



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9504 OF 2021**

Fariha Tazeen Md. Abdul Salam,
Age-28 years, Occu. Nil,
R/o. h no. 1-8-258, Labour Colony,
Near Panchasheel School,
Post- Shivaji Nagar, Nanded
District- Nanded

..Petitioner

Versus

1. Momin Education Society,
Sayyadan, Kalal Lane, Nanded,
Tq. & Dist. Nanded.
Through its Secretary
2. Islahul Amal Girls High School,
Sayyadan, Kalal Lane, Nanded
Tq. & Dist. Nanded,
Through its Head Master.
3. Education Officer (Secondary,)
Zilla Parishad, Nanded.
4. State of Maharashtra,
Through School Education and
Sports Department,
Mantralaya, Mumbai-32.

..Respondents

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Mr. S. V. Dixit, Advocate for the Petitioner.

Mr. V. J. Dhage, Advocate for Respondent Nos.1 and 2.

Mr. S. K. Shirse, AGP for Respondent Nos.3 and 4.

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

DATED : 16th APRIL 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India seeking issuance of Writ of Mandamus or direction against respondent nos.1 and 2-Educational Institution to consider her claim for compassionate appointment on the post of Assistant Teacher.

3. The petitioner contends that her mother Rubina Firdos Md. Suleman was employed as Assistant Teacher with respondent no.2-School. She died on 03.10.2020 while in service. The petitioner who holds qualification as B.Sc., B.Ed. is eligible to be appointed as Assistant Teacher. Therefore, on 18.03.2021, she applied to respondent nos.2 and 3 seeking appointment on compassionate ground. The application is supported by no objection from other relatives. However, respondent nos.2 and 3 deliberately avoided to appoint her without justifiable cause. The petitioner further contends that in view of the policy of the State Government, promulgated under Government Resolution dated 31.12.2002, she is entitled and eligible for being appointed as Assistant Teacher on compassionate ground. Inaction on the part of the respondents made her to approach this Court under Article 226 of the Constitution of India seeking appropriate directions.

4. In response to the notice of this petition, respondent nos.1 and 2 have appeared before this Court and submitted affidavit-in-reply. They oppose the prayers in the petition on the ground that the petitioner is not at all eligible for compassionate appointment in terms of policy underlined in the Government decision. They have raised following objections:

- (i) The petitioner's mother Rubina Firdos Md. Suleman was aged about 55 years and 4 months at the time of her death.
- (ii) The petitioner was not dependent on the deceased mother.

- (iii) The petitioner is married daughter and dependent on her husband namely Md. Fasihuddin Faruqui, who is serving as Hardware and Networking Manager in Freedom Ford.
- (iv) The petitioner's father is Headmaster in grant-in-aid school by name Baitul-Uloom High School, Nanded.
- (v) After death of the petitioner's mother, the pensionary benefits of around Rs.14 lakhs sanctioned and disbursed to the family.
- (vi) The family members are receiving pension at the rate of Rs.26,000/- per month.
- (vii) The petitioner's mother had received GPF amount of Rs.5,94,510/-.
- (viii) The petitioner's mother had more than three children and third child is born after 31.12.2001.
- (ix) The economical condition of the petitioner is sound. There is no pressing need to extend compassionate appointment, which is rule of exception and not the right.

5. Mr. Dixit, learned Advocate appearing for the petitioner vehemently submits that the State of Maharashtra laid down policy under Government Resolution dated 31.12.2002, in its School Education Department, providing for compassionate appointment of the dependents of the employee, died in harness. He would submit that in case of death Class III or Class IV employee, the family members as specified in Clause 3(A) of the Government Resolution are entitled to seek compassionate appointment. He would refer to the Corrigendum to the Government Resolution to point out that even the married daughter of the deceased employee is made eligible for the

compassionate appointment. The petitioner submitted her application for such an appointment. She possesses requisite qualification for the post of Assistant Teacher. It is not disputed that such post is available on the establishment of the school. As such, there is no legal impediment to appoint the petitioner. However, respondent nos.1 and 2 deliberately sitting on the application. No response in furtherance of the pending applications is made by them till this date. The petitioner has apprised respondent no.3-Education Officer regarding her pending claim with respondent nos.1 and 2. However, no steps are taken by him till this date. Therefore, he urges to issue appropriate Writ or directions against respondent nos.1 to 3 to appoint the petitioner in tune with the policy of the Government.

6. Mr. Dhage, learned Advocate appearing for respondent nos.1 and 2 contends that although the petitioner made application seeking appointment on compassionate ground, she is not at all entitled for such appointment for the reasons as stated in the affidavit-in-reply. The Management has time and again apprised petitioner that her application is not compliant with the stipulations of the scheme for compassionate appointment. He would further submit that the compassionate appointment is an exception to the general rule. There is no vested right with petitioner to seek compassionate appointment. The employer is under obligation to look into the economical status of the family and being satisfied of the dire need, the compassionate appointment can be extended. In the present case, the material placed alongwith reply demonstrate that the petitioner has deliberately suppressed the facts depicting her sound economical condition, so also fact that she is married daughter of the deceased employee.

7. We have considered the submission advanced on behalf of the Advocates appearing for the respective parties. The petitioner's claim is based on the scheme promulgated under Government Resolution dated 31.12.2002 that provides the compassionate appointment to family member of the employee, died in harness. Annexure-A to the Government Resolution provides for Rules of appointment. Clause 3(A)(1) provides for the list of relatives entitled for compassionate appointment. As pointed out by Mr. Dixit, learned Advocate, by way of Corrigendum in the original scheme, the married daughter is also included in the list of eligible relatives of the deceased.

8. We find that controversy raised in present matter revolves around Clause 7(B) that states as under:

“७. ब) एखादया कुटुंबात मृत कर्मचार्याचे नातेवाईक पूर्वीच सेवेत असल्यास व तो नातेवाईक त्याच्या कुटुंबातील अन्य सदस्यांना आधार देत नसल्यास अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हलाखीची आहे किंवा कसे हे नियुक्ती अधिकार्याने अत्याधिक दक्षता घेवून ठरवावे व त्याची खात्री पटल्यानंतरच अनुकंपा तत्वावरील नियुक्तीच्या योजनेचा लाभ देण्यात यावा.”

ENGLISH TRANSLATION

“7B. If in a family, the relatives of the deceased employee are already in service and the said relative is not supporting other members of their family, in such a case, the financial condition of that family is weak or not, the appointing officer should decide this with utmost care and after being convinced, the benefit of the scheme of appointment on compassionate ground should be given.”

9. In light of the aforesaid clause of the scheme, it is apposite to refer to certain observations of the Supreme Court in the matter of compassionate appointment. In case of ***Union of India and Anr. Vs. Shashank Goswami & Anr.***¹, the Supreme Court observed as under:

“There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is

¹ 2012 AIR SCW 3257.

based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

10. Similarly, in case of **Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union²**, the Supreme Court observed thus:

“As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds.”

11. Bearing in mind the aforesaid principles of law espoused by the Supreme Court, if factual aspects emerging from the pleadings and material placed before us is considered, it is evident
- ² (2022) 10 SCC 172.

that the petition suffers from suppression of material facts. Firstly, petitioner has not disclosed that she is a married daughter of the deceased. Secondly, she has not disclosed that her father is also employed as Headmaster in the school receiving grant-in-aid. Both the aforesaid facts are surfaced in the affidavit-in-reply filed on behalf of respondent nos.1 and 2. Pertinently, the petitioner did not traverse contents of the affidavit-in-reply. The respondents have further brought on record that the petitioner's husband is a qualified person and serving at "Freedom Ford" as Hardware and Networking Manager. The petitioner's father has been promoted as Headmaster on 01.02.2018 and he was continued in service on that post. Upon death of the petitioner's mother, the family received Rs.14 lakhs towards pensionary benefits and receiving pension of Rs.26,000/- per month. In this background, particularly when the petitioner is a married daughter, it is difficult to believe that she was dependent on the income of her mother at relevant time.

12. The scheme under Government Resolution dated 31.12.2002, in unequivocal terms, stipulates that in case relative of deceased employee is in service, the employer or appointing authority is under obligation to enquire into financial position of the family before permitting compassionate appointment of family member. The respondent nos.1 and 2 have placed on record the voluminous evidence depicting sound financial condition of the petitioner's family. It is not the contention of the petitioner that her father was not taking care of the family members or her husband is non-earning or incapable of earning. Therefore, in light of the specific stipulation contained in Clause 7(B) of the Regulation, it would be difficult to hold that the petitioner was

dependent and consequently entitled for compassionate appointment owing to the death in harness of her mother.

13. In view of aforesaid observations, we find that the present petition suffers from suppression of material facts, therefore, petitioner is not entitled for any discretionary reliefs in exercise of extraordinary jurisdiction of this Court. Even on merits of the case, sound financial condition of the petitioner's family disentitles her to seek Writ of Mandamus against the respondents to issue compassionate appointment in light of the specific stipulation under the scheme.

14. In the aforesaid circumstances, no case is made out for issuance of Writ. Hence, Writ Petition stands dismissed.

15. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE