

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

WRIT PETITION NO. 3302 OF 2017

Manisha w/o Vilas Vane
Age : 36 years, Occu : Service,
R/o Aradgaon, Tq. Rahuri,
Dist. Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department, Mantralaya,
Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. The Secretary/Administrator,
Shivaji Shikshan Prasarak Mandal,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar.
4. The Head Master,
Sant Tukaram Vidhaylaya,
Bargaon Nandur, Tq. Rahuri,
Dist. Ahmednagar.

...Respondents

Mr. N.D. Sonavane, Advocate for Petitioner
Mr. A.R. Kale, AGP for Respondent/State
Mr. V.P. Patil, Advocate for Respondent Nos. 3 and 4

**CORAM : PRASANNA B. VARALE AND
MANISH PITALE, JJ.**

DATE: 9th OCTOBER, 2018

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.)

1. Rule. Rule is made returnable forthwith. With the consent of the parties, heard finally and the petition is taken up for final disposal at admission stage.

2. The learned Counsel for the petitioner challenges the rejection order dated 22nd February, 2017, thereby proposal for appointment of the petitioner is rejected. The learned Counsel for the petitioner submitted that the petitioner was before this Court with similar grievance namely, the rejection of proposal in Writ Petition No.10368/2015 and by order dated 21.11.2016, the Division Bench of this Court, allowed the petition. The Division Bench of this Court was pleased to observe that the proposal was rejected because of the shortfall of certain documents. The learned Counsel for the petitioner submitted before this Court that the petitioner is possessing all the requisite documents and there is a clear vacancy in the school and on that clear vacant post, petitioner was appointed. The Division Bench then directed the Education Officer to consider the proposal afresh in accordance with law and further directed that the proposal shall not be rejected on the ground that the appointment of the petitioner was during ban period. It was made clear by this Court that the appointment of the petitioner is on compassionate

ground. The fresh proposal was submitted by the Management on 19.11.2017. While submitting the proposal, an error is committed by the Management and it is stated that the petitioner is appointed on 05.01.2017 as the Laboratory Assistant. Though it is specifically stated in the proposal that the petitioner was appointed on compassionate ground, the affidavit-in-reply filed on behalf of the Management show that the Management admits that the mistake is committed by the Management while submitting the proposal and the Management ought to have submitted that the appointment of the petitioner is on 02.03.2010, and it is further submitted that this is a technical defect on the part of the Management. The learned Counsel for the petitioner submitted that the Education Officer (Secondary) again took recourse to the Government Resolution dated 2nd May, 2012 and order passed by the learned Single Judge in Writ Petition No.9076/2016. Then, the Education Officer in the order referred to provisions of the MEPS Act, 1977, and more particularly, Section 5(1) of the Act and to reject the proposal, the ground is raised in the order that the proposal cannot be allowed as the Management failed to absorb the surplus teachers. The learned Counsel for the petitioner by placing heavy reliance on the Judgment of this Court in Writ Petition No. 5732/2014 dated 9th February, 2015 submitted that the Division

Bench in a clear words observed that the nature of compassionate appointments is a different and the proposal cannot be rejected on the ground that provisions of the MEPS Act are not followed. It would be useful to refer the observations of the Division Bench in the said Judgment in para Nos. 5 and 6 which read thus,

5. We have considered submissions canvassed by learned counsel for respective parties. It is not the case that more number of candidates have been filled in by the institution on the basis of compassionate appointment. It is submitted that the petitioner is the only candidate appointed on compassionate ground amongst the whole staff.

6. For a person to be appointed on compassionate ground, one need not go through the selection process. As the petitioner is the only person appointed on compassionate ground, even a person from surplus category could not have been absorbed in his place.

3. The learned Counsel then submitted that the order passed by the Education Officer is not at all sustainable though the learned Assistant Government Pleader opposes the Petition on the ground that in the proposal submitted by the Management, the factual aspects are not reflected. We are unable to accept the submissions of the learned Assistant Government Pleader.

4. A perusal of the proposal clearly shows that the Management stated in the proposal that the petitioner was appointed on the compassionate ground as a Laboratory Assistant and the rejection order is not on the ground that there was certain deficiency in the proposal but the rejection order is firstly on the ground of Government Resolution dated 2nd May, 2012, and then, the application of Section 5(1) of the MEPS Act.

5. As stated above, in view of the decision of this Court in writ petition No. 5732 of 2014, the order passed by the Education Officer (Secondary) is clearly unsustainable. Resultantly, the Writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clauses (B) and (C) of the Petition.

6. Rule is made absolute in above terms with no order as to costs.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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