

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14868 OF 2022

Hemlata Dhavlu Gadhve & Anr.

....Petitioners

V/S

The State of Maharashtra & Ors.

....Respondents

...

Mr. Mihir Desai, Senior Advocate with Ms. Devyani H. Kulkarni, Ms. Sanskruti Yagnik for the Petitioners.

Mrs. Nisha M. Mehra, AGP for Respondent No.1-State.

Ms. Bhairavi Ranpise for Respondent No.2.

...

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 13 APRIL 2023.

P.C.:

1 The present Petitioners are appointed on compassionate ground. They are terminated from service on the ground that on the date the appointment order was issued the Petitioners had crossed 45 years of age. As such were overage and could not have been appointed on compassionate ground.

2 The learned Senior Advocate for the Petitioners submits that the husband of Petitioner No.1 expired on 23 April 2014 and husband of Petitioner No.2 expired on 6 October 2015. The Petitioners within the prescribed period of one year made an Applications for appointment on compassionate ground. The learned Senior Advocate submits that the posts were not available at that

time. However, on 3 March 2019 the posts were notified as being vacant and the Petitioners were called for verification of the documents under communication dated 25 March 2019. On the said date also, the Petitioners were below 45 years of age. After verification of documents the Respondent took time and gave appointment orders on 26 August 2020. It is submitted by the learned Senior Advocate that the Petitioners crossed age of 45 years after verification of documents and before the appointment orders dated 26 August 2020 were issued. The appointments of the Petitioners were already in process. The Respondents ought not to have been terminated the services of the Petitioners on the said ground.

3 The learned Advocate for the Respondent-Zilla Parishad submits that a person can be appointed on compassionate ground provided he/she has not crossed 45 years of age. The learned Advocate relies upon the Government Resolution dated 21 September 2017. The learned Advocate submits that as on the date of appointment of Petitioners, they were overage and that therefore the Respondent-Zilla Parishad has passed the order terminating the services of Petitioners. No illegality has been committed by the Respondent-ZP. The Respondent-ZP has followed the Government Resolution.

4 The purpose of appointing persons on compassionate ground is to mitigate the hardship that is caused to the family on account of the death of the bread earner dying in hardness while in service.

5 The husband of Petitioner No.1 expired in the year 2014 and husband of Petitioner No.2 expired in the year 2015. It is not disputed that the Petitioners had filed Applications seeking appointment on compassionate ground within a period of one year as required under the Government Resolution. However, it appears that the Respondents did not take up the process for filling in the posts through compassionate appointment. It appears that 10% posts can be filled in by appointment on compassionate ground. The said drive was undertaken by the Respondents for filling in the posts on compassionate appointment in March 2019. On 25 March 2019 communication was given to the Petitioners that they are called for document verification. Prior to that, by letter dated 28 September 2018, the Respondent-Zilla Parishad received the communication to fill in 10% posts by compassionate appointment and on 3 March 2019 the posts to be filled were notified. It is not disputed that as on the date of the verification of the documents on 15 April 2019 the Petitioners were below 45 years of age. The Respondent-ZP took more than 15 months to issue appointment order and during this period the Petitioners crossed 45 years of

age. It is because of the inordinate delay on the part of the Respondent-Zilla Parishad in issuing the appointment orders that the Petitioners crossed the upper age limit.

6 In case of an advertisement for recruitment, the age as on the last date of submission of application is considered unless the advertisement prescribes any particular cut off date. In the present case already the documents verification was done on 15 April 2019 and on the said date, the Petitioners were below the upper age limit.

7 It appears that the Respondent-ZP also communicated with the Government for relaxing the maximum of age of the Petitioners however the Respondent-State did not accept the request of the Respondent ZP.

8 Be that as it may, the Petitioners were below the age of 45 years on the date of document verification and as the appointment orders were issued after 15 months, the Petitioners had crossed the age limit. The Respondents ought to have considered that the said appointments are on compassionate ground. They had already worked for almost two years and subsequently the orders of termination were issued on the said ground.

9 Considering the nature of appointment and also the fact that even document verification were conducted when the Petitioners were below 45 years of age and there was inordinate delay on the part of the Respondent-ZP in issuing appointment orders, we set aside the impugned orders of termination. Petitioners shall be reinstated on or before 2 May 2023.

10 Though we are not awarding back-wages to the Petitioners from the date of their termination till the reinstatement, the said period shall be counted for the purpose of continuity in service and all other consequential benefits, except back-wages.

11 The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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