

(2023) 04 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 3821 Of 2021

Tehmina Murtuza Charke

APPELLANT

Vs

Secretary And Others

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 39

Citation : (2023) 04 BOM CK 0041

Hon'ble Judges : G.S.Patel, J;Neela Gokhale, J

Bench : Division Bench

Advocate : IM Khairdi, Anvil S Kalekar, SS Bhende, Ashok Misal, Sumedh S Modak, Vijay Killedar, Manoj Harit

Final Decision : Allowed

Judgement

Neela Gokhale, J

1. Rule. The 1st Respondent has filed an Affidavit in Reply. The other Respondents have appeared in the matter but have not filed any Affidavit. By consent, Rule made returnable forthwith.

2. Compassionate appointment concept finds its origin in Article 39 of the Directive Principles of State Policy in the Constitution of India. This provision makes a departure from the general provisions for appointment to a post by following a particular procedure of recruitment. The object of making such a benevolent scheme by a State or a Public Sector Undertaking is to ensure that dependents of the deceased are not deprived of means of livelihood and enable the family to combat sudden financial crisis. Hence it is imperative that compassionate appointment needs to be done immediately to redeem the family in distress and it is improper to keep a decision pending for an unreasonable period lest it becomes infructuous.

3. The inaction of the Respondents in the present case has clearly defeated the very object of compassionate appointment provision and compelled the Petitioner

to approach this Court, while fending off the family's hardships; financial and otherwise.

4. The Petitioner's husband Murtuja Ismail Charke (now deceased) was an employee of the 7th Respondent school run by the 1st Respondent Trust. The 1st Respondent is Education Trust. The Respondents No.2, 5 and 6 are the Education Departments/Officers of the State and the 3rd Respondent is the Education Officer of the Solapur Zilla Parishad. The 4th Respondent is the Administrative Officer of school board of Solapur Municipal Corporation. The 8th Respondent is one of the schools run by the 1st Respondent Trust.

5. The Petitioner's husband was an Assistant Teacher in the 7th Respondent school since 14th June 2010 on a vacant and permanent post being appointed after following due process of law. On 16th August 2011, the 2nd Respondent granted approval to his appointment.

6. The Petitioner and her husband were married on 18th November 2012 and have two children. The Petitioner's husband died on 21st April 2019. She applied for a compassionate appointment in any one of the schools being run by the 1st Respondent Trust. The 1st Respondent runs as many as four Educational Institutions in Solapur. The Petitioner is qualified as B.A. and D.Ed. and is eligible for appointment as a teacher in any one of the schools of the 1st Respondent Trust. All the certificates showing the qualifications of the Petitioner are on record.

7. Mr Khairdi, learned Counsel for the Petitioner submits that the Petitioner made several representations to the 1st Respondent to be appointed on compassionate ground since there was no earning member in the family after the untimely demise of her husband. Much to her disappointment, no efforts were made to consider her appointment on compassionate ground.

8. Mr Khairdi brings to our attention the Government Resolution ("GR") dated 31st December 2002 issued by the State which provides and regulates conditions and eligibility of compassionate appointment. We have perused the contents of the GR. Undoubtedly, the Petitioner is eligible to be considered for compassionate appointment after the death of her husband.

9. An Affidavit in Reply is filed on behalf of 1st Respondent. Mr Kalekar, learned Counsel appearing for the 1st Respondent concedes that the 1st Respondent has no objection in appointing the Petitioner on compassionate ground. He admits that there are vacancies in the 8th Respondent primary school. His only contention is that the Headmistress of that school is not willing to accommodate the Petitioner in the school. It appears that there is some dispute in the Management inter-se. However by letter dated 20th August 2019, the 1st Respondent has conveyed to the Petitioner that the Trust is willing to appoint her in the 8th Respondent primary school or Begam Kamrunissa Karigar Girl's High School and Junior College, Solapur, which is also run by the 1st Respondent. The said letter is placed at Exhibit R1.

10. Mr Kalekar, further contends that in contravention of the 1st Respondent's decision, the Headmistress of the 8th Respondent appears to have gone ahead to appoint another teacher in the primary school as is seen from her communication with the 3rd Respondent Education Officer of Zilla Parishad, Solapur. By letter dated 15th March 2021, the Headmistress has sought approval of the Education Officer to appoint another teacher in the primary school. The said letter is at Exhibit R3. The Education Officer has granted approval on the same day. However by letter dated 21st May 2021, the 4th Respondent, i.e., the Administrative Officer of the School Board of the Solapur Municipal Corporation has sought an explanation from the Headmistress herself regarding her authority and the basis on which she had requested approval for appointment of another teacher. The said letter is at Exhibit R5.

11. We have considered the submissions of the Petitioner and the 1st Respondent. It cannot be denied that the Petitioner's husband was an employee of the 1st Respondent at the time of his death. The Petitioner has immediately and without delay sought compassionate appointment. She has two school going children and there is no earning member in the family after her husband's demise. The objection of the Headmistress is completely misplaced and irrelevant.

12. The Petitioner has sought compassionate appointment as she is in dire financial conditions and facing considerable hardships. It is unfortunate that she has been compelled to knock the doors of this Court despite fulfilling the eligibility conditions specified in the GR for appointment on compassionate grounds. It is evident from the Affidavit of the 1st Respondent that there are vacancies in its various schools.

13. In view of the foregoing we have no hesitation in holding that the Petitioner is entitled to be considered for compassionate appointment in place of her deceased husband. Delay on the part of the Authorities of the State to decide the claim for compassionate appointment has undoubtedly frustrated the very object of the scheme of compassionate appointment, which cannot be permitted. We thus direct the 1st Respondent to consider appointing the Petitioner on the available vacancy in the 8th Respondent primary school within a period of two weeks from the date of this order. The Education Department concerned is thereafter directed to grant approval at the earliest, if the Petitioner is so considered and appointed.

14. Rule is made absolute in terms of prayer clauses (b). The Writ Petition is allowed. There will be no order as to costs.