



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

WRIT PETITION NO.5711 OF 2023

Smt Sharda wd/o Ashok Bankar, Khat Road, Bhandara

-vs-

State of Maharashtra, Thr. Secretary, School Education & Sports Dept. Mantralaya, Mumbai and
ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. Z. Jibhkate, Advocate for petitioner.

Shri P. P. Pendke, Assistant Government Pleader for respondent Nos.1 to 3.

CORAM : A. S. CHANDURKAR AND ABHAY J. MANTRI, JJ.

DATE : November 06, 2023

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

2. The petitioner is aggrieved by the communication dated 09/12/2022 issued by the Education Officer (Secondary), Zilla Parishad, Bhandara thereby rejecting the proposal for grant of approval to the appointment of the petitioner on compassionate ground. In the said communication reference is made to the Government Resolution dated 21/09/2017 which states that since the age limit for appointment on compassionate basis is 45 years and the petitioner has crossed the age of 45 years, she is not eligible for appointment on such ground.

3. The learned counsel for the petitioner has referred to the provisions of Rule 9(4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 as well as Government Resolution dated 31/12/2002 to contend that as there is no upper age limit for appointment under the compassionate scheme, the rejection of the proposal is unwarranted. He further submits that as per Clause-2

of Government Resolution dated 21/09/2017, the said Government Resolution is applicable only to employees of the State Government. Same is not applicable to an applicant seeking appointment in a private school under the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short, the Act of 1977). Hence rejection of the proposal is unjustified.

4. The learned Assistant Government Pleader for respondent Nos.1 to 3 seeks time to obtain necessary instructions. We, however find on perusal of the impugned communication that reference has been made to the Government Resolution dated 21/09/2017 to hold that the age limit of 45 years is applicable. As stated above, this Government Resolution is stated to be applicable only to employees of the State Government. If Zilla Parishads/Municipal Councils/Municipal Corporations etc., have to make it applicable, separate orders have to be passed in that regard. There is no reference to this Government Resolution being made applicable to private schools under the Act of 1977. In that view of the matter, we find that rejection of the proposal seeking appointment on compassionate ground by relying upon the Government Resolution dated 21/09/2017 is not sustainable since the petitioner seeks approval to her appointment on compassionate basis in a private school.

5. For aforesaid reasons, the following order is passed :

- (i) The communication dated 09/12/2022 issued by the Education Officer (Secondary), Zilla Parishad, Bhandara as well as communication dated 04/07/2023 issued by the Deputy Director of Education, Nagpur Division, Nagpur are set aside.
- (ii) It is directed that the proposal dated 22/11/2022 forwarded by respondent No.5-School be considered afresh by the Education

Officer (Secondary), Zilla Parishad, Bhandara after taking into consideration Government Resolution dated 31/12/2002 along with Rule 9(4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

- (iii) The proposal be re-considered within a period of four weeks of receipt of copy of this order and the decision be communicated to the petitioner.

6. The Writ Petition is partly allowed in aforesaid terms with no order as to costs.

(Abhay J. Mantri, J.)

(A. S. Chandurkar, J.)