



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7357 OF 2023

Salman Chaush s/o Saeed Choush,
Age 26 yrs., Occ. Junior Clerk,
in Baitul-Uloom High School, Nanded,
R/o House No.1-4-163, Nai Aabadi,
Nanded, Tq. & Dist. Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
School Education and Sports Department,
Mantralaya, Mumbai.
Through it's Secretary.
- 2 The Director of Education,
Directorate Officer, Pune.
- 3 The Deputy Director of Education,
Latur Division, Latur.
- 4 The Education Officer (Secondary),
Zilla Parishad, Nanded.

... Respondents

...

Mr. M.C. Syed, Advocate for petitioner

Dr. Kalpalata B. Patil Bharaswadkar, AGP for respondent Nos.1 to 4

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 04th APRIL, 2024

PRONOUNCED ON : 10th MAY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Present petition challenges the order dated 23.03.2023 and communication dated 26.03.2023 by respondent No.4, thereby rejecting the request for grant of regular pay scale instead of honorarium to the initial appointment of the petitioner as Junior Clerk and pay difference of arrears of the salary. The consequential prayer has also been made.

3 The facts which are not in dispute are that the petitioner came to be appointed on 29.12.2014 as Junior Clerk in Baitul Uloom High School, Nanded. His appointment was on compassionate ground as his father Saeed Choush, who was the permanent employee of said school expired on 21.09.2014. After the appointment of the petitioner, the school had submitted the proposal for grant of approval to the services of the petitioner on 16.02.2015. Initially respondent No.4 had not taken any decision and, therefore, the petitioner had come to this Court by filing Writ Petition No.553

of 2018 for directions. This Court by order dated 28.08.2018 directed respondent No.4 to decide the proposal within a period of four months. Thereafter, the Education Officer granted approval in favour of the petitioner by order dated 08.03.2019 on probation as Shikshan Sevak (Junior Clerk) on honorarium of Rs.2,000/- per month from 29.12.2014. Thereafter the Headmaster of the school submitted proposal to respondent No.4 on 15.03.2019 for taking the name of the petitioner in Shalarth Pranali. Respondent No.4 has issued approval in favour of the petitioner against regular salary on 16.08.2019 on the pay scale of Rs.5,200 – 20,200 - 1,900/- from 29.12.2017. The Headmaster had requested respondent No.3 to take the name of the petitioner in Shalarth Pranali and pay salary, but respondent No.4 did not take decision and, therefore, once again the petitioner had approached this Court by filing Writ Petition No.537 of 2020 for direction to decide the proposal. By order dated 09.01.2020 this Court directed respondent No.1 to decide the proposal within a period of two months. Respondent No.3 has then decided the proposal in favour of the petitioner on 21.01.2020 and permission was granted to include the name of the petitioner in Shalarth Pranali. It is further admitted position that the honorarium has been granted @ Rs.2,000/- per month to the petitioner instead of regular pay scale for the initial period of three years and thereafter regular salary has been granted.

4 The petitioner has come with a case that when his appointment was on compassionate ground, then he requires to receive full salary instead of honorarium. The regular pay scale ought to have been granted since the date of appointment. Representation was made by the petitioner to respondent No.4, but when it was not decided on the third occasion the petitioner had come to this Court by filing Writ Petition No.1976 of 2023 for direction. Again this Court had directed respondent No.4 to decide the representation of the petitioner by order dated 21.02.2023, to decide within a period of 45 days. By impugned order dated 23.03.2023 the said representation has been rejected and the earlier order is maintained. Hence, the present petition.

5 Heard learned Advocate Mr. M.C. Syed for the petitioner and learned AGP Dr. Kalpalata B. Patil Bharaswadkar for respondent Nos.1 to 4.

6 The learned Advocate for the petitioner relies on the decision of this Court in **Shri. Sagar Yashwant Mene vs. The State of Maharashtra and others** in Writ Petition No.589 of 2021 decided at the Principal Seat on 11.08.2021, wherein it is held that there was no bar of any Government Resolution preventing the Management to make appointment on compassionate ground and it is held that the Government Resolution dated

28.01.2019 cannot be made applicable retrospectively.

6.1 He further relies on the decision in **Shri. Kishor Anantrao Sabale vs. The State of Maharashtra and others** in Writ Petition (Stamp) No.93327 of 2020 decided at the Principal Seat on 11.08.2021 on the same ground.

6.2 He also relies on the Single Bench decision of Allahabad High Court in **Praveen Kumar vs. State of U.P. and others** in WRIT – A No.6719 of 2023 decided on 02.08.2023, wherein reliance was placed on the Larger Bench decision of the Hon'ble Allahabad High Court in **Ravi Karan Singh vs. State of U.P. and others** [1999 (3) UPLBEC 2263], **Pradeep Kumar and 6 others vs. State of U.P. and others** in Writ-A No.6717 of 2018 decided on 13.12.2019 and **Asif Khan vs. State of U.P. and others** in Writ-A No.15205 of 2022 decided on 23.09.2022. In all these cases it has been held that an appointment under the dying in harness rules has to be treated as a permanent appointment, otherwise if such appointment is treated to be a temporary appointment, then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the dying in harness rule, because such appointment is intended to provide immediate relief to the family on the sudden death of a bread earner. It has been further held that the appointment under dying in harness rule is a

permanent appointment and not a temporary appointment. He therefore, submits that the petitioner's appointment on compassionate ground was towards a permanent post and, therefore, even while giving appointment order the Management has given pay scale. The said ought to have been considered at the time of approval of the services of the petitioner.

7 Learned AGP for the respondents has submitted that by Government Resolution dated 25.11.2005 the appointments and the conditions of service in private schools in the State were regulated and it is said as regards the honorarium to the non teaching staff in a school would be on honorarium, when it is temporary/on probation. Therefore, no fault can be found with the order that has been passed by respondent No.4.

8 Hon'ble Supreme Court in **V. Shivmurti vs. State of A.P.** [2008 (13) SCC 730] has observed in paragraph Nos.27 and 29 that -

“27 When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences

in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact for more than the consequences of death in harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness etc.

29 When compassionate appointment of a dependent of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependent of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependents of medically invalidated employees stands on an equal footing to that of dependents of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependent of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependent of a medically invalidated government servant have to be held to be valid and permissible.”

8.1 In **Bhavani Prasad Sonkar vs. Union of India and others** [(2011) 4 SCC 209] it has been observed that -

“15 Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Article 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee.

20 Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

- (i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.
- (ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.
- (iii) An appointment on compassionate ground is to meet the

sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

9 In **Sanjai Kumar vs. Deputy Director General (NCE), Directorate, U.P., Lucknow and others** [(2002) 3 UPLBEC 2748] and **Ram Chandra vs. State of U.P. and others** [2008(2) ESC 1053] which has been referred in the Division Bench of Hon'ble Allahabad High Court in **Jagdish Narain vs. Union of India**, Civil Miscellaneous Writ Petition No.4059 of 2003 decided on 14.07.2011, wherein it has been held that the appointment on compassionate ground is always permanent in nature. Therefore, taking into consideration the fact that the petitioner came to be appointed on compassionate ground which is in common parlance against the post that was held by his father on permanent basis, then he cannot be considered on probation. It is not his regular recruitment and, therefore, the Government Resolution dated 25.11.2005 applicable to the regular recruited employees will not be made

applicable. It is not in dispute that after the approval dated 16.08.2019 the petitioner is getting salary by pay scale. Therefore, the question was in respect of period in between 29.12.2014 to 29.12.2017. For that purpose in view of the above said pronouncements and the findings of this Court that the petitioner's appointment was against the permanent post, the petitioner is entitled to get salary in pay scale since the date of his appointment i.e. 29.12.2014. Therefore, the impugned order dated 23.03.2023 and the communication dated 26.03.2023 by respondent No.4 deserves to be set aside.

10 For the aforesaid reasons, following order is passed.

ORDER

1 The Writ Petition stands allowed.

2 The impugned order dated 23.03.2023 and communication dated 26.03.2023 by respondent No.4 is hereby quashed and set aside.

3 Respondent No.4 is directed to grant regular pay scale approval instead of honorarium to the petitioner as Junior Clerk since the initial date of appointment i.e. 29.12.2014.

4 Arrears of salary, if any, for the said period between 29.12.2014 to 29.12.2017 be paid to the petitioner in two installments; first installment would be due on 20.05.2024 and the second installment would be due on 22.07.2024.

5 No order as to costs.

6 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

agd