

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5732/2014

Ujjwala W/o Madhukar Kolhe
Age 38 years, Occu-Nil
R/o At & Post. Kolhewadi
Tq.Sangamner, Dist.Ahmednagar

..PETITIONER

Versus

- 1] Sahyadri Bahujan Vidya
Prasarak Samaj, Sangamner,
Dist.Ahmednagar, through its
Secretary.
- 2] Shri Sant Janardan Swami Vidyalyaya,
Kolhewadi, Tq. Sangamner,
District Ahmednagar
Through its Head Master
- 3] Education Officer (Secondary)
Zilla Parishad, Ahmednagar
- 4] The State of Maharashtra
Through Education and
Sports Department,
Mantralaya, Mumbai-32.

(Copy to be served on G.P.
High Court of Bombay, Bench
at Aurangabad.)

.. RESPONDENTS

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Mr.L.V.Sangeet,Adv. for petitioner.
Mr.S.T.Shelke,Adv. for respondent nos.1 and 2.
Mr.A.S.Shinde,AGP for respondent nos.3 and 4.

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**CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA,JJ.**

DATE : 9th February, 2015.

ORAL JUDGMENT [PER S.V.GANGAPURWALA,J.] :

Rule. Rule returnable forthwith. With consent of parties, Petition is taken up for final hearing.

2] Mr.Sangeet, learned counsel for petitioner submits that the respondent institution has forwarded the proposal to the Education Officer seeking approval to the appointment of the petitioner on compassionate ground as a Junior Clerk. The said proposal is rejected on the ground that at the relevant time, there was ban on recruitments. Learned counsel submits that as the appointment was on compassionate ground, even issue of recruitment would not arise. Even Government Resolution dated 2/5/2012 would not come in the way of the present petitioner.

3] Mr.Shelke, learned counsel submits that the petitioner was appointed on compassionate ground and pursuant to the appointment proposal was forwarded. Petitioner is the only person appointed as Junior Clerk as per the seniority.

4] Mr.Shinde, learned AGP submits that the Government Resolution dated 2/5/2012 does not make any exception with regard to appointment on compassionate ground. In view of the fact that at the relevant time, there was ban on recruitment the

order has been rightly passed.

5] We have considered submissions canvassed by learned counsel for respective parties. It is not the case that more number of candidates have been filled in by the institution on the basis of compassionate appointment. It is submitted that the petitioner is the only candidate appointed on compassionate ground amongst the whole staff.

6] For a person to be appointed on compassionate ground, one need not go through the selection process. As the petitioner is the only person appointed on compassionate ground, even a person from surplus category could not have been absorbed in his place.

7] In light of the above, impugned order is quashed and set aside. The Education Officer shall consider the proposal of the petitioner seeking approval to the appointment as the Junior Clerk on compassionate ground on its own merits and shall not reject it on the ground that at the relevant time, there was ban on recruitment. The said proposal shall be considered expeditiously preferably within four months. Pursuant to the rejection of the approval, it appears that the petitioner is not allotted any work and is terminated.

8] As the order cancelling approval itself is set aside, the petitioner shall be allowed to rejoin the duty as it is submitted that the petitioner can be accommodated. Order of termination is quashed and set aside. However, the petitioner will not be entitled for backwages that is from the date of termination till the date of

this order but the said service can be counted for the purpose of continuity.

9] Rule accordingly made absolute. No costs.

V.L.ACHLIYA,J.

S.V.GANGAPURWALA,J.

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