

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2083 OF 2019

Shri.Pravin Mahadev Misal	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.Prashant Bhavke for the petitioner.

Mr.S.B.Kalel-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- FEBRUARY 18, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner prays for the following relief:-

“b] By suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 1-11-2018 passed by Respondent No.5-Education Officer [Exhibit-G] thereby rejecting to grant proposal submitted by Respondent No. 6 and 7 seeking individual approval to the appointment of the Petitioner in the post of Peon at the Respondent No.7-Secondary School and accordingly be pleased to further direct the Respondent No.5-Education Officer to grant individual approval to the appointment of the Petitioner in the post of Peon at the Respondent No.7-Secondary School w.e.f. 9-11-2012 within the period of two weeks or within any other period which this Hon'ble Court deems fit and accordingly release salary/honorarium payable to Petitioner with its all arrears.”

2. It is common ground that the petitioner was appointed on compassionate ground on the death of the bread winner in the family. There is no denial of the fact that his father Late Mahadev

Misal was working as a peon in respondent no.7-Secondary School. He suddenly expired. The petitioner forwarded his application seeking appointment on compassionate ground and that was granted. The appointment order, copy of which is at Exhibit 'D' came to be issued. The petitioner was appointed as a probationary peon for two years with effect from 9th November, 2012 and having completed two years of service, he stood confirmed.

3. The proposal to approve his appointment was forwarded, but, apparently, it was not accepted by the Education Officer. The case of the petitioner is, like anybody else, his proposal has not been accepted or considered on account of the Government Resolution dated 2nd May, 2012 which has imposed ban on recruitment. That ban is not relaxed even in cases of compassionate appointment.

4. This court has, on several occasions, considered this issue or point and held that such a blanket ban will not apply to an appointment on compassionate basis. That is not a fresh appointment, but so as to accommodate the family members of the bread winner, on account of his/her death, that this scheme is evolved. This being a case different to all other matters of the above nature, we allow this writ petition.

5. The appointment of the petitioner shall be approved and with effect from 9th November, 2012. The admissible pay-scale and other benefits be released in his favour. The needful be done by passing a formal order of approval in accordance with law and in any event, within three months from today.

6. The writ petition is allowed in these terms. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)