

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.60 OF 2015

Smt. Yasmin Begum D/o Shaikh Munshi,
Age-26 years, Occu:Service as Peon in
Faizul-Uloom Primary School,
Hazrat Nizamuddin Road,
Qaiser Colony, Aurangabad.

...PETITIONER

VERSUS

- 1) The Education Officer (Primary),
Zilla Parishad, Aurangabad,
- 2) Hazrat Nizamddin Shikshan Sanstha,
Qaiser Colony, Aurangabad,
Through its Secretary,
- 3) Faizul-Uloom Primary School,
Hazrat Nizamuddin Road,
Qaiser Colony, Aurangabad,
Through its Head Master,
- 4) The State of Maharashtra,
Through Secretary,
Education (Primary),
Mantralaya, Mumbai-32.

...RESPONDENTS

....

Mr.Ajay S. Deshpande Advocate for Petitioner.
Mr.U.B. Bondar Advocate for Respondent No.1.
None present for Respondent Nos. 2 and 3 though served.
Mr.A.V. Deshmkh, A.G.P. for Respondent No.4.

....

**CORAM: SUNIL P. DESHMUKH AND
B.U. DEBADWAR, JJ.**

DATE : 11th MARCH, 2020

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Petitioner questions propriety of communication issued by respondent No. 1 dated 15th June 2014 as well as the consequent order passed by respondents No. 2 and 3 dated 27th November 2014.

3. It is undisputed position that petitioner had been appointed on a post where her mother had been working for over 20 years. There is no dispute on that the post where her mother had been working, had been a sanctioned post. After death of her mother, according to prevailing policy of the State government, petitioner came to be appointed as peon on 30th November 2011, mother having died on 13th October 2010. There is also no dispute on that the appointment has been made

on compassionate ground. Respondent No. 1 – education officer (primary) had approved said appointment on the post of peon, on fixed honorarium for a period of three years.

A circular appears to have been released through internet by respondent No. 1 on 15th June 2014, instructing appointing authorities to discontinue services of contractual appointees and as a consequence of such circular, respondents No. 2 and 3 had issued an order terminating services of the petitioner on 27th November 2014.

4. Learned counsel for the petitioner Mr. Ajay Deshpande vehemently contends that the action and the orders of respondents are grossly capricious, arbitrary and terse and contravene fundamental rights enshrined under Article 14 of the Constitution of India. He submits that there is no dispute that petitioner has been appointed on compassionate ground regularly for the period of three years as per prevailing procedure and was entitled for regularization. However, just about three days before completion of such period, her services are purportedly sought to be brought to an end under erroneous appreciation and apprehension of circular released through

internet on 15th June 2014. He submits that the petitioner had not been appointed on contractual basis. He, therefore, urges to intervene in the matter and set aside the impugned communication and termination order.

5. Learned counsel Mr. Uttam Bondar appearing for respondent - zilla parishad, submits that a circular had been issued and having regard to that post of peon is not admissible pursuant to government policy and the Right of Children to Free and Compulsory Education Act of 2009 ("RTE Act, 2009"). Such post is not possible under new policy. He submits that there is no post of peon under the staffing pattern pursuant to RTE Act, 2009. It was thus imperative to issue a proper circular and accordingly had been issued on 15th June, 2014.

6. Affidavit-in-reply on behalf of respondents No. 2 and 3 refers to that petitioner's appointment has been temporary in nature and that the termination has taken place as a fall out of circular dated 15th June, 2014.

7. Learned Assistant Government Pleader purports to support the submissions on behalf of the respondents.

8. During the course of submissions, it emerges that Maharashtra Act No. XXV of 2014 is enforced from 1st July 2013, known as the City of Mumbai Primary Education, the Maharashtra Primary Education, the Hyderabad Compulsory Primary Education and the Madhya Pradesh Primary Education (Repeal) Act, 2013, and section 3(2)(f) thereunder, reads as under,

" (f) the salaries and existing terms and conditions of service of the teaching and non-teaching employees of the schools established under the repealed Acts and appointed as per the Government orders, issued from time to time, shall be continued as per the existing Government policy until duly altered or modified by the Government.

Provided that, the conditions of service applicable to such employees immediately before the commencement of the said Act shall not be varied to his disadvantage. "

9. From the same, it appears that prevailing position under the old legal scenario has been saved as had been subsisting a day before the enforcement of said enactment. Perusal of impugned communication shows that the relevant factors such as admissibility of peon's post and staffing pattern

has not received any consideration. So far as the legal position, as had been subsisting on the date of appointment has not been considered. There is no dispute that appointment of the petitioner has been on compassionate ground according to prevailing policy of the government. Petitioner's appointment can hardly be said to be on contractual basis. Further, it is not the case of any of the parties that petitioner's appointment has been on contractual basis. In the circumstances, abrupt interruption and termination of services of petitioner, appears to be rather hasty and under some apprehension and do not appear to be in consonance with the prevailing legal scenario.

10. In the circumstances, we deem it appropriate that the case of petitioner's appointment for approval be considered taking into account all the facts and circumstances and the legal position as had been subsisting on the date of appointment. Without being influenced by the observations made in this order, the authority concerned shall decide the proposal for approval. In case the education officer deems it appropriate, he may hear the parties concerned.

11. In view of aforesaid, impugned communication dated 15th June 2014 and consequential termination order dated 27th November 2014 are set aside.

12. Rule is made absolute in aforesaid terms.

13. Writ petition is disposed of.

(B.U. DEBADWAR, J.)

[SUNIL P. DESHMUKH, J.]

asb/MAR20