



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

WRIT PETITION NO.4994 OF 2022

Hemant Gajanan Pande
Age – 25 years, Occupation – Service,
R/o. Samarth Nagar, Anjangaon Surji,
Tq. Anjangaon Surji,
District Amravati

...PETITIONER

VERSUS

1. Education Officer (Secondary)
Zilla Parishad, Camp,
Amravati, Tq. & District Amravati
2. Indira Gandhi Secondary and
Higher Secondary School,
Dahigaon Recha,
through its Headmaster,
R/o. Dahigaon Recha,
Tq. Anjangaon Surji, District Amravati

...RESPONDENTS

Mr. P.S. Patil, Advocate for the petitioner.
Mrs. K.S. Joshi, Additional Government Pleader for the State.

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

RESERVED ON : SEPTEMBER 01, 2023

PRONOUNCED ON : SEPTEMBER 07, 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, the petitioner has approached to this Court with prayer to direct respondent No.1 – the Education Officer (Secondary), Zilla Parishad, Amravati to grant approval to the appointment of petitioner as a “Peon” in respondent No.2 – School, in terms of letter dated 20/09/2019.

3. The respondent No.2 is the School run by Dayaram Shikshan Sanstha and recognized by Education Department and receiving 100% grant-in-aid. The father of the petitioner namely Late Gajananrao Pande was working in respondent No.2 - School. He expired on 13/09/2007. At the time of his death, the petitioner was minor. The mother of the petitioner namely Smt. Kiran Pande moved an application to respondent No.2 – School for grant of appointment on compassionate ground. As she was not appointed, she filed Writ Petition No.4399/2014 before this Court. This Court vide its judgment dated 15/06/2016 granted leave to her to make an appropriate representation for seeking appointment on compassionate ground and also directed the petitioner that the copy of said representation should be given to the Education Officer. As per the directions of this Court, mother of the petitioner tendered the representation to the office of respondent No.1 However, no decision was taken. Due to the non-compliance of the order and direction, the mother of the petitioner had filed Contempt Petition no.66/2019.

Thereafter respondent No.1 issued notices to the Headmaster of respondent No.2 – School and directed to conduct the hearing. The hearing was conducted on 29/04/2019 but no decision was communicated to the mother of the petitioner. In the meantime, mother of the petitioner gave her consent to substitute the name of her son i.e. the petitioner for the compassionate appointment along with her consent letter. Respondent No.2 considered the request and issued the appointment order on 23/06/2019. Accordingly, the petitioner has joined the service in respondent No.2 - School on 26/06/2019.

4. After the joining of the petitioner, on 28/08/2019 respondent No.2 forwarded the proposal of approval to the office of respondent No.1 – Education Officer along with all necessary documents. Respondent No.2 has clarified that when mother of the petitioner requested for appointment on compassionate ground at that time the post of the peon was not available in the School. But thereafter two posts of Peon are lying vacant in the School, and therefore, requested to grant the approval to the appointment of the petitioner. Respondent No.1 rejected the approval on the ground that as per the Government Resolution dated 28/01/2019, the revised staff approval is not sanctioned by the State Government and secondly on the ground that in the staff justification in academic year 2018-2019, four posts of non-teaching staff are not sanctioned.

5. Being aggrieved with the same, present petitioner approached to this Court on the ground that respondent No.1 while deciding the issue of approval ought to appreciate the directions issued by this Court. Moreover, the compassionate appointment is an exception to the mandatory Rule of following specific selection procedure for recruitment on vacant post or on newly created post. As such no Government Resolution pertaining to ban on recruitment, stay on filling up vacant post and prohibition on appointments until the staffing pattern of the non-teaching post is formalised, is not applicable to the appointment made on compassionate ground.

6. Said petition is opposed by the respondents by making an oral submissions.

7. Heard Shri P.S. Patil, learned Counsel for the petitioner. 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 the 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 refused 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 petitioner is covered and directions are required to be issued to respondent No.1, to grant the approval.

8. Shri M.K. Pathan, learned Assistant Government Pleader for the respondent No.1 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.

9. The issue involved in the present petition is that whether the refusal by the Education Officer to the approval of the appointment of petitioner 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.

10. In the present case, respondent No.2 considered these aspects. There is no dispute that the father of the petitioner was

appointed on a sanctioned post. It is also undisputed that he died during his service on 13/09/2007 leaving behind present petitioner and his mother. The respondent No.2 had considered these aspects and granted the appointment to the petitioner on 23/06/2019. The petitioner has joined the service on 26/06/2019 as "Peon" on compassionate ground. The post was sanctioned post and had become vacant because of the death of his father. While submitting the proposal regarding approving the service of petitioner, respondent No.2 clearly mentioned that at the time of application received from mother of the petitioner there was no vacant post. But now there are two vacant posts and the approval needs to be granted. However, the Education Officer i.e. respondent No.1 had not considered the said aspect and rejected the approval on the ground that revised staff approval is not sanctioned by the State Government and secondly on the ground that in the staff justification four posts of non-teaching staff are not sanctioned.

11. 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.

12. 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."

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

14. Respondent No.2 had considered all these aspects and considering that the family of the deceased is in distress provided the appointment to petitioner subject to the approval of respondent No.1.

15. 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.”

16. 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.”

17. 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 are already appointed on compassionate ground is unjustifiably refused approval. Thus, it is apparent that despite the legal position is clear, respondent No.1 made the petitioner to run from one pole to another for the approval of the services of petitioner. The proposal was pending for the approval with respondent No.1 since 2019. All these years are spent by petitioner 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.1 who deprived petitioner 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 20/09/2019 of refusing the approval, stands quashed and set aside.
- (ii) We direct respondent No.1 – the Education Officer (Secondary), Zilla Parishad, Amravati to grant approval to the appointment of petitioner forthwith as “Peon” in respondent No.2 – School with effect from 23/06/2019 and to release her remuneration and salary; all arrears and benefits within a period of six weeks from the date of this judgment.

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

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