



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

Writ Petition No.6510 of 2018

Rahul S/o Dhondiram Meshram,
Aged about 27 years,
Occupation – Nil,
R/o Siddharth Square, Frezarpura,
Amravati, Tahsil and District Amravati.

... **Petitioner**

Versus

- 1. State of Maharashtra,**
through its Secretary,
School Education Department,
Mantralaya, Mumbai-400 032.
- 2. Education Officer (Secondary),**
Zilla Parishad, Amravati,
Tahsil and District Amravati.
- 3. Amravati Krucelien Society,**
through its Secretary.
- 4. Holy Cross Convent English High School,**
Amravati, through its Head Mistress.

Nos.3 and 4 R/o Near Irvin Square,
Camp Road, Amravati,
Tahsil and District Amravati.

... **Respondents**

Shri PA. Kadu, Counsel for Petitioner.

Shri A.M. Ghogare, Assistant Government Pleader for Respondent Nos.1 and 2.

Shri S. Zia Quazi, Counsel for Respondent Nos.3 and 4.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 16th JANUARY, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

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

2. The prayer made in this petition is for direction to the respondents to consider the claim of the petitioner for grant of compassionate appointment in Class-IV category on the post of Peon.

3. The facts necessary for deciding the present petition are as under :

(i) The father of the petitioner, viz. Dhondiram, was appointed on 1-9-1986 in Class-IV category on the post of Peon in the respondent No.4-School, which is managed by the respondent No.3-Society. Said Dhondiram expired on 10-8-2012. After the appointment of Dhondiram, his services were duly approved by the respondent No.2-Education Officer and the payments were drawn by the respondent Nos.2, 3 and 4 in favour of Dhondiram from the public exchequer. The respondent No.3 claims that the respondent No.4 is a Minority Institution and enjoys all privileges under Article 30 of the Constitution of India.

(ii) After the death of Dhondiram, the petitioner moved to the respondent Nos.2, 3 and 4 from 8-1-2013 onwards seeking grant of compassionate appointment.

(iii) In spite of repeated requests made by the petitioner, since the prayer for grant of compassionate appointment was not allowed, the petitioner has approached this Court seeking direction to the respondents to issue an order of appointment in Class-IV category on compassion.

4. The submissions of Shri Kadu, learned counsel for the petitioner, are that the petitioner's father was in the employment of the respondent Nos.3 and 4 for a period from 1-9-1986 till his death, i.e. 10-8-2012. It is claimed that the appointment of the father of the petitioner was duly approved by Education Department and his salary was drawn from the public exchequer.

5. According to the learned counsel for the petitioner, on 8-1-2013, 6-1-2014, 8-12-2015 and 21-4-2016, the petitioner had approached the respondent-Management so also the Head Mistress seeking grant of appointment as a Peon in Class-IV category on compassionate basis. Such request of the petitioner was not adhered to.

6. According to the learned counsel for the petitioner, a similarly placed person, like that of the petitioner, was granted compassionate appointment by the respondent Nos.3 and 4 on 1-10-2016. As such, it is clear that the conduct of the respondents is of victimizing the petitioner by acting in a biased and arbitrary manner. According to the learned counsel for the petitioners, the respondents are acting in discriminatory manner.

7. While countering the aforesaid submissions, Shri Quazi, learned counsel for the respondent Nos.3 and 4, submits that the School managed by the respondent No.3, i.e. the respondent No.4, is a Girls' School. It has adopted a policy not to appoint a male person as a Peon. According to him, the respondent Nos.2 and 3 being a Minority Institution, in view of the privileges conferred on such Institution under Article 30 of the Constitution of India, the respondent Nos.1 and 2-Government Authorities or that of the petitioner cannot compel them to grant compassionate appointment. It is the contention of the learned counsel for the respondent Nos.3 and 4 that the petitioner cannot be granted compassionate appointment because his mother is getting family pension. It is also urged that in view of mandate provided under Article 30 of the Constitution of India, particularly autonomy to administer, this Court cannot judicially review its actions.

8. So as to substantiate the aforesaid contentions, the learned counsel for the respondent Nos.3 and 4 has drawn support from the judgment of this Court in the case of *Canossa Society, Mumbai* Versus *Commissioner, Social Welfare, Pune*, reported in **2014 (4) ABR 521**, particularly Paragraphs 14, 21 and 22.

9. As against above, the respondent No.2-Education Officer has filed his reply. He has stated in categorical terms that the petitioner's claim for grant of compassionate appointment needs to be addressed by the respondent No.3-Management and such appointment cannot be said to be causing interference in the day-to-day administration of the respondent No.4-Minority Institution. According to Shri Ghogare, learned Assistant Government Pleader for the respondent Nos.1 and 2, the day-to-day administration of the respondent No.3-

Society and also that of the respondent No.4-School cannot be said to be interrupted by the appointment of the petitioner on compassionate ground. Such appointment by any stretch of imagination cannot be said to be an interference in the standard of education imparted by the respondent No.4-School. As such, it is necessary to direct the respondent Nos.3 and 4 to grant appointment to the petitioner on compassionate ground.

10. At this stage, we gave an option to the respondent Nos.3 and 4 as to whether the respondent Nos.3 and 4 are willing to give an appointment order to the petitioner on compassionate ground. However, the learned counsel for the respondent Nos.3 and 4 is not in a position to make any categorical statement to that effect. As such, we are required to decide the present petition on merits.

11. It is not in dispute that other similarly placed persons were granted compassionate appointment by the respondent Nos.3 and 4 on 1-10-2016. The fact remains that such appointment was granted in spite of the fact that the claim of the petitioner was pending consideration since 8-1-2013. After Dhondiram, the employee of the respondent Nos.3 and 4, has expired, the approach on the part of the respondent Nos.3 and 4 in singling out the petitioner for grant of compassionate appointment does not stand to the scrutiny of Article 14 of the Constitution of India. There is no element of the intelligence differentia pointed out by the learned counsel for the respondent Nos.3 and 4 so as to substantiate the aforesaid act of granting compassionate appointment to the person who has applied subsequent in point of time to that of the petitioner. Such conduct of the respondent Nos.3 and 4 of granting compassionate appointment to a third person

eventually justifies case of acquiescence as by conduct of granting compassionate appointment, the educational standards or merits of the respondent Nos.3 and 4-Minority Institution cannot be said to be interfered with.

12. Merely because the respondent No.3 is a Minority Institution, that by itself will not given it privileges to refuse the employment on compassionate ground, particularly when the petitioner is satisfying all the requisite criteria as per the scheme framed by the State Government, from whom the respondent No.3-Institution is receiving the grant-in-aid. Apart from above, the claim for grant of compassionate appointment is against an unskilled post in Class-IV category.

13. Apart from above, in the case of *T.M.A. Pai Foundation and others* Versus *State of Karnataka and others*, reported in *2002 AIR SCW 4957*, the Apex Court has held that all laws made by the State to regulate the administration of the Educational Institutions and grant of aid would apply to the Minority Educational Institutions also. However, in case if such regulation interferes with overall administrative control of the Management over the staff or abridges or dilutes the rights to establish and administer the Educational Institutions, such regulation to that extent will be inapplicable to the Minority Institutions. The Apex Court in the aforesaid judgment has made apt observations, which read thus :

“(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as

to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(v)...

An institution can have the services of good qualified professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff.”

14. If the Management of the Minority Institution denies its staff an opportunity to achieve the excellence, it is not open for such Minority Institution to complain invasion of fundamental right to administer the Institution. The Apex Court has already held that the scheme of compassionate appointment is brought into force in the interests of the employees who died in harness and so as to meet the financial crisis, it is necessary to implement the scheme of compassionate appointment.

15. In the case in hand, the respondent Nos.3 and 4 by their own conduct by granting appointment to a third person on compassionate ground has set up an example that they are adopting the policy of grant of compassionate appointment

and accordingly has issued an order granting such appointment to a third person without considering and granting a claim of the petitioner.

16. Claim for compassionate appointment in an Educational Institution cannot be said to be a fundamental right. However, the fact remains that if the Educational Institution is adopting the very scheme of grant of compassionate appointment in relation to certain set of employees, it cannot be said that the respondent Nos.3 and 4 can be choosy about implementation of such scheme of grant of compassionate appointment *qua* the case of the petitioner, who is eventually similar situated.

17. In *Sou. Swara Sachin Kulkarni (Kumari Deepa Ashok Kulkarni) Versus Superintending Engineer, Pune Irrigation Project Circle and another*, reported in *2013 SCC OnLine Bom 1549*, the Apex Court had an occasion to consider whether the public employment can be denied to the petitioner therein. The Apex Court in Paragraph 3 of the said judgment observed thus :

“3. It is on this point that we have heard the Counsel and after perusing the writ petition and all the annexures thereto, so also the affidavit placed on record, we are of the opinion that the petitioner’s name could not have been deleted from the list. The compassionate employment is to enable the family to get or tide over a financial crisis. As the petitioner is the only member who can earn and support the mother in her old age, so also the emoluments including the pension of the deceased are inadequate that she was interested in pursuing her claim. The name of the petitioner was therefore duly reflected in a list initially and thereafter a recruitment or appointment exercise was undertaken. The petitioner therefore was wait

listed at Serial No.10. Thus, initially her number was 1070 and which advanced to Serial No.10. We find that the respondents insisted on the petitioner submitting a certificate that she is unmarried, that is by a communication dated 21st May, 2011. The petitioner pointed out that such an insistence is impermissible in law. A letter dated 27th February, 2009 was issued communicating to her that her name has been deleted from the wait list owing to her marriage. If the petitioner's name is to be deleted from the list because of her marriage then insistence on production of a certificate about her marital status in the year 2011 was clearly an exercise visited by non-application of mind. The deletion by letter dated 27th February, 2009 itself is violative of constitutional mandate. We cannot expect a Welfare State to take a stand that a married daughter is in-eligible to apply for compassionate appointment simply because she becomes a member of her husband's family. She cannot be treated as not belonging to her father's family. The deceased was her father. In this case, the deceased has only daughters. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized from the income and the terminal benefits of the deceased. In such circumstances if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is dis-entitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State. The State is obliged to bear in mind the constitutional

mandate and also directive principles of the State Policy. The point raised in this case is covered by the judgment of a Division Bench in Writ Petition No.1284 of 2011 decided on 1.8.2011 and a Judgment of a learned Single Judge in W.P No.6056 of 2010 decided on 26th October, 2010, all of this Court.”

18. If the above law is applied in the case in hand, what can be noticed is that just because the respondent No.3, a Minority Institution, is enjoying the constitutional privileges under Article 30 of the Constitution of India, that by itself will not give the said respondent power to deny public employment (as the said respondent is admitted to grant from the public exchequer) on compassionate ground. We are sensitive to the fact that the said respondent is running a School, mainly for the girls, however the said act of the respondent of managing the School for the girls by itself will not give it privileges to deny employment by adopting the gender-bias approach.

19. The fact remains that the grant of compassionate appointment can be said to be going out of the right conferred by the State Government by virtue of the Resolution dated 31-12-2002 and such other subsequent Government decisions. The stand taken by the respondent Nos.3 and 4 that they are not granting compassionate appointment to a male member, in our opinion, also can be said to be violation of Articles 14 and 16 of the Constitution of India. Article 16 of the Constitution of India provides for equality of opportunity in the matter of public employment. The fact that the respondent No.4-School is admissible to the Government grant itself speaks of there being an availability of the opportunity of employment in an Institution which is governed under the supervisory jurisdiction

of the State Government subject to restrictions/privileges provided under Article 30 of the Constitution of India. As such, what is offered by the respondent Nos.3 and 4 is a public employment which comes within the domain of Article 16 of the Constitution of India.

20. Apart from above, the fact remains that it is not a case of the respondent Nos.3 and 4 that they have not granted employment to any male staff for the purpose of imparting education or on the administrative side. The approach of the respondent Nos.3 and 4 in singling out the case of the petitioner speaks of the intention to deal with the case of the petitioner as per their convenience and that too in a biased and arbitrary manner. That being so, in our opinion, a case for causing interference is made out.

21. That being so, we deem it appropriate to direct the respondent Nos.3 and 4 to issue an appointment order in favour of the petitioner thereby appointing him in Class-IV category on the post of Peon or equivalent post. Let the aforesaid order be issued within a period of eight weeks from today and the compliance to that effect be reported to this Court.

22. We set up the aforesaid time-limit having regard to the fact that the respondent Nos.3 and 4 have conducted themselves in a most discriminatory and arbitrary manner and not only the appointment order to the petitioner is not issued for last about 11 years, but also the other person who was junior to the petitioner was granted compassionate appointment.

23. In case the respondent Nos.3 and 4 fail to issue an appointment order to the petitioner, we direct the respondent No.2 to withhold all the grants of the respondent Nos.3 and 4 which are payable to them until the order is complied with.

24. We further deem it appropriate in the facts and circumstances of the case and particularly having regard to the stand taken by the respondent Nos.3 and 4 to direct the respondent Nos.3 and 4 to pay the costs of Rs.25,000/- (Rupees Twenty Five Thousand) to the Legal Services Authority at District Court, Amravati. The acknowledgment of payment of costs be produced on the record of this Court so as to report the compliance of the same.

25. The petition stands allowed in above terms. Rule accordingly.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)