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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12002 OF 2017**

Suraj Uttam Kamble ..Petitioner
Vs.
State of Maharashtra & ors. ..Respondents

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Mr. Chetan G. Patil for petitioner.
Mr. S.B. Kalel, AGP for State – respondent Nos. 1 and 2.
Ms. Pavitra Manish I/b. Mr. Meelan Topkar for respondent Nos.
3 and 4.

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

**RESERVED ON : 25th JANUARY, 2019
PRONOUNCED ON : 13th FEBRUARY, 2019**

JUDGMENT (PER M.S.KARNIK, J.):

Rule. Rule is made returnable forthwith by consent
of the parties.

2. The challenge in this Petition, filed under Article 226
of the Constitution of India, is to an order dated 11th July, 2017
passed by respondent No.2 – Education Officer (Secondary),
Zilla Parishad, Kolhapur, refusing to grant approval to the

appointment of the petitioner as a Shikshan Sevak, who was appointed on compassionate basis.

3. The facts of the case in brief are as under :-

The petitioner's late father was working in the School run by respondent No.3 as Assistant Teacher. He expired on 15th August, 2008 while in service. On the oral request of respondent Nos. 3 and 4 – School, the petitioner worked in respondent No.4 – School without any remuneration from 3/11/2012 to 30/4/2013. The respondent No.3 passed a Resolution on 25/11/2013 appointing the petitioner as a Shikshan Sevak for the period from 2/12/2013 to 1/12/2016 on compassionate basis as petitioner holds all requisite educational qualifications for appointment to the said post. The proposal for approval to the petitioner's appointment was submitted to respondent No.2. The impugned order refusing to grant approval to the appointment of the petitioner was made on 11/7/2017.

4. Learned counsel for the petitioner in assailing the impugned order contends that approval to the petitioner's appointment is erroneously refused on the ground of ban imposed for recruitment in terms of Government Resolution ("GR" for short) dated 2nd May, 2012. Learned counsel submits that the said GR dated 2nd May, 2012 is not at all applicable to the petitioner's case as the petitioner is appointed on compassionate basis in place of his late father, who was working as Assistant Teacher in an approved post. He submits that GR dated 2/5/2012 is in respect of direct recruitment to the post of Shikshan Sevak. Insofar as appointment on compassionate basis is concerned, the same is not governed by the GR dated 2/5/2012 but by the policy of the State Government which still holds the field in matter of appointment on compassionate basis.

5. Learned counsel submits that the petitioner's father expired on 15/8/2008 and it is in his place the petitioner is appointed as a Shikshan Sevak for the period from 2/12/2013 to 1/12/2016. The appointment of the petitioner is on

compassionate ground and the same is governed by the Government Resolutions applicable for appointment on compassionate basis, more particularly as per the policy enunciated in GR dated 31st December, 2002.

6. Learned AGP submitted that by GR dated 2/5/2012 a ban was imposed on making appointments in Secondary School. The proposal for an approval was, therefore, rightly turned down as the appointment of the petitioner which was made after imposition of ban was contrary to the GR of 2nd May, 2012.

7. We have heard learned counsel for the parties. We have also gone through the Memo of the Petition and the Exhibits annexed to the Petition.

8. It is common ground that appointment is sought by the petitioner on compassionate basis. The very object and purpose of such employment and conferring a power to make

appointment on compassionate ground is that the employer assists the family to tide over the financial crisis caused by the loss of bread winner. It is an assistance to the family and which is in distress. In the circumstances, this is not a fresh appointment or an appointment which ordinarily requires the approval. The post held by late father of the petitioner was permanent and duly sanctioned. In his place, in terms of Government policy, compassionate appointment was sought and it is that appointment which has been made. There is no post created nor is there any question of an appointment being made through recruitment process which is covered by the ban. The ban, thus, could not have covered this appointment.

9. A perusal of the impugned order reveals that the only reason approval is not granted to the petitioner's appointment is on account of the GR dated 2/5/2012. The stand of the respondent No.2 that the GR dated 2/5/2012 is also applicable to the appointments made on compassionate basis is untenable. A plain reading of the GR dated 2/5/2012 clearly

reveals that the same is not in supersession of any of the earlier policy/GR of the State Government in respect of the compassionate appointment.

10. The question of applicability of GR dated 2/5/2012 to appointments on compassionate basis was subject matter of consideration in Writ Petition No.7507/2016 decided by this Court on 11th December, 2018 to which one of us (S.C. Dharmadhikari, J.) was a party. We may refer to the relevant portion of paragraph 12 of the decision of this Court which reads thus :-

“12. However, in the Writ Petition as also in the affidavit-in-rejoinder, it is reiterated that it is impossible to sustain this ground of refusal. The appointment on compassionate basis is made in terms of a Government circular dated 31st December, 2002. That has not been superseded by this subsequent Government Resolution and particularly, the one imposing ban dated 2nd May, 2012. In fact, such appointments were kept out of the purview of the general ban imposed on recruitment. The very object in all such appointments enables the State Government to carry forward its earlier policy despite the overall ban on recruitment and appointment.”

11. The decision squarely applies to the facts of the present case. We, therefore, have no hesitation in setting aside

the impugned order. It is, accordingly, quashed and set aside.

12. The Petition is allowed in terms of the prayer Clause (A), which reads thus :-

“A) That this Hon'ble Court be pleased to issue a appropriate writ, order or direction thereby quashing and setting aside the impugned order/ communication dated 11th July 2017 passed by respondent No.2 herein and further be pleased to direct respondent no.2 herein to forthwith grant approval to the appointment of the petitioner to the post of a Shikshan Sevak since the date of his appointment i.e. 2nd December, 2013 along with all consequential benefits.”

13. Rule is made absolute with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)