

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

WRIT PETITION NO.5320 OF 2014

Devidas s/o.Tolba Fulwalkar,
Age 53 years, Occu. Service as Peon,
R/o.Mukhed Taluka Mukhed,
District Nanded.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Department of School Education,
Mantralaya, Mumbai-32.
2. Deputy Director of Education,
Latur Region, Latur.
3. Education Officer [Secondary],
Zilla Parishad, Nanded.
4. President,
Fule Samaj Sudharak Samiti,
Mukhed, Tq. Mukhed,
District Nanded.
5. Head Master,
Shahir Annabhau Sathe Madhyamik
Va Ucha Madhyamik Vidyalaya,
Mukhed, Tq. Mukhed,
Dist. Nanded.
6. Vijay s/o.Ganpatrao Patil,
Age 24 years, Occ. Service,
R/o. Shivaji Nagar, Tq.Mukhed,
District Nanded.

RESPONDENTS

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Mr.S.R.Choukidar, Advocate for the petitioner
Mr.S.B.Yawalkar, Addl.GP for respondent nos.1
to 3 - State

Mr.V.S.Panpatte, Advocate for respondent nos.
4 and 5

Mr.V.P.Golewar, Advocate for respondent no.6

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 10.01.2018

Pronounced on : 29.01.2018

ORDER: (Per S.S.Shinde, J.):

1] This Petition is filed with the
following prayers:

- B) By issuance of appropriate writ or
direction, the respondents may be
directed to appoint the petitioner
on the post of Laboratory Assistant
on the establishment of the school
Shahir Annabhau Sathe Madhyamik Va
Ucha Madhyamik Vidyalaya, Mukhed,
Tq. Mukhed, Dist. Nanded either by
promotion or by nomination and issue
necessary orders in that behalf from
the date of retirement of Shri
Gaikwad i.e. 31.5.2013 and further
direct respondent nos.2 and 3 to

grant approval to the appointment of petitioner as Laboratory Assistant from that date.

D-1) Quash and set aside the appointment of respondent No.6 on the post of Laboratory Assistant and approval granted to the said post on 5/6/2014 by respondent No.3.

D-2) Hold and declare that, petitioner is entitled for appointment on the post of Laboratory Assistant on the establishment of Respondent No.5-School and hence, direct respondent Nos.4 & 5 to appoint the petitioner on the post of Laboratory Assistant w.e.f. 1/6/2013 and further direct respondent No.2 & 3 to grant approval to the said appointment and extend to him all consequential benefits arising therefrom.

2] Learned counsel appearing for the petitioner submits that, the petitioner was appointed on the post of Peon on 22nd June, 1990. During the course of employment, he had acquired the qualification of Graduation in

Arts Faculty. One Shri Gaikwad was promoted on the post of Laboratory Assistant from the post of Peon on 22.12.1995, and he stood retired consequent upon attaining the age of superannuation on 31st May, 2013. It is submitted that, the petitioner filed various representations to the concerned employer from 19th August, 2013 till 15th February, 2014, requesting therein to appoint the petitioner on the post of Laboratory Assistant. It is submitted that, the provisions of the Maharashtra Employees of Private Schools Rules, 1981, and Schedule-F therein prescribes that preference shall be given to lower grade staff if he improves qualification while filling in the post of Laboratory Assistant on higher post. In stead of appointing the petitioner on the said post for which he is entitled to, an attempt is being made to directly appoint other persons. It is submitted that, respondent no.6 has

been appointed on 01.01.2014, however, he has not actually attended the day to day work in the school till November, 2014. The various representations filed by the petitioner have been ignored and not replied by respondent nos.4 and 5. The appointment of respondent no.6 is illegal, and the same is contrary to the relevant Rules. It is submitted that, the representations given by the petitioner were not considered on the ground that the post is not available and further assurance is given before the Statutory Authority that upon creation of second post, the claim of the petitioner would be considered. The said assurance is also not honoured. If at all the claim for appointment on compassionate ground was to be honoured, respondent no.6 could have been appointed on the post held by the petitioner. Respondent nos.2 and 3 have failed to perform their statutory duties and approved appointment of respondent no.6

without considering the objections raised by the petitioner well in advance. Learned counsel appearing for the petitioner invites our attention to the pleadings in the Petition, annexures thereto and submits that the Petition deserves to be allowed.

3] Pursuant to the notices issued to the respondents, respondent nos.4 and 5 have filed affidavit-in-reply. Learned counsel appearing for respondent nos.4 and 5 relying upon the averments in the said affidavit in reply submits that, respondent no.6 has been appointed on compassionate ground to the post of Laboratory Assistant in respondent no.5 school with effect from 1st January, 2014. Accordingly, the proposal in respect of approval to his appointment was forwarded, and the approval has been granted. It is submitted that, suppressing the fact of appointment of respondent no.6 the Petition was filed, however, subsequently respondent

no.6 has been added as party respondent. It is submitted that, the appointment on compassionate ground is an exception to the general rule of following procedure in the public employment. The compassionate appointments are made to overcome the financial crunch / crisis faced by the family of the deceased, due to death of the employee during the course of employment. It is submitted that, the post of Laboratory Assistant comes at serial No.6 of Schedule-B, Item IV, wherein the qualification for non teaching posts in the school are prescribed. The post of Laboratory Assistant is not promotional post. The post of Laboratory Assistant is as per the provisions contained in schedule-F. The common seniority list of lower grade staff such as Laboratory Attendant, Peon, Watchman, Chowkidar, Sweeper, Kamathi, Attendant, Lab Hamal, Liftmen and such other lower grade staff, if

any, shall be maintained on the basis of the dates of their appointment. If any of the lower grade staff improves his qualifications as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post according to his place in seniority. It is not the case of the present petitioner that he has improved his qualification while serving as Peon, nor it is the case of the present petitioner that while entering in the service, he was possessing degree of B.Sc. or B.A. Therefore, his case cannot be considered for the post of Laboratory Assistant. Respondent no.6 was appointed pursuant to the advertising the post on 12.12.2013, and the present petitioner did not participate in the selection process, and therefore, the question of appointing the petitioner on the said post does not arise.

4] Learned counsel appearing for respondent no.6 submits that, respondent no.6 has passed AI-CIT, MS-CIT, D.T.Ed. and B.Ed. The father of respondent no.6 was serving as permanent employee in respondent no.4 College. The father of respondent no.6 died on 2nd October, 2012 in harness. Thereafter, the mother of respondent no.6 also died on 1st March, 2013. Due to sudden death of father and mother, respondent no.6 was facing serious financial crisis / crunch, and therefore, he filed an application to the respondent School and the management on 17.12.2012, requesting to appoint him on compassionate ground. Pursuant to the advertisement issued on 12.12.2013, respondent no.6 was appointed as qualified for the post of Laboratory Assistant. The petitioner did not participate in the said selection process. Two posts were advertised, and one post was offered to the candidate,

belonging to Scheduled Caste. It is submitted that, the services of respondent no.6 are already approved, and therefore, being permanent employee serving on regular basis, he cannot be dislodged or removed from the service.

5] We have given careful consideration to the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have carefully perused the pleadings and grounds taken in the Petition, annexures thereto, affidavit-in-replies filed by the respective respondents, and other documents placed on record. The post of Laboratory Assistant is not promotional post. Schedule-F provides that if any lower grade staff improves his qualification as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post according to his

place in seniority. It appears from the reply filed by respondent no.6 that the Headmaster of respondent-School had issued memos to the petitioner on 04.05.2010, 26.10.2013, 29.10.2013, 28.02.2014 and 25.02.2014 for not discharging duties properly. Be that as it may, since respondent no.6 is appointed on the post of Laboratory Assistant and his services have been approved, the prayer of the petitioner to quash the appointment of respondent no.6, cannot be acceded to. The Full Bench of the Bombay High Court Principal Seat in the case of *Tanaji Madhukar Barbade Vs. State of Maharashtra & others*¹ while interpreting Schedule-F of the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981, held that, Schedule-F does not provide for promotion to the post of Junior Clerk. It merely provides a preference to be given to the lower grade staff in making appointment to the posts of Junior

1 2010 [6] Mh.L.J.901

Clerk and Laboratory Assistant. Therefore, keeping in view the relevant provisions and the fact that respondent no.6 has already been appointed, it is not possible to grant any relief to the petitioner. It is true that, if the lower grade employee improves his qualification, in that case a preference may be given to such employee while considering the appointment on the post of Laboratory Assistant. In the present case, the posts were advertised, and admittedly, the petitioner did not participate in the said advertisement. In that view of the matter, we are unable to persuade ourselves to grant any relief to the petitioner. Hence, the Writ Petition stands rejected.

6] We make it clear that, the rejection of this Petition shall not be construed to mean that the petitioner and other similarly situated employees should not be considered for the vacancies which would arise in

future. However, keeping in view their seniority, qualifications and only after following the mandate and procedure as envisaged under the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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