

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1619 OF 2021

ANITA SHANKARRAO SARKATE ALIAS ANITA SHIVAJI KORDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. S.R. Barlinge, Advocate for petitioner;
Mrs. V. N. Patil Jadhav, AGP for respondents 1 and 2;
Mr. S.R. Bagal, Advocate holding for Mr. B. N. Gadegaonkar, Advocate
for respondents 3 and 4.

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**CORAM : DIPANKAR DATTA, CJ.
AND
SMT. VIBHA KANKANWADI, J.**

DATE : NOVEMBER 17, 2022

PC :

1. Petitioner is the widow of Shivaji Sitaram Korde (hereafter 'Shivaji' for short). Shivaji died in harness while working as a permanent Assistant Teacher in Vidyasagar Vidyalaya, Khanapur - Chitta, Taluka and District Hingoli (hereafter "the Vidyalaya", for short) on 13th January, 2018.

2. Petitioner came to be appointed as a 'peon' in the Vidyalaya on compassionate ground vide an order dated 20th March, 2018. The Headmaster of the Vidyalaya, respondent no.3, submitted a proposal for approval of the petitioner's appointment to the Education Officer (Secondary), Zilla Parishad, Hingoli, respondent no.2, on 23rd April, 2019.

3. By communication dated 8th July, 2019, the respondent no.2 returned the proposal to the respondent no.3 on the ground

that the appointment of the petitioner had been made without there being any vacant sanctioned post of peon in the Vidyalaya. Thereafter, on 30th September, 2019, the respondent no.3 re-submitted the proposal to the Education Officer clarifying that the petitioner had been appointed on a sanctioned post of peon, since rendered vacant by reason of termination of service of the incumbent Jalba Laxman Waghmare (hereafter “Waghmare”, for short).

4. Despite receipt of such clarification from the respondent no.3, the respondent no.2 did not grant approval to the appointment of the petitioner. This has triggered this writ petition dated 23rd October, 2020.

5. We had the occasion to hear the writ petition on 14th November, 2022. The order passed on that day required the Head Master of the Vidyalaya to place before us the order of termination of service of Waghmare; the order issued by the respondent no.2 approving the appointment of Waghmare; and the record evidencing payment of salary to Waghmare from Government funds.

6. In compliance with such order, an affidavit has been filed by the respondent no.3. To such affidavit is annexed copy of the order dated 31st July, 2017 terminating the service of Waghmare, being Exhibit-P-1. The order of approval of appointment of Waghmare dated 29th October, 1997 is part of the affidavit,

being Exhibit-P-2. Exhibit-P-3 is the Pay Bill for November 2015 in respect of Waghmare.

7. Mr. Bagal, learned advocate for the respondents 3 and 4, submits that after termination of service, Waghmare did not challenge the same by approaching the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. This position is not disputed by the learned AGP appearing for the respondents 1 and 2.

8. From the aforesaid narration of factual events, it appears to be clear that the petitioner's appointment on compassionate ground was made on a vacant sanctioned post of peon, vacancy on the post having arisen due to termination of service of Waghmare. The respondent no.3 having clarified the position by letter dated 30th September, 2019, there was no valid reason for the respondent no.2 not to approve the appointment of the petitioner.

9. Shivaji having died leaving the petitioner in financial distress and she having otherwise been found to be eligible for compassionate appointment, refusal to approve her appointment amounts to heaping more distress on her despite the fact that she has started discharging the duty of peon.

10. We, accordingly, allow the writ petition by directing the respondent no.2 to approve the appointment of the petitioner in

accordance with law as early as possible but positively within thirty (30) days of receipt of an authenticated copy of this order.

Needless to observe, the petitioner shall be paid salary (arrears and current) also in accordance with law.

11. No costs.

[SMT. VIBHA KANKANWADI, J.]

[CHIEF JUSTICE]

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