

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8097 OF 2018

Shri.Atul Yashwant Gavade	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

WITH
WRIT PETITION NO. 9311 OF 2018
WITH
WRIT PETITION NO. 9313 OF 2018
WITH
WRIT PETITION NO. 9370 OF 2018
WITH
WRIT PETITION NO. 12471 OF 2018
WITH
WRIT PETITION NO. 13982 OF 2018
WITH
WRIT PETITION (ST) NO. 27512 OF 2018

Mr. Prashant Bhavke for the petitioners.

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

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

DATE :- FEBRUARY 18, 2019

P.C. :-

1. Mr.Bhavake says that save and except Writ Petition No.8097 of 2018, all other matters are not involving the common issue or point. They are wrongly tagged along with this petition. We remove the other matters from the board.

2. As far as this writ petition (Writ Petition No.8097 of 2018) is concerned, the prayers therein are to the following effect:-

“(b) By a suitable Writ, Order or direction, this Hon'ble Court be pleased to direct the Respondent No.5 - Education Officer to decide the proposal dated 21-9-2016 sent by the Respondent No.6 - Educational Institution and Head Master of Respondent No.7 - Secondary School for individual approval to the appointment of the Petitioner in the post of Peon at Respondent No.7 - Secondary School within the stipulated period which this Hon'ble Court may deem fit and accordingly, grant individual approval to the appointment of the Petitioner;

(c) By a suitable Writ, Order or direction, this Hon'ble Court be pleased to direct the Respondent No.5-Education Officer not to absorb any surplus Peon on the post already occupied by the Petitioner at Respondent No.7-Secondary School.”

3. 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 Yashwant Gavade 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 15th June, 2016 and having completed two years of service, he stood confirmed.

4. The proposal to approve his appointment was forwarded, but, apparently, no decision has been taken thereon. 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.

5. 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.

6. The appointment of the petitioner shall be approved and with effect from 15th June, 2016. 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.

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

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)