

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

WRIT PETITION NO. 2619 OF 2021

Smt. Manisha Dnyaneshwar Londhe
At & Post- Pargaon (Shingave),
Tal. Ambegaon, Dist. Pune.

... Petitioner.

V/s.

1. The State of Maharashtra,
Ministry of School Education and Sports,
(through the Secretary of this Dept.)
Mantralaya, Mumbai -400 032.
2. Deputy Director of Education
Secondary & Higher Secondary Education,
Pune Region, Pune -1.
3. The Education Officer,
Zilla Parishad Pune, Pune – 411 001.
4. Shri Parmarthik Seva Sangh Mumbai
(through the President/ Secretary)
Gaurai Shankar Apartment, Shop No. 7
At & Post – Narayangaon (Junnar Road)
Tal. Ambegaon, Dist. Pune. PIN 410 504.
5. Shri Sangameshwar Secondary & Baburao ... Respondents.
Genuji Dhoble Higher Secondary School.
(through the Head Master),
At & Post – Pargaon (Shingavi),
Tal- Ambegaon, Dist. Pune-412 406.

Mr. Mahadeo Baburao Ghule, Advocate for the Petitioner.
Ms. P. J. Gavhane, Assist. Government Pleader for the State -
Respondent Nos. 1 to 3.
Ms. Ranjana Todankar, Advocate for the Respondent Nos. 4 & 5.

CORAM : R.D. DHANUKA & R. N. LADDHA, JJ.
DATE : JANUARY 19, 2022.

(Reserved on : 22.12.2021)
(Pronounced on : 19.01.2022)

JUDGMENT : (Per R. N. Laddha, J.)

Rule. Rule made returnable forthwith. This Writ Petition is taken up for hearing and final disposal, by consent and on the request on the learned Counsel for the parties.

2. The husband of the Petitioner namely Dnyaneshwar Sakharam Londhe, was a “Peon”, working with the Respondent No. 5-School and passed away, while he was in service, on 22 September, 2015, leaving behind father, 4 children and his widow-the Petitioner. The Petitioner applied for compassionate appointment on 1 December, 2015 and 8 December, 2015. These applications were considered by the Respondent – Management in its meeting held on 2 October, 2016 and it was resolved to appoint the Petitioner on compassionate basis. She, accordingly was appointed as a “Peon” on compassionate ground, vide order dated 10 June, 2016. Thereafter, she joined her duties as a “Peon” in the Respondent-School on 15 June, 2016. In turn, the proposal of the Petitioner was forwarded to the Respondent -Education Officer, Zilla Parishad, Pune, on 29 January, 2018. As there was no response from the Respondent - Education Officer, the proposal was re-submitted again on 27 June, 2019. It is stated that since approval had not been coming forth, quite a few representations were made to the Respondent -Education Officer.

3. The Respondent-Education Officer, during the pendency of this petition, on 17 August, 2021 placed on record a letter dated 13 March, 2018. The Education Officer by this letter had already refused to accord approval to the compassionate appointment of the Petitioner, stating therein that as per Government Resolution dated 22 March, 2012 a relaxation was granted to the persons, on the wait list of the candidates on the compassionate ground for appointments, till 31 December, 2011 and as the Petitioner is appointed on 15 June, 2016, the approval to the appointment of the Petitioner on compassionate basis could not be granted.

4. The learned Counsel for the Petitioner submits that the husband of the Petitioner was working as a “Peon” in Respondent - School since 1990-1991 till he breathed his last on 22 September, 2015. The Petitioner’s husband was the sole bread earner of the family. According to him, the very object and purpose of such employment and conferring the power to make appointment on compassionate ground is that the employer assists the family to tide over a financial crisis caused by the loss of the sole bread earner. It is the assistance to the family just in distress. In the circumstances, this is not a fresh appointment or an appointment which ordinarily requires approval. He further submits that the Petitioner belongs to the reserved category and she has also passed SSC examination. She has submitted her application within a stipulated period, as prescribed under the relevant Government Resolution and that the post of Peon was also vacant at the relevant time in the Respondent- School. He submits that this Court has

consistently taken a view that compassionate appointment would be an exception to the mandatory rule of following specific selection procedure for recruitment on vacant posts and / or on newly created posts. In support of his submission, he placed reliance on the Judgment of the Division Bench of this Court in the case of ***Smt. Yogita w/o. Shivsing Nikam Vs. The State of Maharashtra and Others, Writ Petition No. 4219 of 2018, dated 11 August, 2021.***

5. On the other hand, the learned Assistant Government Pleader appearing for the Respondent Nos. 1 to 3 and relying upon the Affidavit-in-Reply filed on behalf of the Respondent No. 3, submits that the Respondent No. 1 is running the school on grant-in-aid basis. The Government of Maharashtra vide Government Resolution dated 12 February, 2015 has granted stay to the new recruitment and has directed not to fill-up vacant posts in non-teaching staff. It has been submitted that the Respondent-Management has appointed the Petitioner on compassionate ground without observing the policy of the Government to the staffing pattern of non-teaching posts in aided private school and has made appointment of the Petitioner in violation of the Government Resolution dated 12 February, 2015. It is submitted that the Government of Maharashtra has introduced a new staffing pattern for non-teaching staff of Class IV on 11 December, 2020, by which the post of Class IV in the recognized school of private, partly / fully aided, secondary and higher secondary schools within the State have been abolished and the State Government has taken a policy decision that instead of a new recruitment of regular Class IV posts, the Government has sanctioned consolidated amount as “Shipai Bhatta” to the aided /

partly aided secondary and higher secondary schools. It has been submitted that the Government Resolution dated 31 December, 2011 and Government Resolution dated 22 March, 2012, imposed a ban on making appointments and, therefore, the Respondent- Education Officer has rightly refused to accord approval to the Petitioner's appointment on compassionate ground.

6. We have heard learned Counsel for the Respondent Nos. 4 and 5 and considered the contentions canvassed by the learned counsel for the parties. Perused the impugned order of the Respondent Education Officer. We have also gone through the relevant Government Resolutions.

7. It is not in dispute that the Petitioner's husband had been in permanent service with Respondent- School. He died on 22 September, 2015 while in service. Petitioner had applied for appointment on compassionate ground on 01 December, 2015 and 8 December, 2015 after following the procedure required. The Petitioner was appointed as a "Peon" vide order dated 10 June, 2016 and proposal for approval to the said appointment had been submitted on 29 January, 2018. The principal ground for not approving the appointment of the Petitioner is on the basis of the Government Resolution dated 2 May, 2012 and Government Resolution dated 12 February, 2015 by which such appointments were banned.

8. In this context, the legal position is well neigh settled and does not need the support of precedent, yet to retain emphasis, a

profitable reference can be made to the Judgment of the Division Bench of this Court in the case of ***Smt. Samita Sameer Desai & Anr. Vs. State of Maharashtra through Secretary and Another, Writ Petition No. 7507 of 2016, dated 11 December, 2018***, wherein, it was enunciated that the appointment on compassionate basis is made in terms of a Government Resolution dated 31 December, 2002. That has not been superseded by any of the subsequent Government Resolution and particularly, the one imposing ban dated 2 May, 2012. In fact, such appointments were kept out of the purview of the general ban imposed on recruitment. The very object in any of such appointments enables the State Government to carry forward its earlier policy despite the overall ban on the recruitment and appointment.

9. Similarly, a Division Bench of this Court in the case of ***Bharati Bhausaheb Thakare Vs. State of Maharashtra & Others, Writ Petition No. 15018 of 2019, dated 10 March, 2021***, wherein, after taking survey of the pronouncement in the case of ***Smt. Samita Sameer Desai (supra)***, agreed with the view taken by the learned Bench and quashed and set aside the order of the Education Officer refusing to grant approval.

10. It will be appropriate, in the circumstances, to quote the paragraphs 6 and 7 from the Judgment of the Hon'ble Supreme Court in the case of ***Yogesh Nagraoji Ugale Vs. State of Maharashtra, through Principal Secretary, 2019 (11) SCALE, 448***.

“6. We have heard the learned Counsel for the parties, and have perused the material on record.

6.1. In the present case, the Appellant admittedly possesses the educational qualifications for the post of Peon. The Appellant has an S.S.C. Degree along with MS. C.I.T.

6.2. Even though Respondent Nos. 3 and 4 contended that there is a ban since 2005 for appointment on compassionate grounds, a relaxation was initially granted for persons on the wait list till 31.12.2011.

Thereafter, vide Government Resolution dated 01.03.2014 bearing No. AKP-1014/Pra. Kra. 34/8 the Government of Maharashtra decided to increase the recruitment of ‘Group C and D’ posts on compassionate ground from 5% to 10%.

On 02.04.2014, the Government released a Supplementary Order to this Resolution stating that all employment authorities shall take action every year to fill up the posts reserved for compassionate appointment upto 10% of vacant posts of Class C & D from 2012.

This reveals that the Government was continuing to make appointments on compassionate grounds despite the ban of 2005, and in fact had increased the number of posts earmarked for compassionate appointment to 10%.

6.3. A perusal of the Order dated 31.05.2013 passed by the Education Officer reveals that during the hearing, Respondent No. 3- President of the Society stated that the Society was ready to appoint the Appellant on compassionate grounds, if the Education Officer grants the permission.

The Education Officer had in the proceedings dated 31.05.2013 recorded that there are 2 post of Junior

Clerk vacant in the two Schools run by Respondent Nos. 3 and 4, where the Appellant could be appointed.

This fact has not been either adverted to, or considered by the High Court, in the impugned judgment.

7. *In the facts and circumstances of the present case, we allow the Appeal, and set aside the Judgment passed by the High Court on 19.11.2014 in W. P. No. 3520 of 2014.*

Respondent Nos. 3 and 4 are directed to submit the proposal for appointment of the Appellant before the Respondent No. 2 – the Education Officer within one month, so that necessary orders can be passed on the application of the appellant.

Ordered accordingly.

Pending applications, if any, are accordingly disposed of.”

11. The above conclusion is helpful in understanding the alleged ban on compassionate appointment. Further, the Government Resolution dated 11 September, 2019 provides for a ceiling of 20% on recruitment on compassionate grounds and mandates expeditious action.

12. As is manifest from the above, it can safely be concluded that the State of Maharashtra had never imposed a complete ban on compassionate appointment.

13. There is no dispute that the appointment of the Petitioner on compassionate basis is made in terms of the Government Resolution dated 31 December, 2002 and the said Government Resolution has not

been superseded by any subsequent Government Resolution. From the aforesaid pronouncements, it is clear that the compassionate appointment is an exception to the rule of recruitment. There is nothing on record even to suggest that the State has ever imposed the complete ban on compassionate appointments. On the other hand, this Court has consistently taken a view that the appointment of the candidate on a compassionate ground would not be affected by a ban on recruitment and such appointments are not a fresh appointments. The husband of the Petitioner was already appointed as a “Peon” on permanent and sanctioned post. Hence, no post is required to be created nor is there any question of appointment being made through recruitment process which was covered by the ban. It is also not in dispute that the Petitioner belongs to reserved category and she also possesses the educational qualification required for the post of Peon. Further, she has submitted her application within stipulated period, as prescribed under the relevant Government Resolution and that the post on which her appointment was made was also vacant.

14. In view of the above, we allow the Writ Petition by quashing and setting aside the impugned order. The proposal submitted for approval to the Petitioners’ appointment be decided in right earnest keeping in view the observations made 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. The aforesaid process would be completed within a period of eight weeks from the date of communication of this order.

15. Rule is accordingly made absolute in above terms. There shall be no order as to costs.

(R. N. LADDHA, J.)

(R. D. DHANUKA, J.)

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