relevant time, the respondent No. 5 could not be appointed on compassionate ground, as such, employment was available to the family member of the employees who died due to cancer, paralysis or accident.

5. Next contention of the learned counsel for the petitioner is that despite suicidal death of husband of Respondent No. 5, the petitioner provided part time employment to the respondent No. 5 and paid salary from the pocket of the petitioner. He submits that the respondent No. 5 for the first time applied to the petitioner on 27.04.2004 for her appointment on compassionate ground. He submits that as application

was not in prescribed proforma, it was returned to respondent No. 5 under letter dated 11.05.2004. He submits that even the next application submitted by the respondent No. 5 on 03.06.2004 was incomplete and with false contents and therefore, it was returned on 15.06.2004. The learned counsel for the petitioner has drawn our attention towards lengthy correspondence in between the petitioner and respondent Nos. 2 and 3 and submits that the petitioner has taken every possible efforts to provide employment to the respondent No. 5, however, due to adamant respondent Nos. 2 and 3 and negligence on the part of respondent No. 4, employment could not be given to the respondent No. 5 at the earliest.

6. Learned counsel for the petitioner submits that though in Writ Petition No.2582/2012 on 15.10.2013, this Court directed the petitioner and respondent No. 4 to find out first available vacancy against which petitioner could have been appointed after her first application dated 01.12.2001 and directed to pay arrears of wages from the said date till 25.01.2011 and direction was given to respondent No.2 (Who was respondent No. 4 in the said petition) to equally apportion the arrears of salary payable to the

respondent No. 5, amongst defaulting Government Officer who were involved in the matter and petitioner Management. Contention of the learned counsel for the appellant is that without holding proper inquiry and proper opportunity of hearing to the petitioner, the respondent No. 2 passed the impugned order and fixed liability on petitioner and respondent No. 4 to pay arrears of Rs.4,39,940/- to the respondent No. 5 and liability to pay meager amount of Rs.67,312/- was fixed on the then Education Officer. He submits that for no fault on the part of the petitioner, the respondent No.2 is legally fixed the liability of petitioner to pay major portion of the arrears of the salary to the respondent No. 5.

7. In reply, learned counsel for the respondents submits that at the time of inquiry held by respondent No. 2 on behalf of petitioner, Secretary of the petitioner institution was present and therefore there was no violation of principle of natural justice. Counsel for the respondents submits that the apportionment made by the respondent No. 2 regarding the payment of arrears of salary to the respondent No.5 is correct, proper and needs no interference.

8. After hearing learned counsel for both the

parties, it reveals that the only point for consideration before this Court is whether the apportionment made by the respondent No. 2 - Deputy Director, regarding liability to pay arrears of salary to the respondent No. 5, is correct or not. Even the respondent No. 5 has not disputed the correctness of the order passed by respondent No. 2, under which the arrears of salary was directed to be paid from 01.01.2004 to 24.01.2011. Even the quantum of arrears of salary payable to the respondent No. 5 is not disputed by either parties. Therefore, the correctness of the order passed by respondent No. 2 is to be scrutinized through narrow compass.

9. At the outset, we must make it clear that while exercising writ jurisdiction, this Court is not expected to reassess the material placed before the respondent No. 2 at the time of inquiry. In other words re-appreciation of the evidence is not permitted while exercising writ jurisdiction.

10. Though, petitioner has disputed the legality of appointment of respondent No. 5 on compassionate ground on the basis of Government Resolution dated 28.03.2001, this point cannot be reopened when in Writ Petition No.2582/2012 this Court has already considered

the right of the respondent No. 5 to get appointment on compassionate ground, after the death of her husband. The relevant paragraphs of the order passed in Writ Petition No. 2582/2012 are reproduced as under:-

- 4] Facts show that petitioner was entitled to appointment on compassionate ground immediately after death of her husband and she had also applied within 8 days and sought the same. Thus, for period of more than 10 years, the management and also the respondent authorities, have succeeded in keeping her out of employment. We, therefore, find reply affidavit by respondent No.4 not satisfactory.
- 5] We direct petitioner, as also, respondent No.2 management to appear before the respondent No.4 on 2.12.2013 and to abide by his further instructions in the matter. Said respondent shall find out the first available vacancy against which the petitioner could have been appointed after her first application dated 1.12.2001. The benefit of continuous service shall be conferred upon her from said date. She shall also be paid arrears of wages from said date accordingly. Respondent No.4 shall hold proper enquiry to find out why his department has made petitioner to suffer and did not permit benefit of Government policy to be conferred upon her till 2011.
- 6] The arrears of salary being paid to her from earliest date till 25.1.2011 shall then be apportioned equally amongst such officers i.e. Government Officers who are involved in the matter and also respondent No.2 management.

11. Thus, we do not find any substance in the objection raised by the petitioner that due to the

suicidal death of husband of respondent No. 5, she is not entitled to employment on compassionate ground.

12. The next objection of petitioner is regarding not offering proper opportunity of hearing to the petitioner by respondent No. 2 at the time of inquiry. However, the elaborate order passed by the respondent No. 2 – Deputy Director, shows that at the time of inquiry on behalf of petitioner Sau Asha Suresh Katariya, the then Secretary of petitioner institution was present. Therefore, by no stretch of imagination it can be held that the impugned order was passed by respondent No. 2 in violation of principle of natural justice.

13. Though, petitioner contended that respondent No. 5 submitted application for appointment on compassionate ground on 27.04.2004. The application dated 31.01.2004 submitted by respondent No. 4 – Principal to Deputy Director Education shows that on 01.12.2001 respondent No. 5 had submitted application before the Principal which was not recorded in inward register and forwarded to the petitioner institution. Therefore, the respondent No. 5 cannot be blamed for not submitting application for appointment on compassionate ground within prescribed time limit. On

the other hand, this ground is already considered by this Court in Writ Petition No.2582/2012 and therefore, this Court is not expected to make any more discussion on this point.

14. After going through the impugned order, it emerges that the respondent No. 2 has considered the Government ban on recruitment and held that after removal of that ban, when petitioner institution appointed 6 peons on 01.01.2004, the respondent No. 5 ought to have been appointed by the petitioner as there was no ban on recruitment. The respondent No. 2 has also rightly considered that when on 01.12.2001 respondent No. 5 submitted application before the respondent No. 4 – Principal, the said application ought to have been forwarded by the institution to the Education Department. At least claim of the respondent No. 5 ought to have been considered by petitioner on 01.01.2004.

15. Thus, it emerges that petitioner institution and its principal were all along reluctant to appoint respondent No. 5 on compassionate ground. Therefore, liability to pay the arrears of salary from 01.01.2004 to 24.01.2011 fixed on petitioner cannot be faulted. So also respondent No. 2 rightly fixed the liability of

defaulting Education Officer for the period 03.10.2006 to 17.09.2008 during which the then Education Officer sat over the proposal for approval of appointment of Respondent No. 5. Thus, the apportionment and liability to pay the arrears of salary to the respondent No. 5, amongst petitioner and defaulting education officer cannot be treated as irrational. In the result, we are fully satisfied that the impugned order passed by respondent No. 2 is correct, proper and cannot be treated as irrational order which calls for interference by this Court by invoking writ jurisdiction. It follows that this writ petition being devoid of merit, deserves to be dismissed.

16. Writ petition is dismissed. Rule stands discharged accordingly. Parties to bear their respective costs.

(SUNIL K. KOTWAL, J.)

(T. V. NALAWADE, J.)