

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6206 OF 2016

Vaishali Parashram Nakate @

Shrutika Satish Herwade

... Petitioner

Versus

The State of Maharashtra and Ors.

... Respondents

Mr. Kiran Bapat i/by Mr. Avinash H. Fatanagare for the Petitioner.

Mr. N. C. Walimbe, AGP for the State-Respondent Nos. 1 to 3.

**CORAM: S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 14th SEPTEMBER, 2022

P.C. :-

1. The petitioner seeks direction to withdraw the impugned order dated 10th July, 2009, so also seeks direction to grant approval from 5th May, 1999 with continuity in service. The petitioner is challenging the orders, whereby the request of the petitioner to grant approval since 5th May, 1999 is negated.

2. We have heard the learned counsel for the petitioner and the learned AGP.

3. It appears from the facts on record that the petitioner was appointed on compassionate ground in place of her father who had to retire because of paralytic attack on 5th May, 1999. The proposal was submitted by the College immediately for approval. The said proposal was kept pending. In the year 2007, the permission was granted for appointing the petitioner on compassionate ground by the office of the

Director of Education and as such, the petitioner services are counted from 3rd November, 2007. Under the impugned communication, directions are given to recover the salary paid to the petitioner from 1999, so also for all purposes the services has to be counted from November 2007.

4. According to the learned AGP, the sanction was granted for the appointment of the petitioner on compassionate ground by the office of the Director of Education in the year 2007 and as such, the earlier service of the petitioner cannot be counted.

5. The report of the Divisional Joint Director, Kolhapur Division, suggest that on 15th July, 1999, the proposal was received for seeking approval to the appointment of the petitioner on compassionate ground to its office. However, the record does not show whether the office of the Divisional Joint Director had submitted the proposal to the Director of Education. For the same, the petitioner or the College cannot be faulted with. The facts remains that the College had submitted the proposal for approval in July 1999 itself. However, it is the office of the Divisional Joint Director who probably failed to forward the same to the Director of Education.

6. The petitioner is appointed on compassionate ground. It is not the case of the respondents that the post was not available on the date when the petitioner was appointed. Only because the proposal was kept pending for 8 years, would not be a ground to negate the claim of the petitioner for approval from the year 1999. If at all the fault lies, it lies with the office of the Divisional Joint Director in keeping the proposal pending and not forwarding it to the Director of Education.

7. It is submitted that the amount of salary paid to the petitioner since 1999 is already recovered.

8. In the light of above, we pass the following order :

- (i) The impugned orders are quashed and set aside.
- (ii) The petitioner's services shall be deemed to be approved from the initial date of appointment i.e. 5th May, 1999. The service of the petitioner shall be considered continuous since 5th May, 1999, for all further purposes.
- (iii) The amount of salary that was paid to the petitioner is already recovered, we may not interfere with the same.
- (iv) With the aforesaid observation, writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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