



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10645 OF 2022

Smt. Pratibha Dnyaneshwar Patil,
Age 51 yrs., Occ. Household,
R/o Plot No.16, House No.8,
Bhagatsingh Nagar, Chopda,
Tq. Chopda, Dist. Jalgaon.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Secretary,
School Education & Sports Department
Maharashtra State,
Mantralaya, Mumbai – 32.
- 2 The Chief Executive Officer,
Zilla Parishad, Jalgaon.
- 3 The Education Officer (Primary),
Zilla Parishad, Jalgaon.
- 4 The President,
Amar Society, Near Old Datta Temple,
Chopda, Tq. Chopda, Dist. Jalgaon.
- 5 The Head Master,
Balmohan School, Plot No.8,
Sarvodaya Colony,
Old Shirpur Road, Chopda,
Tq. Chopda, Dist. Jalgaon.
- 6 The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 7 Shekhar Arun Patil,

Age 26 yrs., Occ. Service,
R/o C/o Balmohan Vidyalaya,
Plot No.8, Sarvodaya Colony,
old Shirpur Road, Chopda,
Tq. Chopda, Dist. Jalgaon.

... **Respondents**

...

Mr. R.A. Tambe, Advocate for petitioner

Mr. P.S. Patil, AGP for respondent Nos.1 and 6

Mr. N.S. Choudhary, Advocate for respondent Nos.2 and 3

Mr. V.P. Patil, Advocate for respondent Nos.4 and 5

Mr. U.S. Patil, Advocate for respondent No.7

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

RESERVED ON : 20th MARCH, 2024

PRONOUNCED ON : 03rd APRIL, 2024

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

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

2 The petitioner challenges order dated 18.08.2022 passed by respondent No.3 rejecting approval to her appointment as Assistant Teacher. She also challenges the appointment order dated 20.08.2014 issued in favour

of respondent No.7 and the approvals granted to the appointment of respondent No.7 by respondent No.3 vide orders dated 15.12.2015 and 07.04.2018 as contrary to the Government Resolution dated 02.05.2012. She prays for the consequential reliefs also to direct the respondent authorities to appoint her on compassionate ground as Assistant Teacher with respondent Nos.4 and 5 and to grant approval to her appointment and pay her salary and the service benefits from the date of her appointment as 19.08.2014.

3 The factual matrix leading to the petition are that – one Dnyaneshwar Dhansing Patil was employed with respondent No.5 school run by respondent No.4 society. Petitioner is his widow. Dnyaneshwar died on 18.08.2014. In view of prevailing Government Resolution petitioner requested respondent Nos.4 and 5 to appoint her as Assistant Teacher on compassionate ground. Accordingly, she came to be appointed on 19.08.2014, however, respondent No.5 school had not forwarded her proposal in time to respondent No.3 for grant of approval to her appointment. The proposal was forwarded by respondent No.4 to respondent No.3 on 07.08.2016. Respondents failed to take any positive decision and, therefore, she had approached this Court by filing Writ Petition No.5781 of 2017 seeking directions for appointment on compassionate ground and also challenging the appointment and approval granted to

respondent No.7. That petition was opposed by respondent No.3 on the ground of non eligibility of the petitioner, however, no order was passed on the proposal. This Court by Judgment and order dated 24.06.2022 disposed of the petition directing respondent No.3 to take decision on the proposal for grant of approval to the appointment of the petitioner on its own merits within a stipulated period of eight weeks. Thereafter respondent No.3 vide order dated 18.08.2022 rejected the proposal. The petitioner submits that her husband was a permanent employee of respondent Nos.4 and 5 and he was functioning as Head Master of respondent No.5 school at the time of his death. The post was available after the demise of her husband and, therefore, she had applied. The school started receiving grants since 2011 for the primary section and so far as secondary section is concerned, it is not yet receiving the grants. The petitioner was appointed in respondent No.5 Primary School. She was not allowed to perform her duties in primary section, but she was given duties in the secondary school. The petitioner had several times requested the respondent authorities to allow her to discharge the duties in the primary section. Respondent Nos.4 and 5, therefore, directed her to file application in proper format and, therefore, she had filed the application on 07.04.2016. Then, respondent No.4 society passed a resolution on 05.09.2016, thereby approving to consider the claim of the petitioner on compassionate appointment and to forward the proposal to the

Education Officer. Accordingly, respondent No.5 had forwarded the said proposal in the requisite format. Petitioner also submits that the Government by its resolution dated 20.08.2015 and 20.01.2016 made provision for appointment on compassionate ground of the relatives of the employee, who died in harness as Shikshan Sevak and giving exemption from condition of passing TET examination at the time of appointment. Therefore, she was fit to be appointed on the said vacant post, however, respondent Nos.4 and 5 appointed respondent No.7 as Assistant Teacher vide order dated 20.08.2014 contrary to the Government Resolution dated 02.05.2012. The approval granted to his appointment by respondent No.3 is also illegal.

4 Heard learned Advocate Mr. R.A. Tambe for the petitioner, learned AGP Mr. P.S. Patil for respondent Nos.1 and 6, learned Advocate Mr. N.S. Choudhary for respondent Nos.2 and 3, learned Advocate Mr. V.P. Patil for respondent Nos.4 and 5 and learned Advocate Mr. U.S. Patil for respondent No.7.

5 Learned Advocate for the petitioner Mr. R.A. Tambe has taken us through the documents on record, especially the appointment order dated 19.08.2014 of the appointment of the petitioner and states that it was on the compassionate ground. He has also taken us through the rules regarding the

compassionate appointment in respect of the employee (teaching/non teaching staff) of the private (aided and unaided) schools dated 31.12.2002. He also submits that in the forced circumstances the petitioner had given application dated 07.04.2016, but in fact, she was already appointed on compassionate ground on 19.08.2014. As she was already appointed, there was no vacant post available, therefore, respondent Nos.4 and 5 could not have appointed respondent No.7 and, therefore, the approval granted to the appointment of respondent No.7 by respondent No.3 is illegal. By the representation dated 27.07.2022 the petitioner has tried to explain that though the appointment order was issued by respondent Nos.4 and 5 on 19.08.2014, it was not implemented till 07.04.2016. Now, it is not in dispute that such appointment of the petitioner has been made by respondent Nos.4 and 5. Even if we consider that her application dated 07.04.2016 was not within the limitation that has been prescribed in Government Resolution dated 31.12.2002; yet, only on that count it cannot be said that her appointment cannot be approved. He relies on the decision of Hon'ble Apex Court in **Govinda Janardan Gaikwad vs. State of Maharashtra and others** [Civil Appeal No.7489 of 2023] decided on 06.11.2023, wherein the application was given 15 years past the demise of the father by the son; yet, the concerned authorities were directed to consider the case of the appellant for grant of compassionate appointment. He also relies on the decision in

Malaya Nanda Sethy vs. State of Orissa and others [Civil Appeal No.4103 of 2022] decided by Hon'ble Apex Court on 20.05.2022, wherein also the State authorities were held to be responsible for delay in not considering the application and then the directions were issued. He, therefore, prayed for issuing the writs in favour of the petitioner.

6 Learned Advocate for respondent Nos.2 and 3 Mr. N.S. Choudhary relies upon the affidavit-in-reply of Vikas Mahadu Patil, the Primary Education Officer and submits that it is not in dispute that the deceased Dnyaneshwar was serving in respondent No.5 school run by respondent No.4 and he expired on 18.04.2014. According to the petitioner, she came to be appointed on 19.04.2014 but proposal was not forwarded within time by respondent Nos.4 and 5. He states that the petitioner was possessing educational qualification of M.A. B.Ed., which is not the eligible qualification for being appointed in the primary school. The required qualification for being appointed as primary school teacher is SSC/HSC/D.Ed. with TET. Petitioner does not possess the qualification of passing TET examination. No vacant post on the non teaching staff was pointed out and, therefore, she could not have been appointed in non teaching staff. He states that in respect of compassionate appointment Government Resolution dated 02.05.2012 is not applicable. In fact, in the

Writ Petition No.5781 of 2017 the petitioner was seeking directions for appointment on compassionate ground and also challenging the appointment and approval granted to respondent No.7. As this Court had directed respondent No.3 to decide the representation of the petitioner, it has been decided. The reasons are appropriate. He relies on the affidavit dated 04.09.2017 and additional affidavit dated 10.01.2020 in the Writ Petition No.5781 of 2017 also. In the nutshell he says that as the petitioner was not possessing the required qualification of SSC/HSC/D.Ed., approval cannot be granted to her appointment.

7 Learned Advocate for respondent Nos.4 and 5 relies on the affidavit of one Pradip Hiranman Chaudhari, the in-charge Head Master of the school and submits that the appointment order in favour of petitioner dated 19.08.2014 is doubtful. He submits that the said order appears to be passed on the next day after the death of the husband of the petitioner. The appointment order dated 20.08.2014 issued in favour of respondent No.7 is correct, as respondent No.7 was possessing H.S.C. D.Ed. qualification. By order dated 15.12.2015 the Education Officer has granted approval for two years on permanent non grant basis as the post was vacant. Thereafter on 07.06.2018 the permanent approval was also granted. For the first time it appears that the petitioner filed application for appointment on

compassionate ground on 07.04.2016. The Management has resolved to consider it positively. The petitioner is possessing M.A. B.Ed. qualification, but the post which became vacant after death of her husband was for Primary School, which requires D.Ed. qualification. As on today there are 26 posts sanctioned as per Sanch Manyata and 26 employees are working, but the petitioner may be accommodated in any other institution in the taluka or district for which the respondent Management has no objection.

8 Leaned Advocate for respondent No.7 relied on affidavit-in-reply of respondent No.7 to justify his appointment and submits that his approvals were duly granted by respondent No.3. He also submits that the petitioner was not holding any requisite qualification and, therefore, petition deserves to be dismissed.

9 As aforesaid, the fact which is not in dispute is that the late husband of the petitioner was serving with respondent No.5 school run by respondent No.4 society and he expired on 18.08.2014, however, the further facts are disputed. As regards the alleged appointment letter dated 19.08.2014 in favour of the petitioner is concerned, objections are raised. The petitioner has not filed the application which she had allegedly tendered for considering her name for the appointment on compassionate ground after

the demise of her husband. It is rather unbelievable that on the next day of the death of her husband she would have been appointed. At the cost of repetition, we would say that the petitioner has intentionally suppressed her application for appointment on the compassionate ground prior to the appointment letter dated 19.08.2014. If we consider the said appointment letter also there is absolutely no mention that her appointment is on compassionate ground. At this stage we would also like to consider the procedure that has been prescribed for appointment of a legal heir/relative of the deceased employee (teaching and non teaching staff in private institution). Such Government Resolution came to be passed on 31.12.2002 which appears to be a consolidated and updated resolution of the Government in the said respect. Originally it appears to be brought into force by Government Resolution dated 03.09.1990 and time and again there were amendments were effected. By Government Resolution dated 31.12.2002 it was stipulated that the relative of such deceased employee will have to make an application along with the documents which are prescribed in Annexure 'B'. Such application be filed within the period of three months of the death of such employee or at the time of submitting documents for family pension along with Annexure 'C' and it should be submitted to Education Officer. If the post is available, then it can be directly filled when it comes to compassionate appointment. It is also mentioned in the said Government

Resolution that at the District Education Officer level a list is to be maintained as per seniority, that means, as and when the applications are received and such list should be separately maintained in respect of Class-III and Class-IV employees, the said officer is also bound to take into consideration the seniority in the list and then as per the availability of the post should adjust those candidates in the educational institution. However, if the post is available in the same educational institution where the deceased employee was working, then that should be preferred. Thus, when all the said procedure is contemplated, then it is hard to believe that the said entire process would have been done within one day for the petitioner. The said document dated 19.08.2014 in favour of the petitioner is a doubtful document.

10 There is room to express doubt over that document because the petitioner herself has filed on record the application dated 07.04.2016 given by her to the Education Officer, wherein she had prayed for her appointment on compassionate ground. In her said letter given to the Education Officer, separate letter to Chairman of the school and Chief Executive Officer, Zilla Parishad, Jalgaon of the same date she has not stated that she has been already appointed on 19.08.2014. If she was so appointed on the next day of death of husband, there was no need for her to file such applications after

about two years. Now, she is coming with a case that though respondent No.5 had appointed her in Primary School, she was never allowed to perform her duties in the primary section, but she was doing the duties in secondary school and when she asked that she should be allowed to work in primary section, respondent Nos.4 and 5 directed her to file application in proper format. This appears to be an afterthought contention raised by her.

11 On one more circumstance we would say that the said letter dated 19.08.2014 is a got up document or cannot be relied. Further communication which is again an afterthought letter dated 27.02.2022, wherein she again gave a different story is that though she was given appointment letter dated 19.08.2024, it was not implemented till 19.08.2017. In this letter dated 27.07.2022 she has not stated that respondent No.5 had asked her to work in the secondary division and did not allow her to work in primary section. She has further stated that though she had made application once again on 07.04.2016, appointment was not given and, therefore, she made communication dated 08.07.2018 and once again gave application for appointment on compassionate ground on 16.07.2019, which was also not taken cognizance of. This is again a contrary stand.

12 One more circumstance which goes against the petitioner is that

though she had approached this Court even earlier by filing Writ Petition No.5781 of 2017, her prayer clause was to appoint her on compassionate ground. Now, she is coming with a case that her alleged appointment by order dated 19.08.2014 should be regularized/approved. All these facts, therefore, certainly indicate that she was never appointed on the basis of appointment letter dated 19.08.2014 and she has not worked with respondent No.5 school till date.

13 Now, the petitioner challenges the appointment of respondent No.7. Respondent Nos.4 and 5 accept that respondent No.7 came to be appointed on 20.08.2014. All these parties i.e. respondent Nos.4, 5 and 7 have not produced on record, whether any advertisement was issued to fill up the said post, which had become vacant on the demise of husband of the petitioner. However, we need not go into those procedural aspect since the appointment of respondent No.7 was approved by order dated 15.12.2015 for two years on permanent non grant basis and thereafter on 07.04.2018 the permanent approval was granted by the Education Officer on non grant basis. As aforesaid, the appointment order of dated 19.08.2014 cannot be considered. Respondent No.7 came to be appointed on 20.08.2014 and thereafter it appears that the petitioner applied her compassionate appointment on 07.04.2016 in proper format. In fact, her said application is

not within the stipulated period as per the Government Resolution dated 31.12.2002. She had filed the earlier writ petition in 2017 i.e. after about three years period from the date of appointment of respondent No.7. We have considered the order passed by this Court on 24.06.2022 in earlier Writ Petition No.5781 of 2017. It appears that since the proposal for the approval to the appointment of the petitioner was pending before Education Officer and then by way of affidavit-in-reply it was tried to be placed that there was ban on the recruitment as per the Government Resolution of the year 2012, the approval cannot be granted was the stand taken on behalf of the Education Officer and, therefore, this Court remanded the matter for its consideration to the Education Officer. It was then considered that since the appointment was alleged to be on compassionate ground, there could not have been a hurdle of the Government Resolution; it was then directed that the Education Officer shall not reject the proposal on the ground that there being a ban on appointment. All the other merits were kept open. Even in the affidavit-in-reply in the said writ petition the doubt was expressed by respondent No.7 on the same.

14 Even if we consider that in the affidavit-in-reply to the earlier writ petition the present respondent Nos.4 and 5 had accepted in paragraph No.2 that the appointment letter was given by respondent Nos.4 and 5 on the

very next day i.e. on 19.08.2014, it is their say that she had not joined the services with respondent Nos.4 and 5. According to them, the petitioner never attended the Primary School and has never signed on the muster of Primary School. As aforesaid, the petitioner has then now changed her stand that it was because of respondent Nos.4 and 5. She has not worked in primary section, but she has worked in the secondary section. She has not produced any evidence to support her said statement. Further, it would be a disputed fact - as to where she has worked, which cannot be gone into under the writ jurisdiction of this Court. In view of these facts, this is not a fit case where the appointment of respondent No.7 on 20.08.2014, which has been approved by respondent No.3 under the orders passed on 15.12.2015 and 07.04.2018 deserve to be quashed and set aside. He is working since the date of appointment which need not be then disturbed. However, respondent Nos.4 and 5, on the basis of the application filed by the petitioner on 07.04.2016, may consider to appoint the petitioner on compassionate ground, if post is available. Writ Petition, therefore, stands dismissed. Rule stands discharged.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)