

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15018 OF 2019

Bharati Bhausahab Thakare
Age – 36 years, Occ – Service
As Peon at Nutan Madhyamik Vidyalaya
Khondamali,
R/o Khondamali Taluka and District - Nandurbar

PETITIONER

VERSUS

- | | |
|---|-------------|
| 1. The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32 | RESPONDENTS |
| 2. The Education Officer (Secondary)
Zilla Parishad, Nandurbar | |
| 3. Sakri Taluka Education Society,
Sakri, Taluka – Sakri, District – Dhule
Through its Secretary | |
| 4. Nutan Madhyamik Vidyalaya, Khondamali
Taluka and District – Nandurbar
Through its Head Master | |

.....

Mr. V. S. Panpatte, Advocate for the petitioner
Ms. G. L. Deshpande, AGP for respondent - State
Mr. Subodh P. Shah, Advocate for respondents No. 3 and 4

.....

[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]

DATE : 10th MARCH, 2021

JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with

consent of learned advocates for the parties.

2. Petitioner's husband had been in permanent service in respondent No. 4 school. He died on 24th October, 2012 while in service. Petitioner had applied for appointment on compassionate ground on 29th January, 2013 after following the procedure as required. Petitioner was appointed on 31st January, 2013 and proposal for approval to said appointment had been submitted on 15th February, 2013. Thereafter, since approval had not been coming forth, quite a few representations were made to respondent No. 2. On 13th September, 2019, the Education Officer (Secondary), Zilla Parishad, Nandurbar purportedly declined granting approval to petitioner's appointment referring to that there had been ban for appointments under Government Resolution dated 2nd May, 2012 and that in staffing pattern, there is no sanction to the post.

3. Mr. Panpatte, learned advocate appearing on behalf of the petitioner submits that such a situation is no longer *res integra* and has been dealt with by a division bench under its order dated 11th December, 2018 in writ petition No. 7507 of 2016, wherein it has been observed, thus,

“ 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 crises 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.

10.

11. We are unable to accept her contentions and for more than one reason. In para 7 of the affidavit in reply it is stated that the appointment of petitioner No. 1, who is the widow of the deceased employee is per say illegal as no prior approval was sought before making such appointment. The decision dated 26th March, 2012 to appoint petitioner No. 1 was taken by the Management, but the appointment was effective from 1st June, 2012. It is clear that the appointment was reported for the first time on 7th August, 2012 and thus, all these actions were taken during the period when there was a ban on the recruitment. Pertinently, this affidavit-in-reply only highlights this reason assigned in the impugned order. The essential reliance is on this policy imposing a ban. The relaxation referred to in the affidavit-in-reply does not apply to the instant appointment is

the another reason assigned.

12. *However, in the Writ Petition as also in the affidavit-in-rejoinder, it is reiterated that it is impossible to sustain this ground of refusal. The appointment on compassionate basis is made in terms of a Government circular dated 31st December, 2002. That has not been superseded by this subsequent Government Resolution and particularly, the one imposing ban dated 2nd May, 2012. In fact, such appointments were kept out of the purview of the general ban imposed on recruitment. The very object in all such appointments enables the State Government to carry forward its earlier policy despite the overall ban on recruitment and appointment. It is evident that the husband of petitioner No. 1 expired on 2nd November, 2011 and the application was made to appoint her in his place on 6th February, 2012, which application was considered and it was resolved on 26th March, 2012 to appoint petitioner No. 1 as a Peon on compassionate basis, then, merely because the appointment order was dated 29th May, 2012 and the appointment was with effect from 1st June, 2012 does not mean that the ban covers this appointment. It is for administrative reasons and convenience that petitioner No. 1 – Peon was directed to take charge from the date when academic sessions commenced. It is after she reported for duty that the formal proposal seeking approval to her appointment was submitted by the Headmaster. That is dated 7th August, 2012. However, once the decision to appoint was taken much prior to the ban and even otherwise assuming that such ban applies to the compassionate appointment, still it was much prior to that being in force. Once such is the factual position, then, on the assumption that the ban covers the appointment on compassionate basis, still the refusal to approve petitioner No.1's appointment cannot be sustained.*

13. *Once we find that this is how the matter proceeded and*

purely on facts, then, without addressing the larger issue, we can allow the Writ Petition by quashing and setting aside the impugned order. It is accordingly quashed and set aside. It is declared that petitioner No.1's appointment as a Peon on compassionate basis in the place of her deceased husband would be effective from 1st June, 2012 and that she would be entitled to all the benefits, salary emoluments etc. attached to that post. The appointment stands approved accordingly. The formal order to that effect shall be issued by the concerned authorities within a period of four (4) weeks from the date of communication of this order. ”

4. Having regard to reasons which underwent making aforesaid order and factual position being not disputed, we deem it expedient to follow the decision for the reasons which had weighed in aforesaid order.

5. Writ petition is allowed. Impugned order dated 13th September, 2019 passed by Education Officer (Secondary), Zilla Parishad, Nandurbar is set aside. Proposal submitted for approval to petitioner's appointment be decided in right earnest keeping in view decision referred to above and appropriate orders accordingly be passed, including that of giving benefits of salary, emoluments etc. attached to that post. Arrears of salary and other benefits be released to the petitioner as early as possible, including release of grant as observed in the order. Rule is made absolute accordingly.

6. We expect that aforesaid process would be completed within a period of four months from the date of receipt of writ of this order at the end of Education Officer (Secondary), Zilla Parishad, Nandurbar.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE