



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

WRIT PETITION NO.4845 OF 2025

PETITIONER : **Smt. Shivkanta Bharatbhushan Bhaware,**
aged 55 yrs., Occu.-service, r/o House
No.842, Gajanan Township, Kathora Road,
Amravati.

..VERSUS..

RESPONDENTS : 1. **State of Maharashtra through its Secretary,**
Higher and Technical Education
Department, Mantralaya, Mumbai.
2. **The Director of Higher Education,** State of
Maharashtra, Central Building, Pune.
3 **The Joint Director of Higher Education,**
Amravati Region, Government V.M.V.
Institute premises, Camp, Amravati.
4 **Sant Gadgebaba Amravati University,**
Amravati, through its Registrar, Tapowan
Gate, Camp, Amravati.

Shri. B. G. Kulkarni, Advocate for Petitioner.
Shri. N. S. Rao, AGP for Respondents/State.
Ms B. A. Abhyankar, Advocate for Respondent No.4.

CORAM : **ANIL S. KILOR AND RAJ D. WAKODE, JJ.**

DATE : **2nd FEBRUARY, 2026.**

ORAL JUDGMENT : **(PER : RAJ D. WAKODE, J.)**

1. **Rule.** Rule made returnable forthwith. The writ
petition is heard finally with the consent of the learned counsels
appearing for the parties.

2. The petitioner has approached this Court seeking
challenge to the impugned communication dated 7th August, 2024,

issued by respondent No.1 – State of Maharashtra and the consequential communication dated 26th August, 2024, issued by respondent No.4 – University, whereby respondent No.1 had rejected the proposal for condonation of the upper age limit for regular appointment of the petitioner as a Junior Assistant on compassionate basis in the establishment of respondent No.4 – University.

3. The undisputed facts, leading to the filing of the present writ petition, are as follow:

3.1. The petitioner is the wife of late Shri. Bharatbhushan Kisanrao Bhaware, who was working as a Laboratory Assistant in the establishment of respondent No.4 – University. He was appointed in the year 1995 and served respondent No.4 – University for 18 years, till he died in harness on 30th September, 2013. The family of Shri. Bharatbhushan Kisanrao Bhaware comprised of his wife i.e. the present petitioner, one minor son and one minor daughter. Since the sole bread earner of the family passed away, the petitioner immediately on 7th October, 2013, submitted an application to respondent No.4 seeking appointment on compassionate basis.

3.2. The aforesaid application of the petitioner was forwarded by respondent No.4 – University to respondent No.3 –

the Joint Director of Higher Education, Amravati on 3rd January, 2014, who in turn forwarded it to respondent No.2 – the Director of Higher Education, State of Maharashtra on 5th September, 2014. The respondent No.2, on 10th June, 2015 i.e. after a period of almost nine months, granted permission for appointment of the petitioner as Junior Assistant, Class – III, in the establishment of respondent No.4 – University from the date of issuance of said letter dated 10th June, 2015. Though, the respondent No.2 had granted such permission for appointment of the petitioner as Junior Assistant, the respondent No.4, for the reasons stated in the following paras, appointed the petitioner on fixed pay basis *vide* order dated 25th May, 2016. The aforesaid appointment on fixed pay basis was revised from time to time and even today, the petitioner continues to be in service on fixed pay basis in the establishment of the respondent No.4 – University.

3.3. On 19th March, 2022, the respondent No.4 submitted a proposal to respondent No.3 pointing out that in the year 2015, the compassionate appointment could not be given to the petitioner as no post was available and now when the post became available, the petitioner had crossed the upper age limit of 45 years. Hence, a proposal for condonation of the upper age limit was submitted. The aforesaid proposal for condoning the upper age limit was forwarded

by respondent No.3 to respondent No.2, which was ultimately forwarded to respondent No.1. The respondent No.1, *vide* the impugned communication dated 7th August, 2024, rejected the proposal for relaxation of the upper age limit. Being aggrieved by the same, the petitioner has approached this Court.

4. Shri. B. G. Kulkarni, learned counsel for petitioner, submits that the entitlement of petitioner for grant of appointment on compassionate basis has been accepted by all the respondents. However, the sole ground for denial of regular appointment is that the petitioner has crossed the age of 45 years. He submits that the petitioner had submitted an application for grant of compassionate appointment on 7th October, 2013 i.e. immediately within a period of seven days from the death of her husband on 30th September, 2013, and on that date, she was 43 years 4 months and 7 days old, which was well within the prescribed age limit. It is submitted that due to the delay caused entirely by the respondents in processing the proposal, the petitioner became over-aged, and therefore, she deserves indulgence of this Court.

5. Ms. B. A. Abhyankar, learned counsel for respondent No.4 – University, has filed a reply dated 24th November, 2025. She submits that the entitlement of the petitioner for appointment on the post of Junior Assistant Class – III, on compassionate basis is not

disputed and that the permission for such appointment was granted by respondent No.2 on 10th June, 2015. She further submits that upon the retirement of the other employees, such vacant post is available and respondent No.4 is ready to grant appointment on the regular basis to the petitioner. Accordingly, the respondent No.4 had also submitted the proposal for condonation of the upper age limit to the respondent No.3.

6. After hearing both the learned counsels appearing for the parties, it is evident that the petitioner had immediately applied within a period of seven days from the death of her husband to the respondent No.4 for grant of appointment on compassionate basis. The husband of the petitioner had expired on 30th September, 2013, which is substantiated by the death certificate of the husband of the petitioner dated 11th October, 2013 issued by the Competent Authority, which is at record page No.109. The petitioner's application dated 7th October, 2013, which is at record page No.32 (Annexure – P1). On the date of application, she was 43 years, 4 months, and 7 days old. The aforesaid fact is stated on oath by the petitioner in the memo of petition, which is not disputed by respondent No.4. Thus, she was completely eligible under the Government policy prescribing an upper age limit of 45 years.

7. A perusal of the communications between the respondent Nos.1 to 4 reveals that the period of almost two years was consumed by respondent Nos.2 to 4 for granting approval to the claim of the petitioner for compassionate appointment. The fact further remains that the respondent No.2, *vide* communication dated 10th June, 2015, had granted permission for appointment of the petitioner on compassionate basis and while doing so, had considered the age of the petitioner as on the date of the application. The respondent No.2, *vide* communication dated 10th June, 2015, had directed that the petitioner be appointed as a Junior Assistant on compassionate basis. However, for the reasons stated by the respondent No.4 in its reply, the aforesaid appointment on the regular basis could not be given to the petitioner.

8. Ms. Abhyankar, learned counsel, has invited our attention to her reply wherein, she has stated the circumstances under which, despite the petitioner being eligible and permission having been granted, she could not be appointed on regular basis due to non-availability of a post. She submits that the permission for compassionate appointment was granted by respondent No.2 on 10th June, 2015. However, no vacant post for Junior Assistant was available under the direct recruitment quota and therefore, the petitioner could not be granted regular appointment.

9. It is pertinent to note that in the establishment of the University, a total of 146 posts of Junior Assistant are sanctioned. Pursuant to the Government Resolution dated 14th January, 2016, whereby posts were upgraded from Group-D to Group-C, the promotion quota was increased from 25% to 50%. Consequently, out of the total 146 posts, 73 posts were earmarked for direct recruitment and 73 posts promotion. However, prior to the said Government Resolution, 75% posts i.e. 109 posts, were under the direct recruitment quota and 36 posts were under the promotion quota and candidates had already been appointed against those posts. By virtue of the Government Resolution dated 14th January, 2016, the rescheduling of Junior Assistant posts under the direct recruitment quota resulted in the creation of supernumerary posts, and the vacant posts in the direct recruitment cadre were consequently brought under the promotion quota. As a result, no vacant post remained available under the direct recruitment quota. In view of the above, although the petitioner was otherwise eligible for compassionate appointment, such appointment could not be granted owing to the non-availability of a vacant post.

10. Thus, it is evident from the record that the petitioner could not be granted appointment on a regular basis as no vacant post was available under the direct recruitment quota. However, the

fact remains that the respondent No.4 had appointed the petitioner on daily wage basis under the category of compassionate appointment *vide* office order dated 25th May, 2016, which is at record page No.40 (Annexure – P-6). The aforesaid appointment on daily wage basis was further continued *vide* another office order dated 10th August, 2017, which is at record page No.42 (Annexure – P-7).

11. The petitioner had made a statement on oath that she continues to be in service even today on daily wage basis in the establishment of respondent No.4 – University. Thus, in our considered opinion, the petitioner was already appointed on compassionate basis on 25th May, 2016, though on daily wage basis, as no vacant post was available. The petitioner has been continuously working on the said post in the establishment of respondent No.4 – University. Thus, the provisions as referred to by the respondent No.1 pertaining to the upper age limit would not be applicable in the case of the present petitioner, as held in the impugned communication dated 7th August, 2024. The appointment of the petitioner cannot be construed as a fresh appointment, as the petitioner was already appointed on daily wage basis on 25th May, 2016 and is continued as such in the establishment of respondent No.4. It is only because of a technical

reason that is for want of a vacant post that the petitioner could not be appointed on a regular basis. As soon as a vacant post became available, respondent No.4 on 19th February, 2022, submitted the proposal to respondent No.2 seeking condonation of the upper age limit for the petitioner.

12. In our considered opinion, the petitioner was already appointed on 25th May, 2016, in pursuance of the permission granted by the respondent No.2 on 10th June, 2015, but only on daily wage basis for want of a vacant post. Therefore, respondent No.4 was only required to regularize the services of the petitioner on the post of Junior Assistant, Class – III, from the date on which such post had become vacant. Thus, the impugned communication dated 7th August, 2024 issued by the respondent No.1 on the premise that the petitioner is being appointed a-fresh is unsustainable in the eyes of law and is liable to be quashed and set aside.

13. The petitioner has completed more than ten years of continuous service on daily wage basis on the establishment of respondent No.4 since the year 2016. Shri. Kulkarni, learned counsel for the petitioner, fairly submits that the grievance of the petitioner would be redressed if the services of the petitioner are regularized on the post of Junior Assistant, Class – III, from the date

on which the such post became vacant on the establishment of respondent No.4 – University.

14. Thus, in our considered opinion, respondent No. 4 – University, in compliance with the policy of compassionate appointment, had rightly appointed the present petitioner on a daily wage basis *vide* appointment order dated 25th May, 2016. The proposal submitted by respondent No.4 - University for appointment on compassionate basis was pending with the respondents/authorities and hence, the respondent No.4 – University, in order to provide immediate relief to the bereaved family of its deceased employee, had appointed the present petitioner on a daily-wage basis w.e.f. 25th May, 2016.

15. Respondent No.2 - Director of Higher Education, *vide* its order dated 10th June, 2015, had permitted the respondent No.4 to appoint the petitioner as a Junior Assistant on compassionate basis. However, a regular appointment order could not be issued to the petitioner for want of a vacant post of Junior Assistant in the establishment of respondent No.4. The sole purpose of appointing a family member of deceased employee is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. Thus, in the present case, if the impugned communication dated 7th August,

2024, issued by respondent No.1 - State of Maharashtra, is not quashed and set aside and if respondent No.4 is not permitted to appoint the petitioner as Junior Assistant, Class - III on compassionate grounds, such action would result in putting back the petitioner and her children to the same situation as on 30th September, 2013, i.e., the day on which the sole breadwinner of the family, Shri Bharatbhushan Kisanrao Bhaware, had expired.

16. The Hon'ble Supreme Court of India, while considering the delay at the behest of the employers in deciding applications for compassionate appointment, has observed in the case of Malaya Nanda Sethy vs. State of Orissa, reported in (2024)

15 SCC 766, as follows:

"14. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e. a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

15. We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the High Courts concerned seeking a writ of mandamus for the consideration of their applications. Even after such a

direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

16. If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”

17. In our considered opinion, the present case of the petitioner squarely falls within the description of the situation described by the Hon'ble Supreme Court in *Malaya Nanda Sethy* (supra). The petitioner, on the date of application for grant of compassionate appointment i.e. on 7th October, 2013, was 43 years 4 months and 7 days old and was well within the prescribed upper age limit. It is only because of the delay caused by the respondents in deciding her entitlement and granting permission for appointment on compassionate basis that she has now crossed the

upper age limit of 45 years. It is worth to mention here that the petitioner possesses the qualifications of M.A., B.Ed. and is completely eligible for appointment to a Class - III post. The appointment sought to be made by respondent No.4 is not a backdoor entry and is being made by respondent No.4 after fulfilling the norms and policy laid down by the State governing compassionate appointments. Thus, in the peculiar facts and circumstances of this case and considering the object and purpose of compassionate appointment as enunciated by the Hon'ble Supreme Court of India in several cases, the present writ petition, in our considered opinion, deserves to be allowed.

18. In view of the above, we allow the present writ petition in the following terms:

ORDER

- i) The writ petition is **allowed**.
- ii) The impugned communication dated 7th August, 2024, issued by respondent No.1 and the consequential communication dated 26th August, 2024, issued by respondent No.4, are hereby quashed and set aside.
- iii) The respondent No.4 is directed to grant regular appointment to the petitioner on the post of Junior

Assistant, Class - III on compassionate ground in regular pay scale w.e.f. the date on which such post had become vacant with all consequential benefits.

iv) The aforesaid exercise shall be completed by respondent No.4 within a period of eight weeks from the date of receipt of this judgment and order.

19. The writ petition stands **disposed of**, in the above terms. No order as to costs. Rule accordingly.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)