

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3308 OF 2024

Ashwini Bhushan Thombe. ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents.

Mr. Sanjot Shirsath a/w. Shreya Mohapatra, for the Petitioner.
Ms. Pooja Joshi, AGP for Respondent/State.
Mr. Irvin D'Souza i/b. Mr. Sugandh B. Deshmukh, for Respondent No.
3.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

DATE : 4th FEBRUARY, 2025

P.C. :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner is a widow, born on 24th August, 1994. She belongs to the Hindu Mahar Scheduled Caste Category. Her husband was working as a permanent Peon from 01.04.2002 with the Respondent Management in a recognized and aided Secondary School. On 10.02.2016, he passed away while in service. The Petitioner widow, a

minor daughter and a minor son, are the survivors.

3. On 13.05.2016, the Petitioner made an application to Respondent No. 3 requesting for an appointment on compassionate basis. The Management appointed the Petitioner on compassionate basis on 02.05.2018. A proposal for seeking approval to her appointment was forwarded to the Education Authorities. Since approval was not forthcoming, the Respondent No.3 Management discontinued the services of the Petitioner on 31.09.2018. She again requested for an appointment on 02.01.2019.

4. The learned Advocate for the Management submits that considering that the Petitioner's deceased husband was a permanent employee of the Institution, the proposal was forwarded for seeking approval to her appointment. Since the Education Officer was not granting an approval, the entire financial burden fell on the Management. Hence, it had issued the termination order.

5. Respondent No. 2 Education Officer addressed a letter to the Management, dated 16.04.2019, confirming that the proposal seeking approval to the appointment of the Petitioner on compassionate ground, is submitted. However, vide order dated 22.10.2021, the Petitioner was

refused approval by the Education Officer.

6. In the above backdrop, the Petitioner has put forth prayer clauses (a), (b) and (c), which read as under :

“a. This Hon'ble Court be pleased to issue a writ of certiorari and/ or any other writ, order or direction in the nature of certiorari with directions to quash and set aside the impugned decision/ order dated 22.10.2021 issued by the Respondent No. 2 Education Officer (at EXHIBIT-O -hereto);

b. This Hon'ble Court be pleased to issue a writ of mandamus and/ or any other writ, order or direction in the nature of mandamus to direct the Respondent No.2 to reconsider the grant of approval of the Petitioner's appointment to the post of Peon held by her late husband in Respondent No.3 School, on compassionate grounds with retrospective effect from 2018;

c. This Hon'ble Court be pleased to issue a writ of mandamus and/ or any other writ, order or direction in the nature of mandamus to direct the Respondent No. 3 to release the grant-in-aid payment of regular salary to the Petitioner from 02.05.2018 onwards, till date;”

7. We have considered the submissions of the learned Advocates for the respective sides and the learned AGP. We find that the Education Officer, Secondary has attributed only one reason for refusing to grant approval, that, there is no staffing pattern. This issue has been dealt with by this Court in ***Smt. Yogita w/o. Shivsing Nikam v/s. State of Maharashtra and Ors.¹*** For the sake brevity, it would be apposite to

¹ AIR ONLINE 2021 BOM 3071

reproduce paragraph 23 to 33 in *Smt. Yogita Shivsing Nikam (supra)*, hereunder:

22. *Having discussed the legal position, rather the crystallized position of law with regard to compassionate appointment, compassionate appointment exception to the rule of recruitment. is an exception to the rule of recruitment.*

23. *In the two cases before us, the impugned orders lead to the denial of approval for the compassionate appointment of the petitioners by placing reliance upon an inapplicable Government Resolution dated 12.02.2015 which introduced a ban on recruitment of teaching and non teaching posts. So also, the other reason for denial of approval is that the staffing pattern for the non teaching posts is yet to be sanctioned for the academic year 2014-2015 and hence, the approval cannot be granted.*

24. *In the second petition, the reason for refusal of approval is based on yet another Government Resolution of Government dated 23.10.2013 by which a committee was formed by the State Government for preparing the staffing pattern for several categories of employees and the said committee had directed status-quo to be maintained with regard to recruitment and filling up of vacant posts. The other reason for refusing approval was that the State Government has introduced a Government Resolution dated 28.01.2019 by which staffing pattern for the non teaching posts falling in the Class-III category had been formalized, but, such a staffing pattern for the Class-IV category was still pending. In this petition filed by Sachin, in the second impugned order dated 09.08.2021 refusing approval, the Education Officer concludes that the Maharashtra Government has decided to abolish Class-IV non teaching employees' posts immediately after the employee retired. The Education Officer, therefore, advised that if the case of Sachin Suryawanshi is forwarded along with other candidates, who have been appointed by following the regular recruitment process, the Education Officer would consider his case for approval.*

25. *We find this reason to be astonishing. An employee who is already appointed on compassionate grounds is unjustifiably refused approval and the Management is advised to send a proposal*

indicating that the said employee has been subsequently selected on permanent vacant post so as to consider his case for approval.

26. Despite the legal position discussed in the foregoing paragraphs, Mr. Yawalkar, the learned AGP, on instructions from the State, has canvassed as under:

(a) If there is a ban on recruitment, as per Government Resolution dated 12.02.2015, it would apply also to compassionate appointment.

(b) If there is a status-quo on recruitment ordered by the State Government, such status-quo would apply even to compassionate appointments.

(c) If the staffing pattern is not yet formalized, a compassionate appointment cannot be approved because the death of a permanent employee leads to the creation of a vacancy and it is only on the basis of the staffing pattern that a decision will have to be taken that such a vacant post will amount to a sanctioned permanent post.

27. Considering the settled position of law, we called upon Mr. Yawalkar to respond as to whether his above recorded submissions would stand the test of law laid down in the judgments delivered in Yogesh (supra). Samita Sameer Desai (supra) and Bharati Bhausaheb Thakare (supra). He submits that since the death of an employee occupying a permanent post would amount to creation of a vacancy, the ban on recruitment, the status-quo with regard to recruitment and the appointment pending formalization of the staffing pattern, would be suitable grounds for refusing approval to the appointment on compassionate grounds.

28. To say the least, we are shocked by the stand taken by the State Government, which is not only against logic and reason, but is in complete contradiction to the law crystallized by this Court in numerous judgments. It is unconscionable for the State to canvass such grounds virtually rendering the bereaved family to starvation. We find that the State has consistently ensured that not a single Government Resolution, pertaining to ban on recruitment, stay on filling in vacant posts and prohibition on appointments until the staffing pattern of the non teaching posts is formalized, would apply to appointments made on compassionate grounds. This Court has also consistently taken a view that compassionate appointment would be an exception to the mandatory rule of following specific

selection procedure for recruitment on vacant posts or on newly created posts.

29. *We have noticed the agony caused to litigants in such cases. We, therefore, find it appropriate at this stage to record that after the delivery of this judgment, if any case refusing approval to a compassionate appointment which is otherwise legally sustainable satisfying the eligibility criteria, comes to this Court, we would be issuing directions recommending strict disciplinary action against the Education Officer and we would not hesitate to initiate contempt of Court proceedings against persons responsible, since they are interpreting the Government Resolutions in the most inappropriate manner, despite the crystalised position of law. Because of such acts of the Education Officers. widows and eligible candidates are compelled to rush to this Court after having suffered mental and physical agony of a personal loss of a sole bread earner and also spend on litigation which is costly these days. We would also impose heavy costs to be recovered from the salaries of such Education Officers for the pain caused to such petitioners. We find it appropriate to record that if the Education Officer notices that a particular Management is attempting to defeat the rights of an eligible candidate for compassionate appointment, the Education officer would be at liberty to initiate appropriate action against such Management.*

30. *In view of the above, these petitions are allowed. The impugned orders stand quashed and set aside. Approvals stand granted to these petitioners from the dates of their joining duties on compassionate basis, with all monetary benefits accruing to their posts. Formal approval orders shall be issued by the concerned Education Officers, before 30.09.2021.*

31. *The Education Officer (Secondary), Zilla Parishad, Jalgaon and the Education Officer (Secondary), Zilla Parishad, Nanded shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) each, as costs, from their salary bank account in this Court, on or before 30.09.2021 and these two petitioners namely Smt. Yogita and Mr. Sachin, shall be entitled to withdraw the said amount subject to proper identification, without conditions. In the event, any of these two Education Officers has retired, the said amount shall be recovered from his pension. Compliance of this order shall be reported to this Court upto 15.10.2021, by the respective Chief*

Executive Officer, Zilla Parishad.

32. We direct the learned Registrar (Judicial) of this Court to place this order before the Secretary, School Education Department, Mantralaya to be circulated to all concerned. The concerned Secretary shall pass appropriate instructions to all concerned officers in the State of Maharashtra.

33. We need to clarify that, in cases relating to a candidate not being eligible to occupy the post of the deceased father/parent and, therefore, has to be accommodated on some other inferior post in another class, the authority empowered to make compassionate appointment, shall verify whether such post is available or not and shall list the candidate in the wait list of eligible candidates.”

8. The learned AGP fairly points out a circular dated 14.09.2022, issued by the School Education and Sports Department, Government of Maharashtra, addressed to all Education Officers at different levels in the State, as well as the Corporations, referring to the Judgment in *Smt. Yogita Nikam(supra)* vide which, they are advised not to reject such proposals for approval considering that the appointments are on compassionate basis. Copy of the said circular is taken on record and marked as ‘X’ for identification.

9. We find that despite the above fact situation, Education authorities continue to pass unsustainable rejection orders, ignoring the crystallised position of law. We could have imposed cost in this matter. However, the learned AGP points out that it was within 60 days of the Judgment delivered by this Court in *Smt. Yogita Nikam(supra)*, that the

impugned order was passed and there is possibility that the Education Officer may not have been aware of the said position. In these circumstances, we are not imposing the cost.

10. Considering the above, **this Writ Petition is allowed** in terms of prayer clauses (a), (b) and (c), reproduced above.

11. Consequentially, the unpaid salary dues, payable from the grants, would be calculated by the Management within a period of 30 days and the same be forwarded to the State Government for releasing the said grants. We direct that the concerned Authority of the Education Department would clear the bills towards the unpaid amounts, within a period of 30 days of the date of receipt of the same from the Management and ensure that the payment is made through RTGS or bank transactions/E-payment.

12. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)