

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5749 of 2019**

Smt. Tejaswi Subhash Todkar

....Petitioner

Versus

The State of Maharashtra through
its General Administration Department,
Mantralaya at Mumbai and ors.

....Respondents

Mr. Manoj Agonda Patil, advocate for the petitioner.

Mr. B. V. Samant, AGP for respondent Nos.1 to 6.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 14th DECEMBER, 2021.

P.C. :

1. The petitioner challenges the communication dated 1st January, 2018, which is placed on record at Exhibit -'K', page 60 of the petition, whereby it is informed to the petitioner that as she has completed 45 years of age and as per the Government Policy, her claim for appointment cannot be considered being over-aged candidate and her name from the waiting list would be deleted. Mr. Patil, learned counsel for the petitioner submitted that for no fault of the petitioner, the claim of the petitioner was pending before the authorities and for one reason or the other reason, except the exchange of communication, the matter of the

petitioner for seeking compassionate appointment was not proceeded and the delay was due to Government's otherwise approach resulted in denial of the claim of the petitioner.

2. The petitioner submitted an application to the Deputy Director of Education, Kolhapur Division, Kolapur on 15th March, 2012. Perusal of the copy of the application shows that the husband of the petitioner – Shri Subhash Bandu Todkar was working as a senior clerk in the Office of the Deputy Director and he expired on 30th June, 2011, while he was in service. Due to the death of the sole earning member in the family, the petitioner was facing financial difficulties in raising her minor children and the only income was the pension amount of her husband which was wholly insufficient to meet both the ends. The petitioner, as such, was left with no choice but to submit an application seeking compassionate appointment in place of her husband. The application was received by the concerned officer on 15th March, 2012 itself. The petitioner had submitted all the necessary documents in prescribed format. The petitioner also placed on record, the copies of Government Resolutions in relation to the policy of compassionate appointment. It may be useful to refer that the petitioner submitted a reminder application to the Commissioner (Education), Office of the Commissioner Education, Pune on 29th June, 2017, apprising that her claim is pending before the authority and the delay in decision of the claim would frustrate her appointment. It

is specifically stated in the application that if the application is kept pending, the petitioner would attain the age of 45 years and in that case, she may lose the opportunity of appointment on compassionate ground. Copy of this application is also submitted to the Director of Education, Secondary and Higher Secondary Directorate, Pune as well as to the Deputy Director of Education, Kolhapur. The Commissioner (Education), State of Maharashtra, Pune, by way of communication dated 11th July, 2017, sought a guidance from the Government. In this communication, he has made a reference to the case of the petitioner and has also sought permission for appointment of three candidates on compassionate ground. Then, the Commissioner (Education) submitted to the Principal Secretary that though the Commissioner is a competent authority to take decision on the issues of direct appointments/promotions/nominations etc., he does not possess power to deal with the cases of compassionate appointments. The petitioner again submitted a reminder to the authorities on 11th July, 2017, reiterating the reason of urgency in her claim. Copy of the said communication is placed on record at Exhibit - 'F', page 35 of the petition. The Joint Secretary, Government of Maharashtra vide his communication dated 15th July, 2017, informed the Commissioner (Education), State of Maharashtra, Pune, that he is the competent authority to take decision even in the matters of compassionate appointments. In the very communication, it is further informed to the Commissioner that the petitioner is completing 45 years of

age on 19th July, 2017, as such, decision on her claim be taken as early as possible and not later than 8th July, 2017. The Commissioner was also informed to submit the action taken report. Ultimately, the misfortune of the petitioner as it would be, the petitioner was subjected to denial of her claim vide order dated 1st January, 2018.

3. On issuance of notice by this Court, affidavits-in-reply are filed by the State Government. Learned AGP appearing for the State invited our attention to various Government Resolutions dated 2nd June 2015, 20th October 2015, 30th January 2017, 3rd May 2017 and 25th May 2017. The Government Resolution dated 2nd June, 2015 is in respect of controlling the expenses on the salary amount and in this Government Resolution, a reference is made to allocation of positions available to the candidates seeking appointment on compassionate ground. Then Government Resolutions dated 20th October 2015, 30th January 2017, 3rd May 2017 and 25th May, 2017 are in relation to staff pattern, availability of vacancies qua total seats. It was submitted that as per the Government Resolution, two seats were available in 2016 for compassionate appointment and three seats were available in 2017 as per staffing pattern and allocation of posts but as the petitioner is now over-aged, her claim cannot be considered.

4. Perusal of a document placed on record at Exhibit 'R', page 86 of the affidavit-in-reply shows that the Desk Officer informed the Commissioner, Education, State of Maharashtra, Pune, that in view of the Government Resolution dated 6th December, 2010, maximum age limit for appointment of the candidate on compassionate ground is 45 years and if the candidate placed in waiting list is not appointed till attaining the age of 45 years, as soon as the candidate completes the age of 45 years, her name be deleted from the waiting list. In view of the said Government Resolution, the claim of the petitioner cannot be considered and necessary affidavit be filed in this Court.

5. We are surprised to see the approach of the State Government. There is no dispute that the entire object of providing compassionate appointment is to provide succour to the family in distress. The family losing an earning member faces difficulty not only in day-to-day life but even difficulty in educating the minor children and considering these difficulties being faced, a scheme of compassionate appointment is formulated. In the present matter, on one hand, the petitioner has approached the authorities time and again. The petitioner has approached higher authorities submitting that the delay in consideration of the claim would result in declaring the candidate as an over-aged candidate and the entire exercise for seeking compassionate appointment would be frustrated. The claim made by the petitioner moved only from

one officer to other officers and except running of the paper horses, there is no positive movement and as it is observed by us that all this delay resulted in misfortune of the petitioner in denial of her claim for no fault of the petitioner.

6. In view of these facts, we direct the Secretary of the Education Department of the State of Maharashtra and respondent No.3- Commissioner of Education, State of Maharashtra, Pune, to consider the case of the petitioner as a special case and condone the delay by considering the claim of the petitioner as a claim in time and pass appropriate order for appointment of the petitioner as early as possible and not later than 12 weeks from today.

7. We further make it very clear that the order passed by this Court is in the backdrop of the peculiar facts and circumstances of the case and this order should not be treated as precedent.

8. With the above directions, the petition is disposed of.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)