



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4994 OF 2021

Rahul S/o Sukhdeo Mohite,
Age-35 years, Occu:Nil,
R/o-House No.9-593, Modinagar,
Jaywanti Nagar, Ambajogai,
Taluka-Ambajogai, District-Beed.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The President / Secretary,
Yogeshwri Shikshan Sanstha,
Ambajogai, Taluka-Ambajogai,
District-Beed.

...RESPONDENTS

...
Mr. M.D. Gitte Advocate for Petitioner.
Mr. S.K. Shirse, A.G.P. for Respondent No.1.
Mr. M.M. Patil (Beedkar) Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 29th JANUARY 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for the following relief:-

“(B) By issuing writ of mandamus or appropriate writ, order or directions in like nature, the Respondent No.2 may kindly be directed to issue Appointment Order on Compassionate basis to the petitioner by considering his Applications dated 26.04.2016 and 20.09.2019 submitted with the respondent No.2”

2. The fact which is not in dispute is that late Sukhdeo Baliram Mohite, the father of the petitioner, was the employee of respondent No.2, working as teacher. Mr. Sukhdeo expired on 17th February 2000.

3. The petitioner has come with the case that his father served in respondent No.2 society from 1st July 1972 till 31st December 1995. However, father of the petitioner was suffering from serious disease and therefore he was constrained to accept the voluntary retirement on 31st December 1995, which was about 17 to 18 years prior to the superannuation. At the time of his death, Sukhdeo was survived by two sons (including the petitioner) and two married daughters. According to the petitioner, at the time of death of his father, he was minor and therefore, could not apply for appointment on compassionate ground. After completion of the educational qualification up to M.A., when the petitioner appeared for first year B.Ed. Course, he made application for appointment on compassionate ground

with respondent No.2 on 26th April 2016. Thereafter the petitioner completed B.Ed. Course. Now the qualification of the petitioner is M.A. B.Ed. As per the guidelines issued by Government Resolution dated 31st December 2002 regarding appointment on compassionate ground to the legal heirs of the deceased, teaching and non-teaching employees in private schools, the petitioner is entitled to be considered for the compassionate appointment. However, respondent No.2 has not responded to his applications. Hence this Petition.

4. Affidavit-in-reply of Shri Ganpat Balwant Vyas, Secretary of respondent No.2 has been filed, wherein he has submitted that as per the application for voluntary retirement filed by the deceased father of the petitioner dated 3rd October 1995, the head master, by order dated 31st December 1995 relieved deceased Sukhdeo from his service on the ground of voluntary retirement. After his retirement from 1st January 1996, his pension papers were also forwarded by respondent Sanstha. The pension was sanctioned to deceased Sukhdeo by order dated 30th March 1997. The application was filed by the petitioner for appointment on the compassionate ground on 26th April 2016 and not prior to that. The said Government Resolution dated 31st December 2002 relied upon by the petitioner himself does not

give any right to the petitioner, as it is applicable primarily to the heirs of the employee who has taken voluntary retirement on the ground of serious disease like tuberculosis, cancer as per certificate issued by the Government Medical Officer. Deceased Sukhdeo had not sought voluntary retirement on the ground of serious disease nor he filed certificate by the competent medical officer along with his application for voluntary retirement. Even in case of minor heir, such heir should file application within stipulated period after he attains the age of majority, which has not been done by the present petitioner and therefore on all counts the Petition deserves to be dismissed.

5. Heard learned Advocate Mr. Gitte for petitioner, learned AGP Mr. Shirse for respondent No.1 and learned Advocate Mr. M.M. Patil (Beedkar) for respondent No.2.

6. In order to cut short, it can be said that all the learned Advocates have argued in support of their respective contentions.

7. Along-with the affidavit-in-reply, respondent No.2 has filed copy of the application for voluntary retirement by deceased Sukhdeo. It was filed on 3rd October 1995, which was along with covering letter. In the said application, it has been stated that

due to his domestic problems he was unable to continue the service. He wants to look-after the family business thereby deceased had given three months prior notice on 3rd October 1995. Here it is to be noted that deceased Sukhdeo was a teacher and not class-4 employee having less education. Thereafter Sukhdeo was relieved on 31st December 1995. His pension papers were forwarded under his signature and in pursuant to his application on 25th June 1996. The order of sanction of pension, as aforesaid, is also annexed. All these documents certainly show that it was totally voluntary retirement which was not covered under the Government Resolution dated 31st December 2002. The said Government Resolution is applicable to those teaching and non-teaching employees from the private aided or unaided schools in the State who die in harness or if accepted the voluntary retirement due to serious disease. In annexure-A to the said Government Resolution, it is specifically stated that the eligible persons would be the heirs of such teaching and non-teaching staff who died in harness, be suffering from tuberculosis, cancer or such serious illness or due to accident before 55 years of age for class-I to class-III employees and for class-IV before completing 57 years of age as per the medical certificate issued by medical officer.

8. Herein this case Sukhdeo and in consequence the petitioner are not qualifying under the said Government Resolution dated 31st December 2002. Further the petitioner, though on the date of death of his father was minor, yet he has not made application immediately within six months from the date of his attainment of majority. Petitioner has completed his education qualification as M.A., B.Ed., and then made application. It appears that the petitioner was under wrong impression that till he acquires the same qualification for the post which his father held, he was not entitled to make an application. It is the wrong interpretation of the Government Resolution then.

9. As the petitioner was not qualifying the requirements under the concerned Government Resolution, respondent No.2 was justified in not considering his application. No case is made out for exercise of constitutional powers by this Court. The Writ Petition, therefore, stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE