



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

WRIT PETITION NO.2092 OF 2020

1. Shri Gajanan Bahu-Uddeshiya
Shikshan Sanstha, Nagpur
through its Secretary
Ramesh Krishnarao Borkar
Office at Shri Gajanan Vidyalaya,
751, New Subhedar Layout, Nagpur
2. Shri Gajanan Vidyalaya and Junior
College, Nagpur through its Principal,
Vijay Ramesh Shahakar,
751, New Subhedar Layout,
Nagpur
3. Smt. Sunita Suresh Nimbalkar,
Aged 44 years, Occupation – Service,
R/o. Plot No.115, Ayodhya Nagar,
Nagpur

...PETITIONERS

VERSUS

1. State of Maharashtra,
through its Secretary,
Department of School Education
and Sport, Mantralaya,
Mumbai – 32
2. Deputy Director of Education,
Nagpur Division, Balbharati,
Opp. Dhantoli Park,
Dhantoli, Nagpur
3. The Education Officer (Secondary)
Zilla Parishad, Nagpur

...RESPONDENTS

Mr. B.G. Kulkarni, Advocate for the petitioners.
Mr. M.K. Pathan, Assistant Government Pleader for respondent
Nos.1 to 3/State.

CORAM : **AVINASH G. GHAROTE &**
URMILA JOSHI-PHALKE, JJ.

RESERVED ON : **AUGUST 30, 2023**

PRONOUNCED ON : **SEPTEMBER 05, 2023**

JUDGMENT (Per Urmila Joshi-Phalke, J.)

RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for both the parties.

2. By this petition, petitioner No.3 who is widow at young age has approached to this Court with prayer to direct respondent No.3 – The Education Officer (Secondary), Zilla Parishad, Nagpur to grant approval to the appointment of petitioner No.3 as a Peon in petitioner No.2- School in terms of letter dated 10/01/2020.

3. Petitioner No.1 is an educational society which has established petitioner No.2 – School which is grant-in-aid school. The five posts of Peon were sanctioned in petitioner No.2 – School. The staff approval orders are also filed along with this petition. Shri Suresh Nimbalkar husband of petitioner No.3 was appointed as a Peon in petitioner No.2 – School on the sanctioned post on 26/06/1990 in OBC

category. The appointment was approved by respondent No.3 as per order dated 12/10/1990. Undisputedly, the five posts of Peon were filled as per the rules and all appointments lawfully approved. Shri Suresh Nimbulkar has expired suddenly on 04/03/2013 due to the accident. Petitioner No.3 is the wife of the deceased Suresh and is having minor daughter and minor son. She applied for grant of appointment as Peon on compassionate ground. The post was sanctioned post and had become vacant because of the death of the her husband. The School Committee had accordingly passed the Resolution on 08/09/2013 for the appointment of petitioner No.3 on compassionate ground with effect from 11/09/2013. She had joined the service in petitioner No.2 – School on 11/09/2013 and is working as a “Peon” till today. On 21/10/2013, petitioner No.2 had submitted proposal dated 21/10/2013 to respondent No.3 - the Education Officer (Secondary), Zilla Parishad, Nagpur for grant of approval along with the copies of all necessary documents. The proposal remained undecided, therefore, repeated requests were made by letters dated 23/07/2014, 22/05/2015, 27/05/2019, 13/09/2019 and 10/10/2019. Finally on 10/01/2020, respondent No.3 – the Education Officer as per the letter of the same date has refused to grant approval and has directed petitioner No.1 to discontinue the appointment. The above decision was taken by the Education Officer by making the reference to the Government Resolution

dated 28/01/2019 alleging that revised staffing pattern for Class IV employees has not been issued.

4. As per the contention of the petitioners, the appointment of petitioner No.3 as a “Peon” on compassionate ground is the lawful appointment. The post of “Peon” was the sanctioned post. Till 04/03/2013 the husband of the petitioner was working on the said post as an approved “Peon”. The proposal for grant of approval was submitted by petitioner No.2 to respondent No.3 on 21/10/2013. Respondent No.3 had never communicated any deficiency in the said proposal. After his death, the compassionate appointment was granted to petitioner No.3. Respondent No.3 illegally and arbitrarily refused to grant the approval. Said order of the Education Officer (Secondary) refusing to grant approval is illegal and liable to be set aside with direction to grant approval to the appointment of petitioner No.3.

5. Said petition is opposed by the respondents on the ground that the approval to the appointment was refused in view of the Government Resolution dated 28/01/2019. The order passed by the Education Officer is legal and reasonable one.

6. Heard Shri B.G. Kulkarni, learned Counsel for the petitioners. He reiterated the said contentions and submitted that the action of the Education Officer is arbitrary one. He placed on record the communication to the Education Officer by the Section Officer of Government of Maharashtra which says that the appointment on compassionate ground on the post is originally a sanctioned post. It is not a new appointment or not a creation of new post, and therefore, the Education Officer shall not refuse the approval. He further placed reliance on the judgment of this Court in the case of *Yogita w/o Shivsing Nikam Vs. State of Maharashtra and ors. 2021 LawSuit (Bom) 875*. He submitted that in view of the said decision, present case of the petitioners is covered and directions are required to be issued to respondent No.3, to grant the approval.

7. Shri M.K. Pathan, learned Assistant Government Pleader for the respondents reiterated the contention and submitted that in view of the Government Resolution dated 28/01/2019, the approval is refused. No illegality is committed by the Education Officer and hence, petition deserves to be dismissed.

8. The issue involved in the present petition is that whether the refusal by the Education Officer to the approval sought for the

appointment of petitioner No.3 is legal or not. It is well settled that the object behind providing appointment on compassionate ground is by way of an exception to the general rule of appointment on the basis of open invitation of application and merit. While determining the financial condition of the concerned family, whether the family is indigent or not is to be ascertained for compassionate appointment. The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis, the appointments on compassionate ground should be made immediately to redeem the family in distress. Admittedly, none can claim compassionate appointment by way of inheritance. The compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all the aspirants, including the satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress. Time and again a consistent view has been taken by the Hon'ble Apex Court in the matters of death of a permanent employee and the applicability of the policy of compassionate appointment. A family which is rendered to the comforts of life, there being a bread earner in the family, is shaken due to the death of such a bread earner. This virtually throws the family into a financial crisis. The purpose for which compassionate appointment

schemes have been introduced is laudable since it ensures that the family which has suddenly faced a tragedy and is in mental and financial distress, would be provided with succour. A model employer would ensure that such a family is not rendered to starvation and its members are not required to beg for keeping their mind, body and soul together.

9. In the present case, petitioner Nos.1 and 2 considered these aspects. There is no dispute that the husband of petitioner No.3 was appointed on a sanctioned post on 26/06/1990 in OBC category. It is also undisputed that he died due to the accident. His death left behind wife, minor daughter and minor son. Petitioner Nos.1 and 2 have considered this aspects and immediately passed a Resolution to grant appointment to petitioner No.3 as a "Peon" on compassionate ground. The post was sanctioned post and had become vacant because of the death of her husband. It appears from the material placed on record that there were total five sanctioned post of "Peon". The husband of petitioner No.3 was appointed on the said sanctioned post. The Education Officer (Secondary) has granted approval to the said post. Thus, services of the deceased Suresh were approved by the Education Officer. Accordingly, he served in petitioner No.1 – Institution till his death. On 04/03/2013, he died in an accident. On 10/06/2013, petitioner No.3 applied for the compassionate appointment by filing the

application addressed to petitioner No.1. Petitioner No.1 decided to consider the application and had passed Resolution on 08/09/2013. Accordingly, appointment order was issued to petitioner No.3. Accordingly, she joined the services on 11/09/2013. Petitioner No.1 has submitted proposal for the approval and thereafter several letters were issued to approve the appointment of petitioner No.3. However, no decision was taken and subsequently, it was rejected by respondent No.3.

10. First time on 03/09/1990, the State Government issued a Government Resolution to provide compassionate appointment to an eligible member of a family, whose sole bread earner has suffered death, while in employment or has been discharged from employment on account of medical incapacitation. Voluntary retirement taken by a permanent employee, who is suffering from a grave disease or terminal illness, is also covered by such Government Resolution.

11. In a series of such Government Resolutions, the State also introduced the Government Resolution dated 31/12/2002, which makes a reference to 17 Government Resolutions earlier issued. Said Government Resolution resolved as under :

"शासन निर्णय :-

शासनाने राज्यातील खाजगी (अनुदानित व विनाअनुदानित)

शाळांमधील शिक्षक व शिक्षकेतर कर्मचा-यांच्या नातेवाईकांना अनुकंपा तत्वावर सेवेत सामावून घेण्याबाबत शालेय शिक्षण विभागाने वेळोवेळी निर्गमित केलेले सर्व आदेश अधिक्रमित करून असे आदेश देण्यात येत आहेत की, राज्यातील खाजगी (अनुदानित व विनाअनुदानित) शाळांतील शिक्षक व शिक्षकेतर कर्मचारी सेवेत असतांना अकाली मृत्यू पावला वा कोणत्याही दुर्धर रोगाच्या कारणाने त्याला सेवानिवृत्ती पत्करावी लागली तर त्याचे लगतचे नातेवाईक पुढील अटी व शर्तीच्या अधिन राहून अनुकंपा तत्वावर नियुक्ती मिळण्यास पात्र असतील:-

१. अनुकंपा तत्वावर नियुक्ती देण्याबाबत राज्यातील सर्व खाजगी प्राथमिक, माध्यमिक व उच्च माध्यमिक तथा अध्यापक विद्यालयातील सर्व शिक्षक व शिक्षकेतर कर्मचा-यांना सदरहु योजना लागू असेल.
२. मृत वा वैद्यकीय कारणास्तव सेवानिवृत्त झालेल्या कर्मचा-यांच्या नातेवाईकास सेवेत सामावून घेण्याबाबतचे नियम सोबत जोडलेल्या परिशिष्ट "अ" मध्ये देण्यात आलेले आहेत.
३. संबंधित कर्मचा-यांच्या नातेवाईकानी नोकरीसाठी करावयाचा अर्ज व त्यासोबत सादर करावयाची कागदपत्रे याची माहिती परिशिष्ट "ब" मध्ये नमुद केल्यानुसार असेल.
४. ही योजना अंमलात आणण्यापर्वी अनुकंपा तत्वावर नियुक्ती देण्या/ नाकरण्या बाबत निर्णय घेण्यात आला असल्यास ती प्रकरणे पुनर्विलोकनार्थ पुन्हा विचारात घेण्यात येऊ नयेत. मात्र दिनांक १ जानेवारी, २००१ नंतर ज्या कर्मचा-यांचे निधन झाले आहे वा जे कर्मचारी दुर्धर रोगाच्या कारणाने अकाली सेवानिवृत्त झालेले आहेत अशा कर्मचा-यांच्या कुटुंबातील व्यक्तींनी अनुकंपा तत्वावर नियुक्तीसाठी अर्ज केला असेल व त्यांची विनंती अमान्य केली असेल तरी असे नातेवाईक या योजनेमध्ये पुन्हा नव्याने अर्ज दाखल करू शकतात.
५. कर्मचारी मयत वा अकाली सेवानिवृत्त झाल्यावर तीन महिन्यांच्या आत किंवा कुटुंब निवृत्तीवेतनाचे कागदपत्र सादर करतांना संबंधित अधिका-याने आवश्यक माहिती (परिशिष्ट "क") नातेवाईकांना उपलब्ध करून दयावी व विहित प्रपत्रातील उमेदवाराचा अर्ज पंधरा दिवसांच्या आत संबंधित शिक्षणाधिका-यांकडे सादर करावा.
६. प्राथमिक, माध्यमिक, उच्च माध्यमिक व अध्यापक विद्यालयांच्या बाबतीत सर्व शिक्षणाधिकारी / शिक्षण निरीक्षकांनी सोबत जोडलेल्या परिशिष्ट "ड" मधील माहिती विभागीय शिक्षण उपसंचालकांमार्फत शिक्षण संचालकांकडे पाठवावी.

७. शाळा व अध्यापक विद्यालयातील रु.५,५००-९,००० या वेतनश्रेणी पर्यंतच्या सर्व पदांना अनुकंपा तत्वावर नियुक्ती देता येईल. तसेच जी पदे भरण्यास शासनाने मंजूरी दिलेली आहे अशाच पदावरील नियुक्ती देण्यासाठी हे आदेश लागू राहातील.

हे आदेश सामान्य प्रशासन विभाग, वित्त विभागाच्या सहमतीने व वित्त विभागाच्या अनौपचारिक संदर्भ क्रमांक ८९२/०२/व्यय-६, दिनांक ३.७.२००२ अन्यवे निर्गमित करण्यात येत आहेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”

12. Thus, the Government Resolution dated 31/12/2002 lays down the parameters to be applied for appointment of an eligible candidate, on compassionate basis.

13. Petitioner No.1 had considered all these aspects and considering that the family of the deceased is in distress provided the appointment to petitioner No.3 subject to the approval of respondent No.3.

14. The Section Officer, State of Maharashtra issued Notification dated 14/09/2022 which makes a reference that the post on which the compassionate appointment is to be made is already a sanctioned post. It is not a new recruitment or new creation of the post, and therefore, it will not affect the ban on the recruitment or non-fixation of the roster. Said Notification is reproduced hereunder :

"उपरोक्त संदर्भाधीन आदेशान्वये मा. उच्च न्यायालयाने अनुकंपा तत्वावर नियुक्ती देणे ही मानवतेच्या दृष्टीकोनातून करण्यात येणारी कृती असून शिक्षणाधिकारी यांचेकडून शासन निर्णयाचा चूकीचा अर्थ लावून प्रस्ताव नाकारले जात असल्याचे नमूद केले आहे. वास्तविक अनुकंपा तत्वावर नियुक्ती द्यावयाचे पद हे मूळतः मंजूर असते, केवळ त्या पदावर या तत्वांतर्गत नियुक्ती करावयाची असल्यामुळे ही नवीन पदभरती नसते किंवा ही नवीन पदनिर्मिती देखील नसते असेही निरीक्षण मा. न्यायालयाने नमूद केले आहे. त्यामुळे या नियुक्तीवर कोणत्याही पदभरतीबंदीचा वा आकृतिबंध निश्चित नसल्याचा प्रभाव पडत नाही, असे मत मा. उच्च न्यायालयाने नमूद केले आहे. तसेच, यापुढे अशाप्रकारे अनुकंपा तत्वावर नियुक्ती नाकारल्याविरुद्ध याचिका मा. न्यायालयासमोर आल्यास संबंधित अधिकाऱ्यांवर शिस्तभंगविषयक कडक कारवाई तसेच मा. न्यायालयाच्या अपमान प्रकरणी कारवाई करण्याचे संकेतही मा. न्यायालयाने दिले आहेत. त्यानुषंगाने मा. उच्च न्यायालयाने उपरोक्त संदर्भ क्र.३ अन्वये दिलेल्या निर्देशास अनुसरून राज्यातील शिक्षकेतर कर्मचा-यांच्या अनुकंपा नियुक्तीबाबतच्या प्रस्तावांवर निर्णय घेताना खालील बाबींनुसार कार्यवाही करण्याबाबत सूचित करण्यात येत आहे.

१) अनुकंपा तत्वावर नियुक्ती द्यावयाचे पद हे यापूर्वीच मंजूर पद असल्याने व अनुकंपा तत्वावरील पदभरती ही नवीन भरती नसल्याने तसेच अनुकंपा तत्वावर नियुक्ती देताना संबंधित पद नव्याने निर्माण केले जात नसल्यामुळे, अनुकंपा तत्वावर नियुक्ती देण्याच्या प्रस्तावावर कार्यवाही करताना, पदभरती बंदी वा आकृतिबंध निश्चित नसल्याच्या कारणास्तव प्रस्ताव अमान्य न करता त्यावर गुणवत्तेनुसार कार्यवाही करावी.

२) अनुकंपा तत्वावर नियुक्ती देताना, नियुक्ती द्यावयाचा उमेदवार कर्मचारी ज्या पदावर कार्यरत होता त्या पदावर नियुक्तीस पात्र ठरत नसल्यास, त्यापेक्षा खालच्या वर्गाच्या इतर पदावर त्यास अनुकंपा तत्वा अंतर्गत समायोजित करावे व यासाठी सक्षम प्राधिकारी अशी पदे उपलब्ध आहेत किंवा कसे याची शहानिशा करून या उमेदवारांना पात्र उमेदवारांच्या प्रतीक्षा यादीमध्ये समाविष्ट करतील.

३) मा. उच्च न्यायालयाने नमूद केल्यानुसार अतिविलंबाने (साधारणतः १० वर्षांनंतर) अनुकंपा तत्वावर नियुक्तीबाबत मागणीचे प्रस्ताव अतिविलंबाच्या कारणास्तव, सदर कुटुंबास याची आवश्यकता नसल्याचे व अनुकंपा तत्वाचा हेतू साध्य होत नसल्याच्या कारणास्तव अमान्य करता येतील.

४) उपरोक्त सूचना ह्या अनुकंपा तत्वावरील नियुक्तीच्या अनुषंगाने दाखल विविध न्यायालयीन प्रकरणी मा. न्यायालयाने दिलेल्या आदेशांस अनुसरून देण्यात येत असल्याने, याबाबत आवश्यक ती कार्यवाही करावी व मा. न्यायालयाच्या आदेशांचा अवमान होणार नाही याची दक्षता घ्यावी. यासंदर्भात मा. न्यायालयाच्या आदेशांचा अवमान झाल्यास त्यास संबंधित अधिकारी/प्राधिकारी जबाबदार राहतील.

५) एखादे व्यवस्थापन अनुकंपा तत्वावरील नियुक्तीसाठी पात्र उमेदवाराचा न्याय्य हक्क डावलीत असल्याचे निदर्शनास आल्यास संबंधित शिक्षणाधिकारी यांनी संबंधित व्यवस्थापनाविरुद्ध नियमानुसार कारवाई करावी.”

15. The Division Bench of this Court at Principal Seat has dealt with this issue in ***Writ Petition No.7507/2016 (Smt. Samita Sameer Desai and anr. Vs. The State of Maharashtra and anr.)*** wherein also the petitioner therein was appointed on compassionate ground. The family was solely dependent upon the source of income of the deceased. The facts in that case indicate that the application of the wife of the deceased was considered and it was resolved to appoint her on compassionate basis in place of her deceased husband. An appointment order was issued in her favour. This Court has observed in paragraph No.9 which reads thus :

“9. It is common ground that the appointment is sought by petitioner No.1 on compassionate ground. The very object and purpose of such employment and conferring a power to make appointment on compassionate ground is that the employer assists the family to tide over the financial crisis caused by the loss of bread winner. It is an assistance to the family and which is in distress. In the circumstances, this is not a fresh appointment or an appointment which ordinarily requires the approval. All that would suffice is an intimation

from petitioner No.2 that the husband of petitioner No.1 was already appointed as a Peon and that post was permanent and duly sanctioned. Having appointed him, it was revealed that he died suddenly on 2nd November, 2011. In his place, in terms of Government policy, compassionate appointment was sought and it is that appointment which has been made. There is no post created nor is there any question of an appointment being made through recruitment process which was covered by the ban. The ban, thus, could not have covered this appointment.”

16. The similar facts are in the present case also. This aspect is also considered by this Court in the case of Yogita w/o Shivsing Nikam Vs. State of Maharashtra and ors. (*supra*) where on a similar facts this Court has held that an employees who was already appointed on compassionate ground is unjustifiably refused approval. Thus, it is apparent that despite the legal position is clear, respondent No.3 made the petitioners to run from pillar to post for the approval of the services of petitioner No.3. The proposal was pending for the approval with respondent No.3 since 2013. All these years are spent by petitioner No.3 in agony without any reason. We find 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 post or on newly created post. We have noticed the agony and the harassment caused to the litigants in the present case. It is the conduct of respondent No.3 which has deprived petitioner No.3 from getting the fruits of her employment, and the right of eligible

candidate was defeated. In view of the above, this petition deserves to be allowed. Hence we proceed to pass following order :

(i) The impugned order/letter dated 10/01/2020 of refusing the approval, stands quashed and set aside.

(ii) We direct respondent No.3 – the Education Officer (Secondary), Zilla Parishad, Nagpur to grant approval to the appointment of petitioner No.3 forthwith as “Peon” in petitioner No.2 – School with effect from 11/09/2013 and to release her remuneration and salary; all arrears and benefits within a period of six weeks from the date of this judgment.

17. Rule made absolute in the above terms. No costs.

(URMILA JOSHI-PHALKE, J.) (AVINASH G. GHAROTE, J.)

**Divya*