

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

WRIT PETITION NO. 9312 OF 2019

1. Smt. Sunanda Arjun Shinde,
Age : 42 years Occu. : Household,
R/o : Jalke (Khurd), Tq. Newasa,
Dist. : Ahmednagar.
2. Shubham S/o Arjun Shinde,
Age : 19 years Occu. : Student,
R/o : As Above
3. Pranav S/o Arjun Shinde,
Age : 11 years Occu. : NIL,
R/o : As Above
Under the Guardianship of mother
(Petitioner No. 1)

.. Petitioners

Versus

1. The Deputy Collector &
Deputy District Election Officer,
Ahmednagar.
2. Assistant Election Returning Officer,
38-Shirdi Loksabha Constituency and
Deputy Collector, Land Acquisition no. 14
Ahmednagar.
3. State of Maharashtra
Through Secretary
Department of General Administration,
Mantralaya, Mumbai.

.. Respondents

Mr. Sharad V. Natu, Advocate for the Petitioners.
Mr. Alok M. Sharma, Advocate for Respondent Nos. 1 and 2.
Mrs. V. N. Patil-Jadhav, AGP for Respondent No 3.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 11th MARCH, 2020.

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The husband of the petitioner no. 1 was working as an Assistant Teacher. He was assigned election duty for the Loksabha election conducted in April-May 2019.

3. It is the case of the petitioners that on 11.04.2019 the training was to be conducted and it was informed to the husband of the petitioner no. 1 to remain present. The husband of the petitioner no. 1 had given an application on 01.04.2019 to relieve from the election duty so as to look after his ailing father. No orders were passed on the said application. It is the contention of the petitioners that on 11.04.2019 the husband of the petitioner no. 1 had attended the training for the election and also was accompanied with his substitute Mr. Kale. While training was imparted the husband of the petitioner no. 1 died on 11.04.2019. The petitioners seek compensation as per the Government Resolution dated 11.04.2019.

4. Mr. Natu, learned counsel for the petitioners submits that on

25.03.2019 order was issued to the husband of the petitioner no. 1 assigning him with the election duty and directing him to remain present for training on 11.04.2019. During the interregnum husband of the petitioner no. 1 requested the respondents to relieve from election duty. But the said request was not considered. On 11.04.2019 the husband of the petitioner no. 1 had taken his substitute, but he was also never assigned the election duty and on 11.04.2019 the husband of the petitioner no. 1 during training suffered heart attack and died. The learned counsel relies on the letter dated 11.04.2019 and 03.05.2019 issued by the Assistant Returning Officer, 38-Shirdi Lok Sabha Constituency. The learned counsel also relies on the statements recorded by the police authority of the persons who were attending the training on the said date. The petitioners also rely on the letter dated 13.05.2019 issued by the Assistant Returning Officer.

5. Mr. Sharma, learned counsel for the respondent Nos. 1 and 2 submits that letters dated 11.04.2019 and 03.05.2019 relied by the petitioners are not issued by the Assistant Returning Officer. The same has been denied in the affidavit filed by the respondents. The learned counsel submits that the letter dated 13.05.2019 is much subsequent to the incident and cannot have more probative value. On 11.04.2019 the husband of the petitioner no. 1 namely Arjun Raghunath Shinde

did not attend the training. On his place Mr. Dattatraya Punjaram Kale had attended the training and he had signed on the attendance sheet. According to the learned counsel the matter involves disputed questions of fact. The same cannot be gone into in the writ jurisdiction. The learned counsel relies on the judgment and order of this Court dated 09.01.2019 in ***Writ Petition No. 10238 of 2016 (Jijabai Ananda Palve Vs. State of Maharashtra and Ors.)***. Mr. Sharma, learned counsel submits that in spirit the respondents acted upon the request of the petitioners and allowed substitute to sign the attendance sheet.

6. As far as the letters dated 11.04.2019 and 03.05.2019 are concerned, we may not place our reliance on the said letters. The letters do not bear the signature, nor the outward number.

7. The letter dated 13.05.2019 is issued by the Assistant Returning Officer. In the said letter he has admitted that in the first session of training on 11.04.2019 Shinde Arjun Raghunath had attended and he died because of heart attack. The said letter is not disputed by the Assistant Returning Officer.

8. It is undisputed that the husband of the petitioner no. 1 was assigned with the election duty under order dated 25.03.2019 and was directed to attend training on 11.04.2019. It is also a matter of record that on 01.04.2019 the deceased husband of the petitioner no. 1 had

requested to relieve him from the election duty. It appears that the respondents did not pass orders relieving said Shinde Arjun (husband of the petitioner no. 1) from election duty. On 11.04.2019 the person to whom the deceased husband of the petitioner no. 1 wanted to substitute was accompanying with him for training. The statements are recorded of the other persons, who had attended the training on 11.04.2019. The statement of one Kishor Shankarrao Deshmukh is recorded on the same day of the incident. He had stated that husband of the petitioner no. 1 had attended the training and during the training he suffered heart attack. He was taken to the hospital. The doctor pronounced him death.

9. There are statements recorded of other persons on 14.04.2019 who had attended the training namely Ajit Sampatrao Patil, Vishnu Kisan Warule, Dattatray Punjaram Kale. All these persons who have attended the training unequivocally affirm that Arjun Shinde had attended the training and during the training he suffered heart attack and died.

10. Considering all these statements recorded by the police authorities and so also letter of the Assistant Returning Officer dated 13.05.2019 accepting that the deceased Arjun Shinde had attended the training and further that said deceased was never issued with the order

relieving him from the election duty. The only conclusion that can be drawn is that the deceased Arjun Shinde had attended the training and died while performing election duty.

11. In a case of *Jijabai Ananda Palve Vs. State of Maharashtra & Ors. (supra)* the deceased therein was relieved from the election duty. In his place substitute was also sanctioned.

12. In the present case, as observed above the deceased Arjun Shinde was not relieved from the election duty, nor any substitute was approved. In view of the said fact coupled with the statements recorded by the authorities and also undisputed letter of the Assistant Returning Officer 38-Shirdi Loksabha Constituency dated 13.05.2019, the irresistible conclusion is that the deceased Arjun Shinde was on election duty.

13. In the light of the above, the impugned letter dated 02.07.2019 issued by the Deputy Collector and Deputy Election Returning Officer, Ahmednagar is quashed and set aside. The payment shall be made to the petitioners as per the Government Resolution dated 11.04.2019.

14. Rule made absolute in above terms. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.