

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

WRIT PETITION NO. 9785 OF 2015

Mandakini Krishnarao Sable .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Santosh S. Jadhavar, Advocate for the Petitioner.
Mrs. M. A. Deshpande, Addl.G.P. for Respondent Nos. 1, 2 and 4.
Shri Suhas R. Shirsat, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 28TH SEPTEMBER, 2016.

PER COURT :

. Mr. Jadhavar, the learned counsel for the petitioner submits that, the husband of the petitioner was working as Shikshan Sevak with the respondent No. 3/School. He was terminated. The same was challenged before the School Tribunal. The appeal was allowed and during the pendency of proceedings challenging his termination husband of the petitioner expired. The petitioner applied for appointment on compassionate ground. The petitioner was appointed as a peon on 29.02.2008 with the respondent No. 3. The proposal was forwarded by the respondent No. 3 seeking approval to the appointment of the petitioner as a peon. The same is rejected.

2. Mr. Jadhavar, the learned counsel for the petitioner states that, the petitioner thereafter approached the Deputy Director of Education. The Deputy Director of Education thereafter directed the Education Officer to comply with the directions of the grievance committee. The petitioner made many representations, but to no avail. Mr. Jadhavar, the learned counsel for the petitioner further states that, the petitioner was appointed on a sanctioned post. The sanstha which runs, the respondent No. 3 school also runs two other schools i. e. total three schools. In the respondent No. 3 school two posts of peon and one post of naik are sanctioned in the year 2007-2008 and the said sanctioned staffing pattern continued for further years in all the three schools run by the same management. Two posts of peon and one post of naik are sanctioned i. e. six posts of peon and three posts of naik are sanctioned. The learned counsel submits that, one Mr. More and Sonwane who were working as naik in the schools run by the management were due for retirement on attaining age of superannuation on 31.01.2008 and 28.02.2008. Two persons working as peon were thereafter accommodated on the post of naik. As such two posts of peon became vacant and the petitioner was appointed on the said open vacant post. The learned counsel submits that, in view of the same, there was no impediment for the Education Officer to grant approval to the appointment of the petitioner.

3. Mrs. Deshpande, the learned Additional Government Pleader submits that, the person who was promoted as naik is not granted approval. As such, it cannot be said that the post of peon is vacant. According to the learned A. G. P. as there is one excess peon appointed in each of the three schools run by the same management, the approval certainly could not have been given to the appointment of the petitioner as a peon. According to the learned A. G. P. on 26.02.2013, the Deputy Director of Education has again conducted hearing and by coming to the conclusion that, there is no vacancy in the non teaching staff in the school and when the vacancy would arise in the non teaching post, the petitioner can be accommodated on the said post. The learned A. G. P. states that, even the post of naik and parichar were filled in excess than the sanctioned posts.

4. We have considered the submissions canvassed by learned counsel for respective parties. As per the staffing pattern produced on record, it would appear that, two posts of peon and one post of naik is sanctioned in the year 2007-2008 and for further years. It is accepted by the learned counsel for either of the parties that, the post of naik and peon is in the same cadre. The same qualification is required for both posts. Two persons who were working as naik in respective schools run by the same management have retired on attaining age of superannuation. The persons who were working as peon were accommodated on

the post of naik and on the vacant post of peon the petitioner was accommodated. This aspect does not appear to have been considered when the order was passed by the Education Officer and the Deputy Director of Education while passing subsequent orders. The same will have to be considered while considering proposal for grant of approval to the appointment of the petitioner.

5. In the result, the impugned order rejecting approval to the appointment of the petitioner is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner after considering aforesaid facts on its own merits. The parties may represent themselves before the concerned Education Officer on 10th October, 2016. The Education Officer shall take decision upon the proposal afresh after considering all the relevant aspects of the matter that may be pointed out by the petitioner and management expeditiously and preferably within a period of three (03) months from the date of appearance of the parties. The writ petition is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]