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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8956 OF 2019

Pratibha Shantaram Wadile
Age 45 years, Occu. Service,
R/o Chimthane, Tal. & Dist. Dhule ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through Secretary,
School Education Department,
Mantralaya, Mumbai – 32
(Copy to be served on Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad)
2. The Education Officer (Secondary),
Zilla Parishad, Dhule,
Tal. & Dist. Dhule
3. Chimthane Vibhag Shikshan Prasarak
Mandal, Chimthane, Tal. Shindkheda,
Dist. Dhule
through its Chairman
4. Janta High School and
Junior College, Chimthane,
Tal. Shindkheda, Dist. Dhule,
Through Principal ... **RESPONDENTS**

.....
Mr. Shailesh P. Brahme, Advocate for the petitioner
Mr. S.S. Dande, A.G.P. for respondents No.1 & 2
Mr. G.D. Jain, Advocate holding for
Mr. N.L. Choudhari, Advocate for respondents No.3 & 4
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CORAM : **SUNIL P. DESHMUKH AND**
R. G. AVACHAT, JJ.

DATE : **21st OCTOBER, 2020**

JUDGMENT (PER R.G. AVACHAT, J.)

1. Heard. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. The petitioner, by this petition, has sought for setting aside order dated 7/8/2018, passed by respondent No.2, the Education Officer (Secondary), Zilla Parishad, Dhule (for short the Education Officer), rejecting the proposal for approval to her appointment as a Peon. A writ of mandamus has also been sought to be issued directing the Education Officer to grant the approval.

FACTS :-

3. Shantaram, husband of the petitioner was appointed as a Peon in the respondent No.4 School on 13/9/1989. The respondent No.3 is an educational institution, that runs respondent No.4 school. Shantaram was permanent employee. He died on 18/8/2011, leaving behind the petitioner widow and three children. The petitioner, on

8/9/2011, made an application to the respondent No.3 for appointment on compassionate ground. The application was also addressed to the Education Officer. The Education Officer, on 5/10/2011, asked the Head Master of the respondent No.4 school to take appropriate action as regards appointment on compassionate ground and to submit report in that regard. The School Committee of the respondent No.3 passed a resolution dated 12/6/2013 to appoint the petitioner. The Head Master immediately informed the same to the Education Officer on 1/7/2013 and requested for grant of approval to the petitioner's appointment. It appears that, the Education Officer sat on the proposal for long. The petitioner, therefore, had to approach the Deputy Lokayukta, State of Maharashtra. The Education officer was directed by the Deputy Lokayukta to consider the case of the petitioner sympathetically and do the needful for grant of approval to her appointment. The Education Officer, in response thereto, passed the order (impugned), declining to grant approval. The reason cited by the Education Officer for turning down the proposal was that Government Resolutions dated 2/5/2012 and 12/3/2015 ban appointment of teaching and non-teaching staff. The petitioner is thus before this Court.

4. We have perused the Writ Petition and the

documents annexed thereto. Both the Government Resolutions, on the basis of which the impugned order has been passed, have not been produced on record for our perusal. Approval to the petitioner's appointment on compassionate ground has been turned down on the ground of there being a ban on recruitment imposed by the aforesaid two Government Resolutions.

5. The factual matrix is not in dispute. It need not be stated that, appointment on compassionate ground is made with a sole object of providing an immediate succor to the members of the bereaved family. The petitioner's husband was in permanent employment. It was a grant-in-aid post. The petitioner was eligible for appointment to the post of a Peon. Immediately after the demise of her husband, she preferred the application for appointment. The Education Officer responded immediately on 5/10/2011 with a direction to the respondent No.4 school to take a call on the petitioner's application and do the needful and submit report thereof. The school management ought to have done the needful immediately. It is only on 12/6/2013 the school management sanctioned the petitioner's application and appointed her w.e.f. 17/6/2013. Had the school management taken prompt action on the petitioner's application and directions issued by

the Education Officer, there could not have been any issue regarding appointment during so called ban on appointments of teaching and non-teaching staff.

6. The Division Bench of this Court, in case of Smt. **Samita Sameer Desai & and. V/s The State of Maharashtra & anr. (Writ Petition No.7507/2016)**, observed in paragraph No.9 as under :-

“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.”

7. Since the Government Resolutions dated 2/5/2012 and 12/3/2015 are not before this Court, without addressing the issue as to whether really those Government Resolutions

were applicable to the case of the petitioner, we set aside the impugned order and remit the matter back to the respondent No.3 to take a decision on the proposal for grant of approval to the petitioner's appointment within a period of one month from the date of receipt of copy this order.

8. Rule is made absolute in above terms.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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