

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11034 OF 2014

Urmila Deepak Salunkhe	 Petitioner
V/s.	
State of Maharashtra and Ors.	 Respondents

Mr. V.K. Bodhare for the Petitioner.

Mr. S.B. Kalel, A.G.P. for the Respondent-State.

Mr. S.B. Lawate for Respondent Nos.3 and 4.

**CORAM : S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE : 5TH MARCH, 2019.

P.C. :

1. Rule. Learned counsel for the Respondents waive service.
2. Rule is made returnable forthwith, by consent.
3. By this Petition, under Article 226 of the Constitution of India, the Petitioner is seeking a direction to the Respondents to grant her appointment as a 'Peon / Class-IV Employee' in the 4th Respondent-School.
4. This Writ Petition is filed on 4th July 2014.
5. Upon such a Petition, notice has been issued by this Court on 18th November 2016.

6. The Petitioner claims that her husband was appointed as a 'Peon' in the 3rd Respondent-School. This was a 'Grant-in-Aid' School. It was claimed that, this appointment is made so as to accommodate a backward-class person. After completing two years probation, the husband of the Petitioner became a permanent employee. His appointment was approved by the Education Officer (Secondary), Zilla Parishad, Solapur. During the course of his duties and employment, he expired on 8th April 2009.

7. The Petitioner has placed reliance on a policy decision of the Government of Maharashtra, as enunciated in a 'Resolution' dated 31st December 2002, under which widow of such employee will be eligible to get appointment on compassionate ground. The whole scheme is devised so as to enable a family in distress to tide over the immediate financial crisis.

8. It may be true that the Petitioner's husband has earned some benefit during the course of his service and, therefore, they may flow or be made admissible even to the family; however, that amount, according to the Petitioner, is meagre and will not enable her to survive.

9. Petitioner, therefore, made an application on 29th June 2009 for appointment on compassionate ground, in place of her deceased husband. It is claimed that, on 2nd March 2010, the Education Officer

directed the Head Master to appoint the Petitioner. The Petitioner was then summoned through the School on 21st April 2010 and it is claimed that, though the School was ready and willing to appoint her, the Education Officer did not respond to the proposal of the Management. The Petitioner has followed-up the matter. It is then stated that, there is a written representation made on 15th October 2013, after waiting for a considerable period.

10. It is in these circumstances that the inaction of the Authorities has made the foundation for the relief in terms of the prayer clauses.

11. In answer to this Petition, an affidavit-in-reply is filed by the In-Charge Education Officer and it is stated that, Respondent No.4-School is 100% aided. It is established and is being administered and managed by a private entity, namely, Respondent No.3. While it is true that the Petitioner's husband was working as a 'Peon' and died while in service, the proposal forwarded by the Management was rejected by the then Education Officer on 31st December 2010 and this fact has not been set out in the Writ Petition. In fact, the Writ Petition proceeds on the footing that no action was taken on the proposal of the Management. The rejection of the proposal was on the ground that, in terms of the Government Resolution dated 25th November 2005, a post of 'Peon' is not available in the School, for its students' strength is less than 500. Therefore, only one post of 'Peon' can be sanctioned. At present, there

are 3 Class-IV servants and that is why, as per the 'Staffing Pattern', no appointment order can be issued in favour of the Petitioner.

12. Thereafter, on 12th February 2015, all Managements of Private Institutions were informed that till the Government re-considers the issue of 'Staffing Pattern', no appointment should be made and status-quo as on that date be maintained by all Managements. It is for these reasons that the appointment was refused.

13. On such a Writ Petition, we have heard Mr. Bodhare, learned counsel appearing for the Petitioner; Mr. Kalel, learned A.G.P. appearing for the State and the Education Officer; and Mr. Lawate, learned counsel appearing on notice for the Management. It is claimed that the pension that is paid to the Petitioner is very meagre and the proof in relation there to is to be found at page No.15 of the paper-book. In today's times, this amount, as is reflected in the Petition, is indeed meagre. Therefore, the Management was of the view that, given the beneficial and benevolent policy of the Government, such an appointment, as is sought by the Petitioner, can be made. The Petitioner has relied upon the 'Government Resolution' of 31st December 2002. Pertinently, at 'Exhibit-2' of the affidavit-in-reply, the 'Government Resolution' of 12th February 2015 has been annexed and relied upon. However, careful perusal of this 'Government Resolution' leaves us in no manner of doubt that the benevolent and welfare measure carved out in the 'Government

Resolution' of 31st December 2002 is not superseded in any manner.

14. By its very nature, the appointment sought by the Petitioner falls in a distinct category. It is a compassionate appointment. The appointment on compassionate ground can be made and in terms of this 'Government Resolution', the whole policy is settled; though the Government may place reliance on Clause (7) of this Policy to urge that an appointment on this basis can be made only on sanctioned posts.

15. Annexure-A to this 'Government Resolution' reveals that, this policy has been carved out to enable the family of a deceased employee to tide over the immediate financial crisis and what we have found from a careful perusal of this policy is that, so far as 'Class-IV Employees' are concerned, there is a power to relax any conditions or rigors on which employment can be granted. We have perused this policy and we find that the Petitioner's application indeed fits in the same.

16. To our mind, however, in all these matters, now it's time that a careful and detailed scrutiny is made. For instance, in this case, the application seeking compassionate employment was made on 29th June 2009. On 2nd March 2010, the Head Master was informed by the Education Officer (Secondary), Zilla Parishad, Solapur that, on the application of the Petitioner, action should be taken in terms of the 'Government Resolution' of 25th November 2005. Pertinently, the

proposal was not rejected in terms of this communication as also the policy. The Management forwarded its proposal to the Education Officer on 21st April 2010. What we find is that, on this proposal of the Management, a communication is stated to have been addressed to the Head Master on 31st December 2010, informing the Head Master that the Petitioner's proposal / application cannot be accepted in the light of the 'Government Resolution' dated 25th November 2005. The Petitioner also was served with a copy of this communication. This communication dated 31st December 2010, a copy of which is at page No.37 of the paper-book, was addressed to the Head Master of Shree Chatrapati Shivaji Vidyalaya, Taluka Sangola, District Solapur and a copy thereof was endorsed in favour of the Petitioner. Both of them have received it. Ordinarily, we would have been justified in refusing a discretionary relief to a litigant like a Petitioner, who is plainly guilty of suppression of material facts. Further we would have been justified in dismissing this Writ Petition for the simple reason that, the 'Deceased' expired on 8th April 2009. The Petitioner made an application on 29th June 2009. On that application, a formal proposal was drawn up by the Management and duly forwarded. We find that on that proposal, the action was taken and the proposal was rejected on 31st December 2010.

17. The Petitioner waited from that day and beyond making a representation, that too on 15th October 2013 till the filing of the Writ Petition, nothing was done. The Writ Petition has also been filed after

more than 5 years of the death of the 'Deceased' and more than 5 years from the date of making the application for compassionate employment.

18. However, we find that, purely on the ground of this lapse on the part of the Petitioner, we should not deny the relief to the Petitioner and that is because the Respondents and particularly the Education Officer (Secondary), Zilla Parishad, Solapur, favourably endorsed the application of the Petitioner. Secondly, the appointment is not refused on the ground of delay or laches, but it is refused on the ground that there is no post available in the school.

19. The 'Staffing Pattern' may have been in place, but the Petitioner's husband was already in employment. He was a 'Class-IV' servant. He died on 8th April 2009. Once there is no question of creation of a post but to accommodate the widow of that deceased employee in the pre-existing post, then, we do not think that the Respondents were justified in rejecting the application. To our mind, therefore, the 'Government Resolution' of 25th November 2005 or the 'Government Resolution' of 12th February 2015 would not come into play. There is no question of any new post being created or new appointment being made. It is only to give effect to a benevolent and welfare measure of the State, that the application of the Petitioner was entertained.

20. To our mind, therefore, the ground on which the said application

has been rejected is not tenable in law. The rejection, as communicated, is, therefore, ex-facie arbitrary and illegal.

21. We, therefore, quash and set aside the communication of 31st December 2010. We allow the Writ Petition and direct that the Petitioner be considered for compassionate appointment in the post of a 'Peon' in the very school, where the husband of the Petitioner was working, or, in the event there is any difficulty in making the appointment in the very school, then, in any other school under the control of the Education Officer (Secondary), Zilla Parishad, Solapur.

22. We direct that the Petitioner's case for compassionate appointment be considered as expeditiously as possible and in any event within a period of three months from today.

23. The Writ Petition is allowed. Rule is made absolute in the above terms. No costs.

[M.S.KARNIK, J.]

[S.C. DHARMADHIKARI, J.]