

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 10571 OF 2014**

RONAK NARESH PADVI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Magare Ajaykumar G.

AGP for Respondent/State : Mr. G.R. Ingole

Advocate for Respondent no.4 : Mr. Brahme Shailesh P.

...

CORAM : S.S. SHINDE & P.R. BORA, JJ.**Dated: April 06, 2015**

...

PER COURT :-

This Petition is filed with following prayers:-

“C. By writ of Mandamus or any other appropriate writ, order or direction in the like nature, the respondents State Authorities more particularly to the respondent No.3, i.e. Joint Director, Higher Education, Jalgaon Region, Jalgaon, may please be directed to consider the claim of the petitioner for appointing him on compassionate ground, in the place of his deceased father in class IV category in the respondent No.4 college.

D. By writ of Mandamus or any other appropriate writ, order or direction in the like

nature, the impugned communications dated 13/07/2012 and 05/10/2012 made by the respondent No.3 to the respondent No.4 college, may kindly be declared as null and void.”

2. It is the case of the petitioner that, the petitioner is a duly qualified person, who has completed his 12th standard in Arts faculty. The petitioner's father, who was in service of Respondent No.4 – college as Laboratory Assistant died on 16th August, 2008. The mother of the petitioner submitted application in the office of Tahsildar, Taloda for legal heirship/succession certificate on 11th September, 2008. After getting the said certificate, the mother of petitioner filed the application on 29th July, 2009 with Respondent No.4 – college for appointment on compassionate ground. The said college on the same day forwarded the proposal to Respondent No.3. Respondent No.3, by its letter dated 11th December, 2009, directed Respondent No.4 – college to furnish the details, as to why the pension and other consequential benefits of deceased Naresh Vasant Padvi has not been granted to his family. It is the further case of the petitioner that, since at the relevant time, the brother of the petitioner namely Rahul Naresh Padvi, had gone to Gujarat State for employment, therefore, immediately, the mother of the petitioner had submitted another application to Respondent No.4 College, requesting to appoint the present petitioner on

compassionate ground. However, till 1st April, 2012 no steps have been taken by Respondent No.3 on the proposal forwarded by Respondent No.4, therefore, petitioner submitted another application on 1st April, 2012. Respondent No.4 college by its communication outward No. 144 dated 23.06.2012 has submitted fresh proposal to Respondent No.3. Respondent No.3 by impugned communication was pleased to return the said proposal on the ground that, it is not submitted within one year from the date of death of deceased Naresh Vasant Padvi. Thereafter Respondent No.4 college by its letter dated 10th August, 2012 informed the mother of the petitioner about returning of proposal by Respondent No.4 to the College. After receiving the communication from the College, another application was filed on 11th August, 2012 to the office of Respondent No.3 as well as to Respondent No.4 college. Again fresh proposal was forwarded by Respondent No.4 in continuation of earlier proposal of the petitioner. However, the same was also rejected on 5th October, 2012. Hence this Petition.

3. The learned counsel appearing for the petitioner invited our attention to the contents of the letter written by the Incharge Principal of Arts & Commerce College Trust's, C.H. Chaudhari Arts, S.G. Patel Commerce & Babaji B.J. Patel Science College,

Taloda, Tq. Taloda (hereinafter referred to as “the said college” for sake of brevity) to the Joint Director, Higher Education, Jalgaon Division, Jalgaon requesting therein to grant permission to appoint the petitioner on compassionate ground. The said letter is written on 29th July, 2009, wherein reference to application filed by mother of the petitioner is mentioned. Therefore, the counsel appearing for the petitioner submits that, the application filed by the mother of the petitioner, praying therein for appointment on compassionate ground, was well within limitation. However, the same was turned down on totally unsustainable reasons and thereafter Respondent No.3 rejected another application on the ground that, the same is not within limitation. The learned counsel appearing for the petitioner also invited our attention to the affidavit in reply filed by Respondent No.4 – College stating that, there is vacant post of peon in the college. Therefore, he submits that, the Petition may be allowed.

4. On the other hand, the learned Additional Government Pleader appearing for Respondent Nos. 1 to 3 relying upon the reasons stated in the impugned communication, would submits that, the Petition is devoid of any merits and same is liable to be dismissed.

5. We have given careful consideration to the

submissions advanced by the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for Respondent Nos. 1 to 3 and also perused the pleadings/grounds taken in the Petition, annexures thereto and reply filed by Respondent No.4. Upon careful perusal of the pleadings in the Petition, annexures thereto, more particularly, the letter at Exhibit 'B' dated 29.07.2009 sent by Incharge Principal of the said college to the Deputy Director, Higher Education, Jalgaon Division, Jalgaon and the letter at Exhibit 'C' dated 11.12.2009 sent by Deputy Director, Higher Education, Jalgaon Division, Jalgaon to the Principal of said College, it is abundantly clear that, application filed by the mother of the petitioner was within the period of one year from the death of father of the petitioner. The petitioner's father died on 16th August, 2008 and application was filed by the mother of the petitioner on 29th July, 2009 and was forwarded by Respondent No.4 – College on the same day. Therefore, the reasons assigned by Respondent No.3 in the impugned communication cannot be sustained.

6. The para 7 and 8 of the affidavit in reply filed by Respondent No.4 read as under :-

“7. I say that the management does not have

objection for appointing the petitioner to the post of peon as per dying in harness scheme. However, it is necessary to receive appropriate permission from the respondent no.3 which is approving and sanctioning authority. There is a vacancy of post of peon to accommodate the petitioner. The relevant papers and information was already forwarded to the respondent no.3.

8. I say that as per the approved staff schedule there was vacancy for last two to three years to accommodate the petitioner. The staff approvals for the year 2008-2009, 2010-2011, 2011-2012, 2012-2013 are produced herewith and marked as Exhibit 'R-2' Colly. Though, two posts of peons are shown to be vacant for the year 2012-2013, one post is occupied by accommodation of surplus employee Mr. Jagan Ukha Marathe. Presently only one post is vacant."

7. In the light of the affidavit in reply filed by Respondent No.4, in particular, paras 7 and 8 thereof, we direct Respondent No.3 to consider the prayer of the petitioner and also request of Respondent No.4 for appointing the petitioner on compassionate ground and pass necessary orders, as expeditiously as possible, however in any case, on or before 15th May, 2015.

8. The Petition stands disposed of in the above terms.

9. Parties to act upon an authenticated copy of this order.

10. The learned Additional Government Pleader assures this Court that, office of Government Pleader will communicate this order to Respondent No.3 by fastest mode of communication.

(**P.R. BORA, J.**)

(**S.S. SHINDE, J.**)

...

SGA/-