

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

WRIT PETITION NO.621 OF 2020

Shri. Nitin Ramesh Khedekar)
Aged 31 years, Occ. Service,)
R/o. A/P/T Khed, Dist. Ratnagiri - 415 709.) .. Petitioner

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
School Education Department,)
Mantralaya, Mumbai - 400 032.)
2. The Deputy Director of Education,)
Kolhapur Region, Kolhapur.)
3. The Education Officer (Secondary),)
Zilla Parishad, Ratnagiri.)
4. Kunbi Shikshan Prasarak Sanstha)
Khed, Mumbai, A/P. Bharane,)
Tal. Khed, Dist. Ratnagiri, through its)
Chairman / Secretary.)
5. Navbharat High School & Junior)
College, Bharane, Tal. Khed,)
Dist. Ratnagiri, Through its)
Head Maaster.) .. Respondents

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Mr. N. V. Bandiwadekar i/b. A.N. Bandiwadekar, Advocate for
Petitioner.

Mr. Y. D. Patil, AGP for Respondent Nos.1 to 3.

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**CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 25, 2020.**

JUDGMENT :

1. Heard Mr. N.V. Bandiwadekar, learned counsel appearing on behalf of the petitioner and Mr. Y.D. Patil, A.G.P. appearing on behalf of respondent Nos.1 to 3. None appears for respondent Nos.4 and 5 though served.

2. Rule. Respondents waive service. By consent of parties rule is made returnable forthwith.

3. By the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the legality and propriety of the orders dated 31.12.2018 and 22.05.2019 passed by the Education Officer (Secondary), Zilla Parishad, Ratnagiri i.e. respondent No.3, *inter alia*, refusing approval to the appointment of the petitioner on compassionate grounds in the respondent No.5 School. One of the reasons given by the respondent No.3 / Education Officer for refusing the approval for appointment is that unless and until the staffing pattern in respect of privately aided, partly aided, secondary and higher secondary schools is finalised by the Government, appointments / approval of appointments on compassionate grounds should not be finalised. Being aggrieved, the petitioner

has filed the present petition.

4. The brief narration of the facts is considered necessary :-

4.1. The respondent No.5 is a Government recognized aided private Secondary School and Junior College run by the respondent No.4 / Trust. The service conditions of the teaching and non-teaching staff working in the respondent No.5 School are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (hereinafter referred to as "the said Act") and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the said Rules").

4.2. The petitioner's father was working as a Laboratory Attendant in the respondent No.5 / School. The appointment of the petitioner's father as a Laboratory Attendant was duly approved on a sanctioned and aided post and he was receiving monthly salary from the grant-in-aid which was sanctioned and released by the Education Department. Thus the petitioner's father was a permanent employee in service on the post of Laboratory Attendant in respondent No.5 School. On

04.10.2006 the petitioner's father died in harness while in employment, leaving behind his widow, two sons and one daughter. On 30.10.2006 the petitioner made an application to the respondent No.4 / Trust followed by a further application dated 09.05.2007 to the respondent No.3 / Education Officer seeking employment on compassionate grounds in place of his father. On 30.05.2007 respondent No.3 / Education Officer forwarded a copy of the petitioner's application dated 09.05.2007 to the respondent No.5 School, *inter alia*, directing appropriate action to be taken on the said application as per rules, so as to give appointment to the petitioner on compassionate basis.

4.3. On 13.06.2007 the management of the respondent No.4 / Trust appointed the petitioner in respondent No.5 / School as a Peon w.e.f. 18.06.2007. The appointment order mentioned that the petitioner's father was working as Laboratory Attendant and he died while in service on 04.10.2006 and that the petitioner was therefore appointed as a Peon on compassionate grounds in place of his father. Petitioner's father was the only bread winner of the family. The petitioner joined service as a Peon on 18.06.2007 in the respondent No.5 School.

4.4. Thereafter, between 2007 to 2012 there was correspondence between the respondent No.5 and respondent Nos. 2 and 3 in respect of grant of approval to the appointment of the petitioner on the post of Peon on compassionate grounds in the respondent No.5 School. The respondent No.2 i.e. Deputy Director of Education, Kolhapur region, Kolhapur was also approached as it was revealed that the petitioner's father was working as Laboratory Attendant in the Junior College and therefore the approval for appointment would be granted by respondent No.2. Certain deficiencies in the proposal forwarded by respondent No.5 School were also pointed out by respondent No.2 to which detailed explanation was submitted by respondent No.5 School.

4.5. On 02.05.2012 the petitioner made one more attempt and submitted an application to respondent No.3 Education Officer seeking grant of approval to his appointment. The respondent No.3 by letter dated 22.03.2012 had informed the respondent No.5 School that by Government Resolution dated 22.03.2012, the State Government had relaxed the ban for making compassionate appointment in Group - C and Group - D posts. Therefore respondent No.5 School was directed to

submit report as to whether the post for which the petitioner had applied was admissible as per the provisions of the Government Resolution dated 25.11.2005 and whether such a post is vacant or not. Respondent No.5 School in compliance of the aforesaid directions submitted a detailed report, *inter alia*, stating that the post in which the petitioner came to be appointed was admissible and was a sanctioned post.

4.6. On 05.06.2014 the respondent No.3 Education Officer addressed a letter to all Secondary and Higher Secondary Schools in Ratnagiri District and intimated that as per Government Resolution dated 31.12.2002 a near relative of the employee who had died while in service as teacher or non-teaching employee in a private aided School would be eligible for appointment on compassionate grounds and the management of such schools should submit the information to the respondent No.3 Education Officer to enable grant of compassionate appointment of such persons in compliance of the said letter. Respondent No.5 School once again furnished the relevant information relating to the appointment of the petitioner and sought approval thereto. Thereafter the petitioner made several applications to respondent Nos.3 to 5 for seeking

approval of his appointment but there was no response from the said respondents.

4.7. On 31.12.2018 the respondent No.3 Education Officer informed the respondent No.5 School that as per Government Resolution dated 12.02.2015 it was directed that until revised staffing pattern of non-teaching employees was sanctioned, no recruitment on vacant posts could be made. By the said letter, the original proposal for seeking approval for appointment of the petitioner was returned back to respondent No.5 School.

4.8. On 19.03.2019 the petitioner made a detailed representation to the respondent No.3 Education Officer stating that the appointment of the petitioner was made in the year 2007 on compassionate grounds and placed reliance on various Government Resolutions before the respondent No.3 Education Officer. The respondent No.5 School by its letter dated 05.04.2019 once again submitted a fresh proposal for seeking grant of approval to the appointment of the petitioner in the respondent No.5 School enclosing all necessary particulars and documentation thereto.

4.9. By letter dated 22.05.2019 the respondent No.3

Education Officer informed the petitioner that as per Government Resolution dated 12.02.2015 no recruitment could be made on any vacant post of non-teaching cadre and once again returned back the said proposal. The petitioner has therefore approached this Court to challenge the twin orders dated 31.12.2018 and 22.05.2019 passed by the respondent No.3 Education Officer refusing to grant approval to the petitioner's appointment on compassionate grounds.

5. The facts are not in dispute in the present case, it is an admitted position that the appointment of the petitioner on compassionate grounds was made on 13.06.2007 in place of his deceased father who was working on a sanctioned post in the service of the respondent No.5 School. It is also an admitted position that by Government Resolution dated 22.03.2012, the State Government had relaxed the ban for making compassionate appointments in Group - C and Group - D posts. As such there was no restriction for appointment of the petitioner on compassionate grounds, which in any event was made on 13.06.2007 i.e. well before the imposition of any ban whatsoever.

6. Mr. Bandiwadekar learned counsel appearing for the petitioner submitted that the petitioner's father was the only bread winner of the family and the appointment of the petitioner was made on compassionate grounds by following the due process of law as applicable at the then time. He submitted that reasonable expectation of the petitioner was that just as the appointment of his father as Laboratory Attendant was approved by the State Government and its functionaries viz; respondent Nos.2 and 3, even the appointment of the petitioner will be approved. Since the approval of the appointment of the petitioner was not forthcoming the same is therefore questioned in the present petition. He submitted that there cannot be any embargo on the appointment of the petitioner on compassionate grounds as the same cannot be equated as fresh appointment.

7. Mr. Bandiwadekar submitted that the case of the petitioner is covered by various decisions of this Court. He specifically referred to and relied upon the judgment and order dated 11.12.2018 passed in Writ Petition No.7507 of 2016 in the case of *Samita Sameer Desai & Anr. v/s. the State of*

Maharashtra through Secretary & Anr. He placed reliance upon paragraph No.9 of the decision which reads thus :-

“9. It is common ground that the appointment is sought by petitioner No.1 on compassionate ground. 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. All that would suffice is an intimation from petitioner No.2 that the husband of petitioner No.1 was already appointed as a Peon and that post was permanent and duly sanctioned. Having appointed him, it was revealed that he died suddenly on 2nd November, 2011. 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 was covered by the ban. The ban, thus, could not have covered this appointment.”

8. Mr. Y.D. Patil, learned A.G.P. appearing on behalf of respondent Nos.1 to 3 while defending the impugned orders has sought to rely upon Government Resolution dated 12.02.2015.

Respondent Nos.1 to 3 have filed their affidavit-in-reply dated 14.01.2020. The stand of the said respondents is contained in paragraph Nos.6 and 7 which reads thus :-

"6. I say that it is pertinent to note that since 25.11.2005 being policy of the Government there is ban on recruitment of non-teaching staff. I say that thereafter the committee was established to consider the cases of non-teaching staff vide Government Resolution dated 12th February, 2015 to consider the staff pattern in respect of the private aided, partly aided Secondary and Higher Secondary and Military schools in the state. The said Government Resolution is annexed as page No.59 being Exhibit-U.

7. I say that the said Government Resolution came to be cancelled vide Government Resolution dated 7th March, 2019 and fresh decision is taken in respect of recruitment of non-teaching staff in the aided, partially aided Secondary and Higher Secondary School. In the said Government Resolution it is provided that the actual post required for Education Institutions as per Government Resolution dated 28th January, 2019 and guidelines provided therein the allegation of the post of non-teaching staff to be made by Education Director, Secondary and Higher Secondary School, Maharashtra State, Pune. Till posts are approved the said posts are not to be termed sanctioned posts in the Educational Institution. Hereto annexed and marked as Exhibit- 1

and 2 are the copies Government Resolution dated 28th January, 2019 and 7th March, 2019. As such policy of the Government as contemplated in Government Resolution dated 28th January, 2019 and 7th March, 2019 are holding field and applicably for the appointment of non-teaching staff in all aided and partially aided school in the State of Maharashtra including Respondent Nos.4 and 5.”

9. I have perused the writ petition, annexures thereto, so also the affidavit-in-reply and rejoinder.

10. It is clear and an undisputed fact that when the appointment of the petitioner was made as Peon on 13.06.2007 there was no embargo or restriction or ban imposed in either making the appointment or granting the approval. The Government Resolution dated 02.05.2012 imposing a ban on making appointments in secondary schools was issued on 02.05.2012 i.e. much after the appointment of the petitioner. Another reason that has been given for denying the approval is that unless and until the sanctioned staffing pattern in respect of private aided, partly aided, secondary and higher secondary is finalised by the Government, appointment / approval of appointment on compassionate grounds shall not be finalised.

On both the above reasons, the approval to the appointment of the petitioner is refused.

11. It is needs to be noted that the very object and purpose of employment on compassionate grounds is that the employer assists the bereaved family to tide over the financial crises caused by the sudden loss of the bread winner of the family. Appointment on compassionate grounds is the form of an assistance to the family which is in distress due to the sudden loss of the bread winner. Such appointment on compassionate grounds therefore cannot be equated with a fresh appointment which will ordinarily require approval. All that it would be required to be considered in such a case is that the father of the petitioner was already working on a duly sanctioned and permanent post. As stated earlier, the ban on recruitment in secondary schools was effected by the State Government by Government Resolution dated 02.05.2012 whereas, the appointment of the petitioner was made on 13.06.2007 and thus the said ban could not have covered this appointment. The contention of the respondent therefore cannot be accepted. The decision to appoint the petitioner was taken

by the management of the respondent Nos.4 Trust and the respondent No.5 School. Such appointment was made on 13.06.2007 and the petitioner joined service with respondent No.5 School on 18.06.2007. Since then, the petitioner has been working on the said post. It is therefore clear that the appointment was made with effect from 18.06.2007 and intimated to the respondent No.3 Education Officer when the proposal for seeking approval to the said appointment was made. During all these actions there was no ban on recruitment whatsoever. The affidavit-in-reply on record refers to and relies upon several Government Resolutions pertaining to the years 2012, 2015 and 2019. None of the said Government Resolutions are retrospective in their application.

12. Another facet of this case is that the appointment of the petitioner on compassionate grounds is made in terms of Government Resolution dated 31.12.2002 and same has not been superseded by any Government Resolution and more particularly by the one imposing ban on 02.05.2012. 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. The above ground is also impossible to be sustained for refusal of the approval sought for appointment of the petitioner. Therefore the refusal to approve the petitioner's appointment on compassionate basis cannot be sustained.

13. This Court has in a catena of similarly placed cases considered the aforesaid issue and more specifically the issue relating to applicability of Government Resolution dated 02.05.2012 imposing ban on recruitment and its applicability to appointments made on compassionate grounds. This Court has held that such a blanket ban would not apply to an appointment on compassionate basis, considering the fact that any appointment on compassionate ground is not a fresh appointment but is made so in exigencies to accommodate the family member of the bread winner on his/her death. It has been held that appointment on compassionate grounds are cases which are different to all other such matters of appointment.

14. Once I find that this is how the case has been proceeded on facts, without addressing the larger issue, the present writ petition deserves to be allowed by quashing and setting aside the impugned orders dated 31.12.2018 and 22.05.2019. The said orders are accordingly quashed and set aside. It is declared that the petitioner's appointment as Peon on compassionate basis in the place of his deceased father would be effective on 18.06.2007 and that he would be entitled to all the benefits, salary, emoluments etc. attached to that post. The appointment of the petitioner therefore stands approved accordingly. The formal order to that effect shall be issued by the concerned authorities namely respondent No.2 and or respondent No.3 within a period of two months from the date of communication of this order.

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

[MILIND N. JADHAV, J.]