



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2285 OF 2024

Shambhu s/o Pandurang Biradar  
Age : 26, Occu : Nil,  
R/o. MHADA Colony, Jalkot Road  
Udgir, Tq. Udgir, Dist. Latur

... PETITIONER

**VERSUS**

1. The State of Maharashtra,  
Through it's Principal Secretary  
Education Department  
Mantralaya Mumbai – 32.
2. Deputy Director of Education  
Deputy Director Office,  
Latur, Dist. Latur.
3. The Chief Executive Officer,  
Zilla Parishad Nanded, Tq. & Dist. Nanded.
4. The Education Officer (Primary)  
Zilla Parishad Nanded, Dist. Nanded.
5. Tejaswini d/o Pandurang Biradar  
Age : 26, Occu : Nil,  
R/o Flat No. 404, Shiv Apartment,  
Near Shivaji Vidyalaya, Nandi Stop,  
Tal. and Dist. Latur.

... RESPONDENTS

Mr. M. P. Bhaskar, Advocate for the Petitioner  
Mr. S. R. Yadav Lonikar, AGP for Respondent Nos.1 and 2  
Mr. B. B. Yenge, Advocate for Respondent No.5

CORAM : RAVINDRA V. GHUGE AND  
R. M. JOSHI, JJ.

DATE : 24<sup>th</sup> APRIL, 2024

**ORDER (PER - R. M. JOSHI, J.) :-**

1. The Petitioner has filed this Petition for following reliefs :  
  
*'B) The Respondent No.3 and 4 be directed to decide the representation dt. 11/12/2023 made by the petitioner.*

*BB) The petitioner is praying direction to respondent No.3 and 4 to include the name of petitioner in waiting list maintained by respondent 3 and 4 by deleting the name of respondent No.5 from waiting list in view of G.R. dated 21.09.2017."*

2. It is the case of the Petitioner that father of Petitioner and Respondent No.5 was employed with Respondents from 26<sup>th</sup> April, 1993 till 29<sup>th</sup> July, 2018. He died on duty on 29<sup>th</sup> July, 2018. The Petitioner has filed an application to the Respondents Authorities for appointment of compassionate ground. On 16<sup>th</sup> October, 2018 heirship certificate was issued by Civil Judge Junior Division, Udgir in favour of the Petitioner and Respondent No.5. The Petitioner as well as Respondent No.5 filed an Application dated 19<sup>th</sup> October, 2018 for compassionate appointment. Since the Authorities did not respond to the Applications, Respondent No.5 filed Writ Petition No. 13246 of 2019 before this Court and by order dated 4<sup>th</sup> November, 2019 directions were issued to Respondent Nos.1 to 4 to consider the Application expeditiously. It is specifically pleaded by the Petitioner that he and his mother had accorded no objection to Respondent No.5 for her compassionate appointment. The said no objection was given with expectation that Respondent No.5 will look after them. It is alleged that after the order passed by this Court, Respondent No.5 left the house of the Petitioner and started residing separately at Latur. It is claimed that the family of the deceased has no source of income and that Respondent No.5 would not look after them and hence

the Petitioner has sought cancellation of appointment of the Respondent No.5 and to place himself in the wait list of the compassionate appointment.

3. Respondent No.5 opposed the Petition by filing affidavit-in-reply alleging that the Petition has been filed to cause harassment to Respondent No.5 as she had performed inter-caste marriage. This Respondent has made allegations against the Petitioner and her mother about drawing service benefits during the life time of the father. It is also alleged that the Petitioner has criminal background.

4. We have heard the learned Advocates for both sides and perused the pleadings and documents on record.

5. There is no dispute with regard to the fact that Pandurang Vitthal Biradar was in employment of Zilla Parishad, Nanded and died while in service. The Petitioner as well as Respondent No.5 are children of Pandurang Biradar. On demise of Pandurang Biradar, both applied for compassionate appointment on 19<sup>th</sup> October, 2018. The Petitioner as well as his mother had recorded no objection for compassionate appointment of Respondent No.5. It is not the case of the Petitioner that the said no objection is obtained by fraud, coercion or misrepresentation etc. It is the case of the Petitioner that after order passed by this Court in Writ Petition No. 13246 of 2019 Respondent No.5 has left the home and

therefore there is apprehension that she would not take care of the Petitioner and his mother.

6. There is no dispute made by the Petitioner with regard to the process adopted by the Respondents for appointment of Respondent No.5 on compassionate ground. Admittedly Respondent No.5 is yet to receive order of appointment. No doubt as per the relevant rules for the appointment on compassionate ground, an undertaking is required to be given by the appointee about taking care of the dependants of the deceased and breach of undertaking would disentitle the appointee to continue in service. In this regard affidavit undertaking has been filed by Respondent No.5 but she is yet to be appointed. We find that Petition filed by the Petitioner is premature in the sense that till the time there is breach of undertaking of Respondent No.5, no cause of action would accrue in favour of the Petitioner to file any Petition challenging the said compassionate appointment.

7. During course of hearing, learned Advocate for Respondent No.5, on instructions, made statement across the bar that Respondent No.5 is ready to undertake that she shall pay 25% of the total salary received by her to her mother during her life time. We, therefore, called upon Respondent No.5 to file written undertaking to that effect. An undertaking dated 25<sup>th</sup> April, 2024 is filed before us stating as under:

*"2. That, the deponent, the respondent No.5 in the*

*instant writ petition undertakes to this Hon'ble High Court that, the deponent shall pay 25% of the total salary which will be received by the deponent per month to the mother of the deponent during her life time after getting the appointment in future on compassionate ground."*

The said undertaking is accepted by this Court.

8. The Petitioner is major and aged 26 years and would not be dependent on deceased if alive. It is not the case that the no objection obtained from him is not binding on him for any reason. For want of actual appointment of Respondent No.5, any question of she committing breach of the undertaking given for the purpose of securing the compassionate appointment has not arisen. We, however, find that the voluntary undertaking made by the Respondent No.5 for giving 25% of her salary to her mother, is sufficient to protect her interest since the mother (widow) is already receiving monthly pension of Rs.22,000/-.

9. In view of the above, **this Writ Petition is disposed off** by accepting undertaking of Respondent No.5. Respondent No.5 to pay 25% of total salary to her mother Jayashree Pandurang Biradar during her life time.

( R. M. JOSHI, J. )

( RAVINDRA V. GHUGE, J. )

ssp