

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

WRIT PETITION NO. 3664 OF 2016

DAYANAND SHIKSHAN PRASARAK MANDAL THROUGH
IT'S SECRETARY AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr V J Dhage
AGP for Respondents 1,2 : Mr S B Yawalkar

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CORAM : S.S. SHINDE & V.K. JADHAV, JJ.

Dated: July 13, 2016

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PER COURT :-

1. Heard learned counsel appearing for the petitioners and learned AGP appearing for the respondents State.

2. It appears that, the Education Officer passed the impugned order observing that since there is no vacant post, no approval can be granted to the appointment of the petitioner, as a Peon.

3. Learned counsel appearing for the petitioners submits that, in fact, the respondent Education Officer (Secondary), Zilla Parishad, Latur ought to have kept in view the position of vacancy as on the date when the

petitioner was appointed as a Peon. He submits that, when the petitioner was appointed, there was clear vacancy and, thereafter, also two posts became vacant due to retirement of the employees on attaining the age of superannuation. In support of this contention that in the similar facts and circumstances, this Court directed the Education Officer to consider the staffing pattern as on the date the employees appointed and places reliance on a judgment in case of **Manisha wd/o Manmath Swami Vs. The State of Maharashtra and others** passed in Writ Petition No.4631/2015 dated 7.1.2016. Therefore, he submits that, respondent Education Officer be directed to re-consider the proposal submitted by the petitioners for granting the approval to the appointment to the petitioner no.3.

4. On the other hand, learned AGP relying upon the contents of the impugned communication submits that, the view taken by the Education Officer (Secondary), Latur is correct, therefore, this writ petition may not be entertained.

5. We have considered the submissions of the counsel appearing for the petitioners and the learned AGP appearing for the Respondent State.

6. It appears that husband of petitioner no.3 by name Shankar s/o Appanath Bhandare died on 1.1.2007. As it is clear from the pleadings in paragraph No.6 of the petition that services of petitioner no.3's husband w.e.f. 26.6.1993 to 1.1.2007 was continuous. Petitioner No.3 being wife of said deceased employee, applied for appointment on compassionate ground. The petitioners no.1 and 2 keeping in view the position of vacancy as was available on the date of appointment of the petitioner, appointed the petitioner on the post of Peon. The petitioner nos. 1 and 2 forwarded the proposal to the Education Officer for granting approval to the appointment of the petitioner as Peon on 16.12.2011. Therefore, the respondent Education Officer ought to have kept in view the position of vacancy as was available on the date of appointment of the petitioner on compassionate ground.

7. In that view of the matter, in our considered view, the impugned communication deserves to be quashed and set aside and the same is accordingly quashed and set aside. Respondent No.2-Education Officer (Secondary), Zilla Parishad, Latur, is hereby directed to re-consider the proposal for granting approval to the appointment of the petitioner No.3 on the post of Peon, keeping in view the staffing pattern as on the date when petitioner no.3 was appointed and then take decision as expeditiously as possible, preferably within SIX WEEKS from today. Needless to observe that, Education Officer shall not raise the same objections/grounds which are raised in the impugned communication while considering the representation of the petitioner afresh. Petition is partly allowed and same stands disposed of. No costs.

8. Parties to act on an authenticated copy of this order.

(V.K. JADHAV, J.)

(S.S. SHINDE, J.)

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aaa/-