

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2653 OF 2019

Ku. Tejal d/o Suraj Rachhore,
C/o Shri Ramesh Tularam Belekar,
Aged about 21 years, Occ. Student,
Ward No.2, In front of Zilla Parishad,
New Koradi, Tah. Kamptee, Dist. Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary,
Ministry of Revenue and Forest,
Mantralaya Mumbai – 32.
2. Zilla Parishad, Nagpur
through Chief Executive Officer,
Zilla Parishad, Nagpur – 01.
3. Education Officer (Primary),
Zilla Parishad, Nagpur.
4. Block Development Education Officer,
Panchayat Samiti, Parshivani,
Tah. Ramtek, District Nagpur.

RESPONDENTS

Shri G.N. Khanzode, Advocate for the petitioner.
Ms. S.S. Jachak, Assistant Government Pleader for respondent No.1/ State.
Shri S.N. Gaikwad, Advocate for respondent Nos. 2 to 4.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 22/9/2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The father of the petitioner was in service with the Zilla Parishad, Nagpur on the post of 'Assistant Teacher'. He expired in harness on 28/8/2007. It is the case of the petitioner that on 9/7/2014, an application seeking appointment on compassionate basis was made to the Education Officer (Primary), Zilla Parishad, Nagpur. The petitioner was informed by the communication dated 5/3/2018 that since she had made an application seeking compassionate appointment on 9/2/2018 which was beyond the prescribed period for making such application, it was not liable to be considered. Being aggrieved, the petitioner has challenged the said communication in the present Writ Petition.

3. The learned Counsel for the petitioner submits that when the petitioner's father expired, she was minor. Her date of birth is 30/3/1997 and she attained the age of majority on 29/3/2015. As per the Government Resolution dated 21/9/2017 and especially Clause 10 thereof, an application seeking appointment on compassionate basis has to be made within a period of one year of attaining the age of majority. If such application is made belatedly but within a period of three years, the delay can be considered by the Administrative Department and the same can be condoned. Since the petitioner's application dated 9/2/2018 was within three years of the petitioner attaining majority, this Clause was required to be considered. Instead of rejecting the application, the Zilla

Parishad ought to have forwarded the same to the Rural Development Department of the State of Maharashtra. It is thus prayed that an appropriate relief be granted to the petitioner.

4. Shri S.N. Gaikwad, learned Counsel for the Zilla Parishad supported the impugned communication by relying upon the affidavit-in-reply. It is stated that the initial application which is claimed to have been made on 9/7/2014 was not found in the records of the Zilla Parishad. Since the application dated 9/2/2018 was made after expiry of more than ten years, the same was not considered. The learned Counsel however does not dispute the applicability of the Government Resolution dated 21/9/2017 to the facts of the case.

5. On perusing the documents on record, it is clear that as per the aforesaid Government Resolution, an application seeking appointment on compassionate basis has to be made within a period of one year of the claimant attaining the age of majority. In the present case, the petitioner attained the age of majority on 29/3/2015. The application dated 9/2/2018 therefore is within three years of she attaining majority. In this backdrop, the applicability of Clause 10 of the Government Resolution dated 21/9/2017 is required to be considered inasmuch as under Sub-Clause 3 of Clause 10 of the Government Resolution dated 21/9/2017, period up to three years can be condoned for considering such claim. The

impugned communication however does not refer to the said Government Resolution and hence in our view, it would be necessary to consider the effect of the said Government Resolution. The rejection of the application without considering the applicability of the said Government Resolution is unjustified.

6. In that view of the matter, the following order is passed :

i. The communication dated 5/3/2018 issued by the Chief Executive Officer, Zilla Parishad, Nagpur is set aside. The Chief Executive Officer shall forward the petitioner's application dated 9/2/2018 along with his note to the Rural Development Department, Mantralaya, Mumbai in the light of Clause 10 of the Government Resolution dated 21/9/2017.

ii. The aforesaid shall be done within a period of four weeks from receiving copy of this judgment. Within a further period of eight weeks, the Secretary, Rural Development Department, Mantralaya, Mumbai shall take a necessary decision in the light of Clause 10 of the Government Resolution dated 21/9/2017 and communicate such decision to the petitioner as well as to the Zilla Parishad. The respective Counsel for the respondents to communicate this judgment to their clients.

iii. Rule is made absolute in the aforesaid terms with no order as to costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT