



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7081 OF 2023

Sonal Devendra Desale
Age : 35 years, Occu : Nil,
R/o : Dharamraj Nagar,
Plot No. 37, Korit Road, Nandurbar
Tal. & Dist. Nandurbar

.. Petitioner

Versus

- 1] The State of Maharashtra
Tribal Welfare Department,
Mantralaya, Mumbai 32
Through its Secretary
- 2] The Project Officer,
Tribal Welfare Project,
Nandurbar Tq. & Dist. Nandurbar
- 3] Shivranjali Mahila Samiti, Nandurbar
Tq. & Dist. Nandurbar
Through its Chairman
- 4] Post Basic Ashramshala, Pathipada
Tq. & Dist. Nandurbar
Through its Head Master

.. Respondents

...
Advocate for the petitioner : Mr. A.R. Syed
AGP for the respondent nos. 1 and 2 : Mr. S.V. Hange
Advocate for respondent no. 4 : Mr. P.C. Mayure
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 22 APRIL 2025

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. Learned
AGP waives service for respondent nos. 1 and 2 and Mr. Mayure
waives service for respondent no. 4.

2. At the joint request of the parties, the matter is heard and is being disposed of finally at the stage of admission.

3. The petitioner is invoking the powers of this Court under Article 226 of the Constitution of India seeking *mandamus* against respondents for appointing her on compassionate basis in place of her deceased husband – Devendra who was serving as a Lab Attendant with respondent no. 4 – Ashram School being run by respondent no. 3 – Samiti, who died in a road accident on 22.11.2020.

4. At the outset, it is necessary to mention that though few other prayers have been made regarding processing the claim under the Defined Contributory Pension Scheme (**DCPS**) and to release the benefits, the parties are *ad idem* that that part of the claim has already been settled. Consequently, the issue that remains for consideration of this Court, is as to the right of the petitioner to seek the appointment as a Lab Attendant with respondent no. 4, on compassionate ground.

5. After hearing the learned advocates and after perusal of the record, it is evident that the petitioner's claim has been denied by respondent no. 4 only on the ground that respondent no. 4 situates in a scheduled area and is governed by Panchayat Extension to Scheduled Areas (**PESA**) Act, 1996, and that by virtue of the government resolution dated 11.09.2018, the post of Lab Attendant has to be filled

from the persons belonging to local scheduled tribes and the petitioner does not fall in that category. Consequently, the issue involved is as to whether pursuant to such government resolution dated 11.09.2018, the right of the petitioner to seek appointment gets adversely affected.

6. Admittedly, the petitioner's husband was confirmed in the post on 15.06.2007. The claim of compassionate appointment, in our considered view, is an incident of the employment and constitutes a right inherent in the employee. The dependent who seeks the appointment, is merely its beneficiary. Whenever such beneficiary asserts his own right, such a claim has its genesis in the right of the deceased to get his dependents appointed in his place in the event of his unfortunate death during the course of the employment. Looked at from this angle, the policy as has been in existence during the course of the employment; rather on the date of the appointment, would apply during the course of his employment.

7. Once having reached such a conclusion that the claim of appointment on compassionate ground basically being incident of employment, is a right vesting with the deceased, since it is trite in the service jurisprudence that the conditions of service cannot be altered during the course of the employment to the disadvantage of an employee, assuming for the sake of arguments that pursuant to the government resolution dated 11.09.2018, the post of Lab Attendant in

the PESA has to be filled from the local scheduled tribe/s, since the deceased was already in the employment and the government resolution was issued subsequently, since it takes away the right of his dependents whereby altering the service conditions adversely, in our considered view, merely because the government resolution dated 11.09.2018 provides for a stipulation of appointment *inter alia* on the post of Lab Attendant only from the local scheduled tribe communities, the respondents cannot legally refuse to consider the petitioner's request seeking appointment on compassionate ground, even when she does not belong to any scheduled tribe.

8. This being the only reason for rejection of petitioner's claim, as is sought to be substantiated not only in the affidavit-in-reply filed by respondent no. 4 but being the stand of respondent no. 2 who has filed the affidavit-in-reply, the petition deserves to be allowed and the respondents are liable to be called upon to consider the petitioner's request on its own merits for appointment on the compassionate ground.

9. The writ petition is allowed partly.

10. The impugned order / communication dated 13.02.2023 is quashed and set aside.

11. Respondent no. 4 shall pass appropriate order on the petitioner's application / request seeking appointment on compassionate ground, however, it shall not reject the request on the ground and by referring to the government resolution dated 11.09.2018.

12. The decision shall be taken as expeditiously as possible, and in any case within four (4) weeks.

13. Rule is made absolute in the above terms.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/