

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

WRIT PETITION NO. 10227 OF 2013

**SHIVANAND DATTATRAY MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. B. S. Deshmukh
A.G.P. for respondent Nos. 1 and 2 : Mr. K. J. Ghute Patil
Advocate for respondent Nos. 3 to 5 : Mr. V. D. Sapkal

...
**CORAM : S.V.GANGAPURWALA & V.K.JADHAV, JJ.
DATED : JULY 20, 2015.**

PER COURT :-

1. Mr. Deshmukh, the learned counsel for the petitioner states that the father of the petitioner was serving as Naik with the respondent No. 4 School. The same was also approved by respondent No. 2.

2. The learned counsel submits that the father of the petitioner died on 22.10.2013 while in service. The petitioner filed application for appointment on compassionate ground on 26.10.2013. No decision is taken by the institution on his application. On the contrary, respondent Nos. 3 and 4 issued an advertisement on 30.11.2013 seeking to appoint a person as Peon from open category. The learned counsel submits that when the petitioner already had applied for appointment on compassionate ground, the said advertisement could not have been issued. Only because the advertisement is issued, the petitioner had participated in the selection process. However, that would not negate the claim of the petitioner. The learned counsel submits that, even advertisement issued was without

permission from the respondent authorities. According to the learned counsel, even the respondent authorities issued letter stating that appointment of respondent No. 5 is illegal. Approval is not granted to the appointment of respondent No. 5. The learned counsel submits that the case put forth by respondent Nos. 3 and 4, regarding various persons getting compassionate appointment in the family of the petitioner, is erroneous. The father of the petitioner was appointed by following due selection process. The learned counsel further submits that the institution has encroached upon the rights of the petitioner and has unduly favoured respondent No. 5 and appointed respondent No. 5 on the vacant post caused due to the death of his father.

3. Mr. Sapkal, the learned counsel for respondent Nos. 3 to 5 submits that the petitioner had participated in the selection process pursuant to the advertisement dated 30.11.2013. Having failed in the selection process, the petitioner has now challenged the selection of respondent No. 5. Respondent No. 5 was working on non-grant post earlier and is also physically handicapped and is selected after following due selection process. The learned counsel submits that the petitioner, after having participated in the selection process, now cannot challenge the said process nor can he claim appointment on compassionate ground. The learned counsel relies on the judgment of the Apex Court in the case of ***Ramesh Chandra Shah and others vs. Anil Joshi and others, reported in AIR 2013 SC 1613***. The learned counsel further submits that, seeking appointment on compassionate ground is not a right. Various other

aspects are also required to be considered. The mother of the petitioner is getting family pension on the death of the father of the petitioner. The family of the petitioner has got agricultural properties, so also, the elder brother of the petitioner is employed with Varroc Engineering Company. The learned counsel further relies on the Judgment of the Apex Court in ***Civil Appeal No. 6348 of 2013 i.e. MGB Gramin Bank vs. Chakrawarti Singh delivered on 07.08.2013.*** Mr. Deshmukh, the learned counsel for the petitioner refutes the said argument of Mr. Sapkal and states that the family of the petitioner does not own agricultural land, so also, the brother of the petitioner is unemployed and the mother of the petitioner is not getting any amount towards family pension as on the date.

4. We have heard the learned AGP also.

5. It is not disputed that the petitioner had participated in the selection process, however, could not be selected. The respondent institution was also duty bound to pass order on the application filed by the petitioner seeking appointment on compassionate ground. The institution failed to do so.

6. We would have appreciated the case put forth by the petitioner, had the petitioner challenged the advertisement before participating in the selection process. No doubt, appointment on compassionate ground is in pursuance of the scheme of the Government. The Apex Court has also held that appointment on compassionate ground may not be claimed as a matter of right and may not claim the same axiomatically. The application

has to be considered in accordance with the scheme. The Government Resolution dated 31.12.2002 lays down the scheme for appointment on compassionate ground. As the petitioner has participated in the selection process, we are not inclined to set aside the said appointment of respondent No. 5. However, considering the fact that the petitioner had also approached the respondent institution in time seeking appointment on compassionate ground, equities will have to be adjusted and balance will have to be maintained. The scheme, i.e. the Government Resolution dated 31.12.2002 also provides that, in case there is no vacancy available with the institution for appointing a person, a list can be maintained by respondent No. 2 and such a person can be accommodated even in some other institution. Considering the above, we pass the following order:

O R D E R

- I. The respondent No. 2 shall place the petitioner in the list of candidates to be appointed on compassionate ground and if there is no vacancy available with respondent Nos. 3 and 4, then, respondent No. 2 shall, as per the seniority list, pass orders with regard to the appointment of the petitioner in some other institution in the District.
- II. The petitioner shall file an application with respondents and the respondents shall act immediately upon the same.
- III. The writ petition is disposed of with aforesaid observations and directions. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)