

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

959 WRIT PETITION NO. 294 OF 2018

DADABHAU ANANTRAO KHARAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Tope Sambhaji S.
AGP for Respondents 1 and 2 : Mr. S.B.Yawalkar
Advocate for Respondents 3 and 4 : Mr. R.J.Nirmal

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE : AUGUST 8, 2018

O R D E R :

Mr. Tope, learned counsel submits that the petitioner was appointed as Shikshan Sevak on compassionate ground. The appointment on compassionate ground is permissible as per the Government Resolution, dated 31.12.2002 issued by the School Department. Subsequent Government Resolutions issued by the General Administration Department also confirms the said fact. Learned counsel submits that aspect of surplus teacher and adherence to the recruitment process would not

apply to the appointment on compassionate ground.

2. Learned counsel relies on the judgment of this Court in the case of **Syed Asad Syed Yusuf vs State of Maharashtra and others**, reported in 2016 (6) **Bom.C.R 544**.

3. Learned AGP submits that there were 16 surplus teachers yet to be absorbed. It is also not clear that the appointment of the petitioner is in 10 per cent posts reserved for compassionate ground. According to the learned counsel, procedure is not followed.

4. Respondents in their affidavit have admitted that the petitioner is appointed as Shikshan Sevak on compassionate ground.

5. In view of that, adherence to Section 5 of the M.E.P.S. Act so also, aspect of surplus teachers

in view of judgment of this Court in the case of **Syed Asad** (supra) would not be relevant.

6. As far as other aspect of 10 per cent reservation meant for compassionate appointment is concerned, the same is not a ground in the order rejecting the approval. It is for the authority to consider the same.

7. In view of above, the impugned order is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner afresh, on its own merits, preferably within four months and shall not reject it on the ground on which impugned order is passed.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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