

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11225 OF 2014

Lakhan s/o. Manik Rathod,
Age: 21 Years, Occ: Service,
R/o. At Post Pimpalgaon – Kajale Tanda,
Tq. Jintoor, Dist. Parbhani

PETITIONER

VERSUS

- 1] The State of Maharashtra,
[Copy to be served through the
Govt. Pleader Office High Court
Bench at Aurangabad].
Through Secretary
Social Welfare Department,
Mantralaya, Mumbai
- 2] The Regional Deputy Commissioner,
Social Welfare Department,
Aurangabad
- 3] The Assistant Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar Social Justice Bhavan,
Parbhani
- 4] Iswar Sinha Jeevan Jagruti Mandal,
Sohamgad, Tq. Jintoor, Dist. Parbhani,
Through its Secretary
- 5] Sant Iswar Sinha Madhyamik Aashram Shala,
Sohamgad, Tq. Jintoor, Dist. Parbhani,
Through its Head Master

RESPONDENTS

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Mr. Ajay S. Deshpande, Advocate for the Petitioner
Mr. A.D.Pawar, Advocate for the Respondent Nos.4 & 5
Mr. M.M.Nerlikar, AGP for the Respondent – State

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 28.04.2015

Pronounced on: 30.04.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith heard with the consent of the parties.

3] This Petition is filed with following prayer:

B] The respondent No.2 & 3 may kindly be directed to accord approval to the appointment of the petitioner on compassionate ground, in place of his father late Shri Manik Meherban Rathod to the post of Clerk in respondent No.5 School run by respondent No.4 made under order dated 7.9.2012 at Exh.'D' by quashing and setting aside the communication of R-3 dated 8/9.9.2014 at Exh.'L.

The relevant facts for the purpose of deciding present Writ Petition, as disclosed in the Memo of the Petition, are as under:

4] The Petitioner is holding qualification as H.S.C. D.Ed. and belongs to '*Banjara*' community, which comes

under VJ Category. Petitioner's father Shri Manik Meherban Rathod was working in Respondent No.5 School run by Respondent No.4, died in harness due to cardiac arrest on 24.03.2012. He was working as Clerk in Respondent No.5 School. Petitioner's father late Shri Manik Meherban Rathod was the sole bread earner in the family and due to his death, there was none who could support for livelihood of the family. Therefore, the Petitioner submitted an application to the Respondent No.4 on 15.04.2012 for appointing him on compassionate ground in place of his father. Upon applying for permission to appoint the petitioner on compassionate ground in place of his deceased Father, the Respondent No.4 unanimously resolved to appoint the petitioner on compassionate ground, and accordingly, on 07.09.2012 an appointment order came to be issued. Since September, 2012, the petitioner is working as Clerk in the Respondent No.5 School.

5] The Respondent No.5 forwarded a proposal to the Respondent No.3 on 24.09.2012 requesting to accord approval to the appointment of the Petitioner on compassionate ground. On 11.09.2013, the respondent

No.5 has issued a communication to the Respondent No.3, seeking approval to the appointment of the petitioner on compassionate ground. Thereafter, on 14.01.2013, the respondent No.3 forwarded a proposal for approval to the appointment of the petitioner to the respondent No.2. Again on 04.10.2013, the respondent No.3 issued a communication to the respondent No.2, seeking approval to the appointment of the petitioner on compassionate ground.

6] In compliance of the communication of the respondent No.2, the Respondent No.3 addressed a communication to the Respondent No.5 on 05.02.2014, and requested to comply with the deficiencies in the proposal for approval of the appointment of the petitioner. On 05.08.2014, the respondent No.3 addressed a communication to the Respondent No.2 and forwarded compliance, submitted by the Respondent No.5 and recommended for according approval to the appointment of the petitioner on compassionate ground.

7] On the basis of some communication of the Respondent No.2, on 08.09.2014 the Respondent No.3

conveyed Respondent No.4 that, one Shri R.B.Rathod be absorbed in the vacancy created due to death of petitioner's father and instructed to appoint the petitioner on a suitable post and to submit the compliance report. As there is no post vacant, inevitably it would result in ouster of the petitioner from service, and accordingly, the Respondent No.5 has prevented the petitioner from putting his signature on the muster Roll from 20.09.2014. Prior thereto, on 18.09.2014, petitioner had represented respondent No.3 for approving his proposal for appointment by getting the same completed and till then surplus employee may not be absorbed in his place. On 27.11.2014, being aggrieved by declining to approve petitioner's appointment on compassionate ground, by keeping his proposal pending for more than two years, and depriving the petitioner from his livelihood, petitioner seeks to approach this Hon'ble Court for appropriate orders to sub-serve the ends of justice.

8] The learned counsel appearing for the petitioner submits that, the respondent No.4 resolved to appoint the petitioner on compassionate ground in place of his father late Shri Manik Meherban Rathod. Accordingly, a

Resolution was passed. In pursuant to the Resolution passed by the Respondent No.4, an appointment order was issued on 07.09.2012. The petitioner, in reciprocation of the appointment order, joined the services on 10.09.2012. The Respondent No.5 forwarded a proposal to the Respondent No.3 on 24th September, 2014, inter alia, requesting to accord approval to the appointment of the petitioner on compassionate ground. It is submitted that, respondent No.3 forwarded said proposal to the Respondent No.2, seeking approval to the appointment of the petitioner by categorically stating that, in the entire Parbhani District, so far no proposal has been submitted for appointment on compassionate ground in VJNT Aided Ashram Schools. It is submitted that, the respondent authorities did not grant approval to the appointment of the petitioner on the ground that, no prior permission was taken from the respondent authorities, and secondly, the teacher namely Shri R.B.Rathod, who has been rendered surplus, be absorbed with retrospective effect from 25th March, 2012. It is submitted that, though comprehensive representation was submitted by the petitioner to the respondent No.3 on 8/9.9.2014, stating therein hardships faced by the petitioner's family, however, the respondents

have not favourably considered the said representation. It is submitted that, the petitioner has devoted services in respondent No.5 School since September, 2012, on the basis of the appointment made on compassionate grounds by the respondent No.4, in contemplation of approval to be accorded by the Respondent No.2 and 3, which was unnecessarily kept pending for more than two years and now it is sought to be rejected under the impugned communication dated 8/9.9.2014. It is submitted that, the Respondent No.5 has stopped his signatures on the muster roll from 20th October, 2014, presumably upon receipt of the communication of the respondent No.3. It is submitted that, the petitioner would be deprived of his livelihood especially on the background that, there is no likelihood of occurrence of vacancy in respondent No.5 School in near future. Therefore, the learned counsel appearing for the petitioner relying upon the pleadings in the Petition and annexure thereto, submits that, Petition may be allowed.

9] The respondent Nos. 1 to 3 have filed affidavit in reply. It is submitted in the affidavit in reply that, the petitioner was appointed as a Junior Clerk in the Respondent No.5 School. It is submitted that, Shri

R.B.Rathod, who was earlier declared as surplus in the Primary Section of the Respondent No.4 Institution, School should be absorbed on the post that fell vacant due to death of the petitioner's father Shri Manik Meherban Rathod. It is submitted that, since Mr.R.B.Rathod was declared as surplus, the Respondent No.2 has rightly directed to absorb him.

10] The respondent No.1 has also filed affidavit in reply, stating therein that, at present, there is no vacancy of Class-III or Class-IV posts in the Primary as well as Secondary Section of the Respondent No.4 Management. One post of B.Sc. B.Ed. teacher from S.T. Category is vacant, but the petitioner does not possess said qualification. There is no other post of Class-III and Class-IV category available with respondent No.4 Management. It is stated that, already the services of the petitioner are discontinued with effect from 20th October, 2014.

11] We have heard the learned counsel appearing for the petitioner, learned AGP appearing for the Respondent – State, and the learned counsel appearing for the Respondent No.1, with their able assistance, perused

the grounds taken in the Petition, annexure thereto, reply filed by the respective respondents, and we are of the opinion that, the Petition deserves to be allowed in part for the reasons set out herein below.

During the course of hearing, the learned counsel appearing for the Petitioner submitted that, the petitioner has passed typing test in the Year 2013, and now he possessed requisite qualification necessary for the appointment of the post of Junior Clerk. It is also submitted that, petitioner is H.Sc. D.Ed., and therefore, eligible to be appointed as an Assistant Teacher in the Primary Section of the School. The afore-mentioned facts stated during the course of hearing are not disputed by the learned counsel appearing for the respondents. It is not in dispute that, respondent management passed a Resolution, and the petitioner was appointed. As a matter of fact, he joined the post of Junior Clerk on 10th September, 2012, and he worked till 20th October, 2014. It is also not in dispute that, though the petitioner had worked for about 2 years, he is not paid salary. It is also not in dispute that, due to death of the petitioner's father, a vacancy arose in the respondent No.5 Institution. However, it is also equally true that, one

Mr. R.B. Rathod was declared surplus, and therefore, his absorption was also necessary. Therefore, we do not find any fault with the respondent No.2, giving directions to absorb Shri R.B.Rathod as Junior Clerk, and as a matter of fact, on vacancy which arose due to death of the father of the petitioner. As on today, there is no vacant post, either in Class-III or Class-IV category, available in the Respondent No.5 Institution.

12] Upon considering the material placed on record, the petitioner possesses requisite qualification for the appointment on Class-IV or Class-III post. It is also fact that, the petitioner was appointed as a Junior Clerk, and he has served for more than 2 years in the Respondent Nos. 4 and 5.

13] In that view of the matter, the ends of justice would meet in case the respondent Nos. 4 and 5 are directed to appoint the petitioner on first vacancy, which would arise in future either in Class-III or Class-IV category. Accordingly, in the peculiar facts and circumstances of this case, we direct the respondent Nos. 4 and 5 to appoint the petitioner on first vacancy, which would arise in future in

Class-III or Class-IV posts. After such appointment is made, the respondent Nos. 1 to 3 shall grant approval to the appointment of the petitioner without raising the ground of filling in backlog, roaster point or absorption of surplus teachers, since the petitioner is facing hardships, and he had worked for more than 2 years as a Junior Clerk without any salary.

14] Accordingly, Rule is made absolute in above terms. Petition is partly allowed, and stands disposed of.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

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DDC