

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5608 OF 2021

Sujata Sanjay Chavan

... Petitioner.

V/s.

The Education Officer, Zilla Parishad,
Solapur & Others

... Respondents.

Mr. I. M. Khairdi for the Petitioner.

Mr. N. K. Rajpurohit, AGP for the Respondent Nos.1 and 2-State.

Mr. Ajit Alange for Respondent Nos.3 and 4.

Mr. Dnyaneshwar W. Bhosale for Respondent No.5.

**CORAM : NITIN JAMDAR AND
AMIT BORKAR, JJ.**

**DATE : 24 JANUARY 2022.
(Through Video Conferencing)**

P. C. :

Heard learned counsel for the parties.

2. The Petitioner has challenged the order passed by the Education Officer (Secondary) Zilla Parishad, Solapur, dated 6 September 2021. The impugned order allowed the application of Respondent No.5 to be appointed on compassionate basis. The challenge of the Petitioner to this order, as the facts narrated will show, is peculiar.

3. Father of the Respondent No.5 worked as Laboratory Assistant in the Respondent-Institution. He expired on 15 April 2014. Respondent No.5 applied to be appointed compassionate basis. The proposal for the appointment of Respondent No.5 was forwarded to the Education Officer. Since no decision was taken, the Respondent No.5 filed Writ Petition No.7169 of 2021. The Writ Petition was disposed of, and the Education Officer was directed to hold an inquiry and pass an order. After the inquiry impugned order was passed observing that the post of Junior Clerk is vacant in the school, and therefore Respondent No.5 can be appointed. The order notes that there are two posts of Clerks in the Respondent institution—one of a Senior clerk and the other of a Junior clerk. Since the post of Senior clerk is occupied by the Petitioner, Respondent no.5 came to be appointed as a junior clerk.

4. The Petitioner has challenged the order of appointment of Respondent No.5 contending that the Petitioner currently is working as Senior clerk, which post is declared as surplus and the Petitioner wishes to relinquish the post of Senior clerk and join as Junior clerk, and therefore the impugned order be set aside. The learned counsel for Respondent No.5 opposes and submits that the Petitioner has no such right. By interim order, the appointment order of Respondent No.5 has been stayed.

5. The genesis of the dispute is the appointment of

Respondent No.5. After the father of Respondent No.5 expired, Respondent No.5 was found fit to be appointed on the compassionate basis. The object of appointment on the compassionate basis is to provide relief to the bereaved family of the expired employee. Speed is the essence of such appointments to provide financial support. There is no challenge to the entitlement of Respondent no.5. The challenge of the petitioner is merely on hypothetical consideration. The Petitioner is working as a Senior clerk. If the Petitioner's post is declared as surplus, the legal consequences of the same will follow viz., the Petitioner would be absorbed on the post of Senior clerk as per the Rules. This desire of the Petitioner to relinquish the higher post and to demote herself to remain in the said school does not give any legal right to the Petitioner to challenge the order in favour of the Respondent. No.5. The Petitioner has no such a legal right to enforce against the Respondents. Even otherwise, the same would be a different cause of action, and two issues, therefore, cannot be mixed up. Continuation of ad-interim relief will nullify the purpose of the appointment on the compassionate basis.

6. As a result, the challenge to the impugned order at the behest of the Petitioner cannot be entertained. If the Petitioner is aggrieved by the consequence of declaring the post of the Petitioner as surplus, it is open to the Petitioner to take such steps as are warranted in law, and the claim of the Petitioner cannot be tied to

the appointment of Respondent No.5

7. With these observations, the petition is dismissed.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)