

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

WRIT PETITION NO. 2317 OF 2017

PETITIONER : Vinod s/o Namdeorao Budhbaware,
aged about : 37 years, R/o. Post :
Kanholi Bara, Tq. Hingna, District-
Nagpur.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, School
Education and Sports Department,
Mantralaya, Mumbai, through its
Secretary.

2. Education Officer (Secondary), Zilla
Parishad, Wardha.

3. Shankaranand Education and
Cultural Society, Nagpur, through its
Secretary, C/o. Shankaranand
Vidhyalaly, Kopra, Chanki, Tq. Seloo,
District-Wardha.

4. Shankaranand Vidhyalaly, Kopra,
Chanki, Tq. Seloo, District-Wardha,
through its Head Mistress.

Mr. H.A. Deshpande, Advocate for the Petitioner.
Mr. D.P. Thakare, Addl. G.P. for Respondents No.1 & 2.
Mr. A.A. Naik, Advocate for Respondents No.3 & 4.

CORAM : SANDEEP K. SHINDE AND
MRS. VRUSHALI V. JOSHI, JJ.
RESERVED ON : 6TH DECEMBER, 2022.
PRONOUNCED ON : 23RD DECEMBER, 2022.

ORAL JUDGMENT (Per: Sandeep K. Shinde, J.)

Education Officer (Secondary), Zilla Parishad, Wardha, *vide* order dated 20th July, 2022, declined to grant approval to the Petitioner's appointment on compassionate ground, in view of Policy set out in Government Resolutions dated 31st December, 2002 and 21st September, 2017. Feeling aggrieved thereby, this petition is preferred.

Facts of the case

02] Petitioner's brother, Pundlik Budhbaware was Assistant Teacher in the Respondent No.4-School. While in service, he passed away on 8th April, 2013. He was survived by mother, wife, minor son, brother (Petitioner herein) and married sister. Except married sister, others were unemployed and dependant on deceased-Pundlik. In the circumstances, on 26th April, 2013, Petitioner being dependant, applied for grant of

compassionate appointment. Petitioner's application was endorsed by Vijayalaxmi, widow of deceased-Pundlik. She had expressed her inability to accept employment on compassionate ground, but had consented to appointment of Petitioner in the Respondent No.4-School. Whereupon, the Respondent No.3-Society, appointed the Petitioner, as a Junior Clerk *vide* appointment order dated 30th April, 2013, on probation for a period of two years on a permanent sanctioned post. After which, the Headmistress of the School sought sanction of Education Officer to Petitioner's appointment. The proposal was forwarded on 31st May, 2013 to Education Officer. It was followed by reminder on 30th June, 2014. It appears that even Deputy Director of Education, Nagpur *vide* communication dated 18th September, 2014, directed Education Officer to consider the case of Petitioner for grant of approval. Whereafter, the Education Officer, by impugned order, refused to grant the approval, reason being, compassionate appointment Policy, set out in the Government Resolutions dated 31st December, 2002 and 21st September, 2017, disentitles the Petitioner from seeking compassionate appointment since deceased had left behind widow and minor son.

03] Heard Mr. Deshpande, learned Counsel for the Petitioner, Mr. Thakare, learned Additional Government Pleader for Respondents No.1 and 2, and Mr. Naik, learned Counsel for Respondents No.3 & 4.

04] Questions fall for consideration is, “(i) whether Petitioner’s claim for compassionate appointment on death of his married brother, survived by widow and minor son, was admissible to the Scheme of compassionate appointment, set out in Government Resolutions dated 31st December, 2002 and 21st September, 2017;” AND “(ii) whether exclusion of brother, of married deceased-employee for compassionate appointment, has rational nexus with the purpose and object, sought to be achieved, under the scheme of compassionate appointment.”

05] Before advertng to the arguments of learned Counsel for the respective parties, it may be stated, that appointment of the Petitioner on the compassionate ground, was made only after he had assured to support his brother’s family. Besides, wife of the deceased-Pundlik, consented to it and expressed her inability to accept the employment. Even in the course of the hearing of this

petition, wife of the deceased-Pundlik has filed an affidavit on 5th December, 2022, stating that;

*“1. My husband **Pundalik s/o Namdeorao Budhbaware** while in employment expired on **08/04/2013**. By letter dated **26/04/2013**, I had consented to appoint my brother in law **Vinod Namdeorao Budhbaware** on compassionate ground.*

*2. I hereby again tender my consent to the appointment of my brother in law **Vinod Namdeorao Budhbaware** on compassionate ground. After the demise of my husband, my brother in law, Vinod Namdeorao Budhbaware is looking after and supporting the whole family. I have no objection to the appointment of my brother in law **Vinod Namdeorao Budhbaware** on compassionate ground. I undertake not to claim compassionate appointment since the same is granted to my brother in law **Vinod Namdeorao Budhbaware.**”*

(emphasis supplied)

06] Learned Counsel for the Petitioner has taken us through Policy of compassionate appointment, set out in the Government Resolution dated 31st December, 2002, as revised on 21st September, 2017, to contend that the exclusion of Petitioner (brother of the deceased) from the Scheme of compassionate appointment, was not only unreasonable, but also has no rational nexus with the purpose and object, sought to be achieved. He

would contend that object of compassionate appointment, is not to provide the employment to unemployed among dependants of the employee, who died-in-harness, but to enable the dependants to get some employment, so as to eke out a livelihood for family members of the deceased. He would submit, that object of the Scheme can only be to provide immediate relief to the family members of the deceased-employee for their sustenance. He would urge since widow of deceased expressed her inability to accept the employment on compassionate ground, there was none other than the Petitioner to look after and support the family of the deceased. Even otherwise, Petitioner was qualified to be appointed as a Junior Clerk and he had assured to look after the family of the deceased and, in fact, had given an undertaking to that effect. Learned Counsel would argue, that since 2013, the Petitioner has been looking after the family of the deceased and, therefore, the Petitioner's appointment on compassionate ground was consistent with the object of the Scheme. In support of the submission, learned Counsel would rely on the judgment of this Court in the case of *Swapanali Shekhar Kalbhor and Others Vs. State of Maharashtra, Writ Petition No.7797/2014, decided on*

11th October, 2017 and judgment of the Gauhati High Court in the case of *Jon Mahanta Vs. Oriental Insurance Co. Ltd. and Others, [(2020) 5 GLR 285]*. As such, he would urge that the impugned order, declining to grant the approval to the Petitioner's appointment, runs contrary to object of the Scheme and thus, it be quashed and set aside, and Education Officer be directed to grant the approval.

07] On the other hand, learned Additional Government Pleader would submit, that claim for compassionate appointment is not a matter of right and the exclusion of brother (married deceased) from consideration for appointment on compassionate ground from the Scheme, was neither unjust nor unreasonable nor discriminatory. He would take us through the Policy of the compassionate appointment, set out in Government Resolution dated 21st September, 2017. This Government Resolution refers to earlier Government Resolutions and Annexure or Schedule-A thereto. Clause 4 thereof sets out all those who are eligible for appointment on compassionate ground. Sub-clause 5 of Clause 4 of Annexure-A qualifies, brother of deceased, to seek employment

on compassionate ground only, if the deceased-employee was unmarried and brother was wholly dependant on the deceased. He would, therefore, submit that, since deceased-employee was married and left behind widow and minor son, Petitioner was not eligible to seek appointment on the compassionate ground. Therefore, the order impugned, cannot be faulted with. He would submit, that the facts in the case of *Swapanali Shekhar Kalbhor* (supra) and *Jon Mahanta* (supra), were quite different and, therefore, the decisions in these two cases do not assist or support the Petitioner's claim. He would, therefore, seek dismissal of the petition.

08] A Scheme in question, does not qualify all dependants of the deceased to seek the employment on compassionate ground. The Scheme conveys, if the deceased was married, her/his husband/wife and children would be immediate family members and considered to be 'dependant' entitled to apply for the compassionate appointment. Since a married employee is normally expected to have a spouse and a son or daughter, they are made 'family members' for the purpose of appointment under

the compassionate Scheme. If the deceased-employee is unmarried, then naturally, he would not have any spouse and son or daughter. In such a situation, the brother or sister of such unmarried employee is treated to be as family members of unmarried employee for the purposes of appointment on the compassionate ground, provided they were wholly depending on the deceased employee. Thus, the commonly accepted rationale for including brother and sister as family members of an unmarried employee is the supposition, that an unmarried employee cannot be expected to have spouse or son or daughter who would otherwise have better claim than the brother or sister of the deceased employee. It is for this reason that in respect of an unmarried deceased employee, the benefit of appointment under the die-in-harness scheme has been extended to the brother and sister of the deceased unmarried employee, as held in the case of ***Jon Mahanta*** (supra). Therefore, the exclusion of brother of the deceased-employee from consideration for appointment on the compassionate ground, when brother was married and survived by wife and son, cannot be said to be unreasonable or unjust or discriminatory, as sought to be contended. It is only when the

deceased died unmarried, the brother and sister of the deceased employee would qualify and entitled to seek employment on the compassionate ground, provided they were wholly depending on the unmarried deceased brother. Therefore, the entitlement of the dependants, to claim the employment on the compassionate appointment, has been made on the, 'marital status', of the deceased employee, which cannot be said to be unreasonable or unjust.

09] In the case, at hand, the Petitioner is claiming approval to his appointment on compassionate ground although his brother was married, reason being, at a material time, he was dependant and the wife of the deceased-Pundlik had expressed her inability to accept the employment and consented to appoint the Petitioner on the compassionate ground. In our view, simply, because Petitioner was, said to be unemployed and wholly depending on the deceased brother, but that itself would not entitle him to claim the employment on the compassionate ground, as a matter of right. Reason being, his brother had left behind wife and minor son, which constitutes his family and none

else. Thus, in our view, Scheme of compassionate appointment, as set out in Government Resolutions, which excludes, of the Petitioner, being brother of married deceased-employee, was neither unreasonable nor unjust and, therefore, the order impugned cannot be faulted with. We answer the questions accordingly.

10] Nevertheless, in consideration of the peculiar facts of the case, that the Petitioner was appointed in the year 2013 on the premise that wife of deceased-Pundlik had given her no objection and further his appointment has been continued over a period of 10 years and further though the approval to his appointment was sought in the year 2013 itself, but not granted by the Education Officer till 2022 and above all, since Petitioner is looking after family of deceased since 2013, we think, it would not be appropriate to discontinue the Petitioner's services in the above facts and circumstances. Therefore, in such exceptional and special circumstances though we have concurred with the reasons given by the Education Officer, while declining the approval, in the interest of justice, we direct the Education Officer to grant the

approval to the Petitioner's appointment, as a special case.

11] The rule is made absolute in the above terms. No costs. Petition is disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.) (SANDEEP K. SHINDE, J.)

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