



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6054 OF 2024

Lina Vishwanath Yerme,
Age 35 years, Occupation – Assistant Teacher,
R/o C/o. Shivaji High School, Chamorshi,
Tahsil – Chamorshi, District – Gadchiroli.

.... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through the Secretary,
School Education Department,
Mantralaya, Mumbai - 32.
- 2) The Deputy Director of Education,
Nagpur Division, Nagpur.
- 3) The Education Officer (Secondary),
Zilla Parishad, Gadchiroli.
- 4) The Maharashtra State Secondary
and Higher Secondary Education Board,
Amravati Division Board, Amravati,
through its Divisional Secretary and
Enquiry Officer.
- 5) Shivaji Shikshan Prasarak Mandal,
Gadchiroli, through its President.
- 6) Shivaji High School Chamorshi,
Tahsil – Chamorshi, District – Gadchiroli,
through its Headmaster

.... RESPONDENTS

Mr. P.S. Kshirsagar, Counsel for the petitioner,
Mr. A.V. Palshikar, A.G.P. for respondent Nos.1 to 4.

CORAM : BHARATI DANGRE &
ABHAY J. MANTRI, JJ.

DATE : 11th OCTOBER, 2024

ORAL JUDGMENT : (Per : BHARATI DANGRE, J.)

Rule. Rule is made returnable forthwith. Heard finally, by the consent of the learned counsel for the parties.

2. The Division Bench of this Court in the case of *Swapanali Shekhar Kalbhor and another V. State of Maharashtra and others* (Writ Petition No.7797/2014) dated 11-10-2017 to which one of us (Smt. Bharati Dangre, J.) was a party, has taken a specific view that a hyper-technical view and rather unfair reading of the policy and refusing its implementation, to assist the dependents of the deceased, has resulted in wastage of valuable and precious judicial time, which we could have been devoted to other matters and particularly concerning the life and liberty of citizens. We concluded that the policy for compassionate appointment should be read fairly and reasonably and holding that it is possible to give it a reasonable, fair and just interpretation, by holding that it does not exclude or rule out the claim of a party like the petitioner, namely, the married sister of the deceased employee, where the deceased was unmarried or not survived by such family member who is eligible for being considered for employment or has none except a married sister, then such married sister in the family cannot be excluded from the scheme of compassionate employment, as the deceased was not married and the rule was made absolute in terms of prayer clause (c) with a direction to consider the case of the petitioner

No.1, if found to be eligible to be appointed on compassionate ground with the Pimpri-Chinchwad Municipal Corporation.

3. Despite a detailed and an exhaustive judgment running into 34 pages, what we have noted is yet another petitioner has been made to suffer, on the account of erroneous interpretation of the policy decision of the State Government, which is infact initiated to offer solace to the members of the family of the deceased, who seek appointment on compassionate ground.

The petitioner is a married sister of the deceased employee who was working with respondent No.6 and upon his demise, she was appointed on compassionate ground with respondent No.6 and the Education Officer also granted approval to her appointment on the post of Assistant Teacher.

4. The petitioner was, however, subjected to enquiry by the respondent No.4 and on conclusion of the enquiry, she is accused of playing a fraud on the State Government by securing an employment, in ignorance of the relevant clauses in the policy decision of the State Government contained in the Government Resolution dated 21-9-2017 and in particular stipulation No.4(a) and 5 as contained in Appendix which permitted, only the unmarried sister of the employee to be

appointed on compassionate ground provided she was dependent upon him.

Reference is also drawn from the Government Resolution dated 31-12-2002 which has once again contemplated that the dependent brother and the unmarried sister would be eligible for appointment on compassionate ground and the findings rendered in the enquiry are to the effect that since the petitioner was a married sister, and there was a surviving brother of the deceased employee, she is not entitled to secure employment on compassionate ground.

It is unfortunate that the petitioner underwent an enquiry as she did not raise any challenge to the necessary proceedings at any point of time and only after the enquiry is completed and the enquiry report is served upon the petitioner, she has approached this court raising the challenge to the same.

5. It is really unfortunate that despite the law having been declared by this Court, the Education Authorities including the statutory functionary like the Maharashtra State Secondary and Higher Secondary Board did not pay any heed to the law laid down in the case of *Swapnali Shekhar Kalbhor* (Supra), pronouncing upon the Government Resolution, containing a provisions for appointment on compassionate ground, a particular clause being assailed as being

violating under Articles 14, 15 and 16 of the Constitution of India, as amounting to arbitrariness in the background that as per the policy initiated by the State, if the deceased has a married sister and mother and no one else in the family, then the sister, though married having assured the Court that if granted an opportunity to serve the employer, the derived income from the salary would take care of a mother, the dependents of the deceased, and should cater to her medical needs.

Formulating the issue as to whether the petitioner claiming to be the dependents of the deceased (the employee) can be appointed in the services of the Pimpri-Chinchwad Municipal Corporation because of the policy of the State to appoint dependents of the deceased employee in the service on compassionate basis.

The claim for compassionate appointment was denied to her on the basis that she is a married sister and the married sister do not find place in the scheme of compassionate appointment or even the policy is framed in that behalf by the State.

Recording the policy which was adopted by the Pimpri-Chinchwad Municipal Corporation and denial of the claim of the petitioner, based on the same was arbitrary and violative of Article 14 of the Constitution of India, the conclusion derived was recorded in paragraphs 20 and 21, which read thus :-

“20. We have perused all these Government Resolutions and we would not like to place such an interpretation

thereon which would completely frustrate the object and purpose of compassionate employment. As is held by the Hon'ble Supreme Court in several decisions that compassionate appointment provides an opportunity to those surviving the deceased employee and wholly dependent on his income to sustain themselves. It is a scheme which assists them. It is a scheme which also takes care of old, aged, infirm parents, widow and the immediate family of the deceased. In most of these cases, it was noticed by the State as also by the Hon'ble Supreme Court that the employees in Government employment join it at a fairly young age and post their marriage or immediately prior thereto and thereafter upon his or her income, his wife and children and on most occasions, his parents are dependent. If there is only one earning son in the family, then, ordinarily and normally he takes care of all the family members. He is responsible and, therefore, has to arrange for the education and marriage of his younger brothers and sisters. He also has to provide for the parents in their old age. All these are normal expectations and from an earning member of the family. If because of modern day tensions, stress, he himself becomes a victim of a disease which is life-threatening or succumbs thereto, then, his family has none to look up to for their sustenance. It is towards that end that the scheme has been directed. It is, therefore, a comprehensive measure which fulfills the mandate of Articles 14 and 16 of the Constitution of India so also the guiding principles, namely, Articles 39, 40, 41 and 43 of the Directive Principles of State Policy enunciated in the Constitution. If such is the benevolent and beneficial purpose sought to be achieved, then, an interpretation consistent therewith has to be placed on the clauses or paragraphs of the Government Resolution. Merely because the Government Resolutions do not specifically mention against the name of the sister, 'married' or 'unmarried', does not mean that the sister of the deceased surviving him is not fulfilling the family responsibility. If, as in this case, the deceased was survived by his old mother and married sister and has no other surviving legal heir who can be accommodated under this policy, then, we do not see how the policy prohibits the respondents from considering the request of the petitioner No.2 – mother of the deceased. It is her request to appoint the petitioner

No.1. Though the petitioner No.1 is the married sister of the deceased, she has undertaken to look after her mother from the income that she can generate by way of salary in the event she is appointed on compassionate basis and in place of her deceased brother. There is nobody else other than this sister. Thus, the father of the deceased had only one son, the deceased, and only one daughter, the petitioner No.1. The unfortunate part in this case is that even the father of the deceased son died while in service. Then, the deceased was appointed in his place. Unfortunately, even the son expired while in service. Now the aged mother requests the employer, namely, a public body like PCMC to assist her in her old age for she was entirely dependent on the income of the deceased son and after his sad demise, if there is a married sister of the deceased and only daughter of the petitioner No.2, then, there is no prohibition in considering her claim for compassionate appointment. All the more when she has assured the Court through her counsel that her husband and her in-laws have no objection to the salary income being completely handed over or utilised for looking after the petitioner No.2. In such circumstances and there being no claimant other than the petitioner No.1, we do not see any impediment for the PCMC to consider the claim of the petitioners herein.

21. On a perusal of the Government Resolutions, we do not find that paragraphs or clauses thereof have to be read in such a manner so as to rule out completely the claim of a party or person like the petitioner No.1. If that is held to be completely ruled out or excluded from the policy, then, we hasten to add that the same is not consistent with the constitutional mandate and enshrined in Articles 14 and 16 and the above Directive Principles of the State Policy. There is thus no rationale or nexus for this classification which can safely be termed as a discrimination. If a classification has to have a reasonable basis, the nexus of the same with the purpose or object sought to be achieved ought to be clearly established. We do not see how the exclusion as is suggested by the PCMC of a claimant like the petitioner No.2 can be held to be in tune with the constitutional scheme. It does not befit a employer like the State to reject such claims and by indulging in hair-splitting or taking a hyper technical view of the matter.”

6. As we have already expressed above that despite a clear pronouncement on the aforesaid aspect, the petitioner has been subjected to departmental enquiry, alleging that she has misled the State Government.

The facts involved in *Swapanali Shekhar Kalbhor* (supra) are identical to that of the petitioner except that in the present case the petitioner has a brother but it is nowhere the case of the respondents that he ever staked his claim for appointment on compassionate ground in the place of the deceased brother nor has he claimed appointment by appearing before an authority or during the enquiry proceedings conducted against the petitioner.

7. We find the action initiated against the petitioner in the departmental enquiry and the report of the enquiry officer dated 02-3-2023 to be in the teeth of the decision in the case of *Swapanali Shekhar Kalbhor* (supra) and since it was clearly held that the provisions in the Government Resolution relating to appointment on compassionate ground should be meaningfully read so that it do not act to the detriment of an employee, who is dependent of the deceased an employee in particular establishment and denied the benefit thereof only on account of his misreading, we quash and set aside the enquiry report dated 02-3-2023 which has held that the appointment of the

petitioner, being a married sister, was contrary to the policy of the State Government providing for compassionate appointment. On the other hand, by declaring that the petitioner is covered by the decision delivered in the case of *Swapanali Shekhar Kalbhor* (supra), we hold her to be eligible to be appointed on compassionate ground and by upholding the appointment effected on 01-1-2020 as well as approval granted by the Education Officer (Secondary), Zilla Parishad, Gadchiroli, direct that further approval to her post of Assistant Teacher shall be conferred, by the respondent authorities by ignoring the enquiry report.

We direct respondent Nos.1 to 3 as well as respondent Nos.5 and 6 to confirm the appointment of the petitioner on the post of Assistant Teacher, fulfilling all the necessary requirements of the policy of the State Government on compassionate ground and extend the relevant benefits flowing therefrom to the petitioner.

Rule is made absolute in the above terms.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)