

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

Writ Petition No. 10296 of 2015

District : Aurangabad

Shubham s/o. Papanna Darelu,
Age : 21 years,
Occupation : Education,
Plot No.36, Gulmohor Colony,
Behind 10, Chinar Garden,
Nashik High Way Road,
Padegaon, Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
2. The Chief Executive Officer,
Zillha Parishad, Aurangabad.
3. The Executive Engineer,
Zillha Parishad, Aurangabad.
4. The Block Development Officer,
Panchayat Samittee, Paithan,
Taluka : Paithan,
District : Aurangabad.

.. Respondents.

.....

Mr. Bipinchandra K. Patil, Advocate, for the petitioner.

*Mr. B.V. Virdhe, Asst. Government Pleader, for
respondent no.1.*

*Mr. Zareefkhan Y. Pathan, Advocate, for respondent
nos.2 and 3.*

Respondent no.4 served (Absent).

.....

**CORAM : S.S. SHINDE &
SANGITRAO S.PATIL, JJ.**

**Date of reserving
the judgment : 4th April 2016.**

**Date of pronouncing
the judgment : 18th April 2016.**

JUDGMENT *(Per Sangitrao S. Patil, J.):*

Heard the learned Advocate appearing for the petitioner, the learned Asst. Government Pleader appearing for respondent no.1 and the learned Advocate appearing for respondent nos.2 and 3. None present for respondent no.4 though served.

2. Rule. Rule made returnable forthwith. With consent of the parties, the Writ Petition is heard finally.

3. The petitioner has challenged the legality and correctness of the communication dated 07.07.2015 issued by respondent no.3, whereby his claim for appointment on compassionate ground came to be rejected. He has further sought a direction to respondent no.2 for appointing him on compassionate ground.

4. The father of the petitioner, namely, Papanna Rajanna Darelu, was a permanent employee of respondent no.2. He was working as Hand Pump Assistant. He died in harness on 20.02.2011. The petitioner applied for being appointed on compassionate ground after the demise of his father, on 31.07.2012, 25.02.2015 and 03.03.2015. Respondent no.3 by the impugned communication dated 07.07.2015, informed the petitioner that though his father was working as Hand Pump Assistant in Panchayat Samiti at Paithan on regular basis, his pay and perks were being paid through the income of the Zilla Parishad and, therefore, the petitioner was not entitled to get appointment on compassionate ground on the basis of the scheme meant for Government / Semi-Government employees. The application dated 03.03.2015 of the petitioner came to be rejected by the said communication.

5. The learned Advocate for the petitioner submits that in the similar fact situation, the Division Benches of this Court in **Writ Petition No. 461 of 2012** [*Santosh Ashok Pradhan Vs. The State of Maharashtra & 2 others*], **Writ Petition No. 5801 of 2012** [*Ashish s/o. Vinayak Kute Vs. The State of Maharashtra & 2 others*] and **Writ Petition No. 5501 of 2008** [*Sharad s/o. Vishnu Mali Vs. The State of Maharashtra & 3 others*], decided on 12.12.2012,

02.07.2013 and 28.11.2008, respectively, negated the contention of respondent no.2 that the Government Resolution dated 26.10.1994 relating to appointment on compassionate ground is not applicable to the employees of the Zilla Parishad since their pay and perks were being paid from the maintenance and repairs fund of the Zilla Parishad. He submits that the present petitioner is similarly situated with the petitioners in the above numbered Writ Petitions. He, therefore, submits that the impugned communication dated 07.07.2015 may be set aside and respondent no.2 may be directed to consider the case of the petitioner for appointment on compassionate ground.

6. The learned Asst. Government Pleader opposed the petition by filing reply of respondent nos.2 and 3. He reiterates the earlier stand of respondent nos.2 and 3 that the pay and perks of the deceased father of the petitioner were not being paid by the Government but were being paid from the maintenance and repairs fund of the Zilla Parishad and, therefore, the petitioner is not entitled to be appointed on compassionate ground on the basis of the Government Resolution dated 26.10.1994. However, he does not dispute that the father of the petitioner was a permanent employee of the Zilla Parishad.

7. The facts of the above numbered Writ

Petitions which have been decided by the Division Benches of this Court and that of the present case are running parallel. The claim of the petitioner for appointment on compassionate ground cannot be rejected on the ground that the pay and perks of the father of the petitioner were being paid through the maintenance and repairs fund of the Zilla Parishad, as has been held in the judgments referred to above. In the circumstances, we do not find any substance in the stand taken by respondent nos.2 and 3 for denying the claim of the petitioner for appointment on compassionate ground. In fact, considering the above mentioned three judgments, respondent nos.2 and 3 should not have taken the same stand for opposing the claim of the petitioner for appointment on compassionate ground, which has been already negated by the said judicial pronouncements.

8. In the result, we allow the Writ Petition, set aside the communication dated 07.07.2015 (Exhibit "G") and direct respondent nos.2 and 3 to decide the applications tendered by the petitioner for his appointment on compassionate ground, on their own merits. Respondent nos.2 and 3 are directed to take decision on the said applications, as expeditiously as possible and preferably within a period of three months from today.

9. Rule is made absolute in the above terms.

(6)

W.P. No. 10296 of 2015

In the circumstances of the case, there shall be no order as to costs.

(SANGITRAO S. PATIL)
JUDGE

(S.S. SHINDE)
JUDGE

.....

puranik / WP10296.15