

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

WRIT PETITION NO. 5438 OF 2017

Mandakini Krishnarao Sable,
Age 50 years, Occu-Service,
R/o. C/o. Dnyaneshwar Vidyalaya,
Rui Chhatrapati, Taluka Parner,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Department of School Education,
Mantralaya, Mumbai

...RESPONDENTS

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

3. Shri Dnyaneshwar Vidyalaya,
Rui Chhatrapati, Taluka Parner,
District Ahmednagar
Through its Head Master

4. Laxman S/o. Sahebrao Pole,
Age-Major, Occu-Service (Education Officer),
Zilla Parishad, Ahmednagar,
R/o. C/o. Office of Education Officer (Secondary),
Zilla Parishad, Ahmednagar

Mr. S. S. Jadhavar, Advocate for the petitioner
Mr. S. D. Ghayal, AGP for the respondent/State
Mr. Pradeep G. Tambade, Advocate for respondent No. 3

**CORAM : Z. A. HAQ &
S. M. GAVHANE, JJ.**

DATE : 27-02-2020

ORAL JUDGMENT [PER: Z. A. HAQ, J.]

. Heard.

2. Rule. Rule made returnable forthwith.

3. The facts of the case show agony of a widow who was appointed as a Peon but the approval to her appointment is refused by respondent No. 2-Education Officer [Secondary] because of which is deprived of her legitimate claim of getting salary.

4. Admittedly, Shri. Raju Londhe (husband of the petitioner) was working as 'Shikshan Sevak' in respondent No.3-school. Services of Shri. Raju Londhe were terminated and he had filed appeal before the Grievance Committee for entertaining complaints of Shikshan Sevak, which appeal was allowed by order dated 27-01-2003. This order was challenged before this Court in writ petition, which was dismissed and in further challenged by the State Government before the Hon'ble Supreme Court. Matter was remanded to the Grievance Committee for fresh decision. After remand, the Grievance Committee upheld the claim of Shri. Raju Londhe. However, Shri. Raju Londhe died during pendency of the appeal before the Grievance Committee and the petitioner had come on record as appellant. The Grievance Committee, by order dated 31-08-2007 had directed the Management to give appointment to the petitioner on compassionate ground on availability of vacancy in its school. The Management issued appointment order dated 29-02-2008 appointing the petitioner as

Peon in respondent No. 3-school. After the appointment, problems faced by the petitioner multiplied because of attitude of respondent No.2-Education Officer [Secondary]. Respondent No. 2-Education Officer [Secondary] rejected the proposal seeking approval to the appointment of the petitioner and being aggrieved, the petitioner had approached this Court by filing writ petition No. 9785 of 2015 which came to be allowed by judgment dated 28-09-2016. In this petition, the respondent No. 2-Education Officer [Secondary] had opposed the claim of the petitioner on the ground that post was not available in the respondent No. 3-school. After considering the rival submissions, this Court had remitted the matter to respondent No. 2-Education Officer [Secondary] for considering it afresh in the light of the observations made in the judgment dated 28-09-2016 delivered in writ petition No. 9785 of 2015. Paragraph Nos. 4 and 5 of the judgment which read as follows:

“4. We have considered the submissions canvassed by learned counsel for respective parties. As per the staffing pattern produced on record, it would appear that, two posts of peon and one post of naik is sanctioned in the year 2007-2008 and for further years. It is accepted by the learned counsel for either of the parties that, the post of naik and peon is in the same cadre. The same qualification is required for both posts. Two persons who were working as naik in respective schools run by the same management have retired on attaining age of superannuation. The person who were working as peon were accommodated on the post of naik and on the vacant post of peon the petitioner was

accommodated. This aspect does not appear to have been considered when the order was passed by the Education Officer and the Deputy Director of Education while passing subsequent orders. The same will have to be considered while considering proposal for grant of approval to the appointment of the petitioner.

5. In the result, the impugned order rejecting approval to the appointment of the petitioner is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner after considering aforesaid facts on its own merits. The parties may represent themselves before the concerned Education Officer on 10th October, 2016. The Education Officer shall take decision upon the proposal afresh after considering all the relevant aspects of the matter that may be pointed out by the petitioner and management expeditiously and preferably within a period of three (03) months from the date of appearance of the parties. The writ petition is disposed of. No costs.”

5. After remittance of the matter, the respondent No. 2- Education Officer [Secondary] considered it afresh and rejected it on the following five grounds :

i] That the proposal was not forwarded through the Management and relevant documents were not produced to show that post of peon was available to accommodate the

petitioner.

ii] Order granting approval to the appointment of Shri. Raju Londhe (husband of the petitioner) was not produced.

iii] Order granting approval to the promotion of the employee in whose place the petitioner was appointed, was not produced.

iv] List of the persons who had applied for appointment on compassionate grounds was not produced.

v] Documents to show that petitioner was reporting on duty from the date of her appointment were not produced.

6. In the reply filed on behalf of respondent Nos. 2 to 4 which is sworn by respondent No. 4-Laxman S/o. Sahebrao Pole [Education Officer (Secondary)], rejection of the proposal is justified on the grounds that the appointment of Shri. Raju Londhe (husband of the petitioner) was not approved and therefore, the petitioner is not entitled to be appointed on compassionate grounds, that respondent No. 3-school has not followed the procedure prescribed by the Government Resolution dated 26-10-1994 and 31-12-2002 while appointing the petitioner, that the appointment of Shri. Raju Londhe was not regular appointment and therefore, the petitioner cannot seek appointment on compassionate ground, and there was no sanctioned vacant post in

which the petitioner could have been appointed.

7. After hearing the learned advocate for the petitioner and learned AGP for respondent Nos. 2 to 4, we find that the reasons given by the Education Officer [Secondary] for rejecting the proposal seeking approval to the appointment of the petitioner are unsustainable. All these points were urged before this Court in writ petition No. 9785 of 2015 and after considering the rival submissions, specially on the point of availability of vacant post, this Court found that the Education Officer [Secondary] had not considered the fact that the post on which the petitioner was appointed had fallen vacant as the person who was working on that post was accommodated in the post of Naik. This Court observed that the Education Officer and the Deputy Director of Education had not considered the factual aspect that one post of peon was vacant as the person who was working on that post was accommodated as Naik. The Education Officer [Secondary], after remittance of the matter was required to consider only this aspect but the impugned order shows that he avoided to deal with this aspect and has given unsustainable reasons for rejecting the proposal. We find that the Education Officer [Secondary] has tried to overreach the order passed by the Grievance Committee directing the appointment of the petitioner on compassionate ground on availability of vacancy. Similarly, we find that the Education Officer [Secondary] has tried to delve into the points which were considered by this Court and were not left open for consideration by the Education Officer. Even now before this Court, the Education Officer has not been able to

demonstrate that the post of peon was not vacant when the petitioner was appointed and that somebody else was appointed in the post which had fallen vacant as observed in the judgment given in Writ Petition No. 9785 of 2015. In the facts of the case, we find that the petitioner is unnecessarily required to litigate for her legitimate claim.

8. Hence following order is passed:

ORDER

i] The impugned order is quashed.

ii] The respondent No. 2-Education Officer (Secondary) is directed to issue approval to the appointment of the petitioner on the post of Peon, from the date of her appointment i.e. 29-02-2008. The order of approval shall be issued till 16-03-2020.

iii] The respondent No. 2-Education Officer (Secondary) is directed to release the arrears of salary of the petitioner from 29-02-2008 till February 2020, till 30-06-2020. If this amount is not deposited in the account of the petitioner till 30-06-2020, the Education Officer (Secondary) shall be personally liable to pay interest on the amount of arrears of salary, the interest being chargeable at the rate of 9% p. a. from 01-07-

2020 till the amount is deposited in the bank account of the petitioner.

iv] We are conscious that monetary claim beyond the period of limitation should not be granted. However, in the peculiar facts of the present case and as the petitioner has been working, but is required to litigate for her legitimate claim, we are granting this relief to the petitioner.

v] The respondent No. 4 shall pay costs of Rs.1,00,000/- [Rupees One Lakh] to the petitioner by Demand Draft till 31-03-2020 and file affidavit of compliance on record of this petition till 10-04-2020.

vi] Rule is made absolute in the above terms.

[S. M. GAVHANE, J.]

[Z. A. HAQ, J.]