

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2517 OF 2020

RAJENDRA BHAGINATH BARGAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Shri R.R.Suryawanshi
AGP for Respondents 1 to 3 : Smt.V.N. Patil Jadhav
Advocate for Respondent 4 : Shri K.F. Shingare
...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 29th October, 2021

Per Court :-

1. The petitioner has put forth prayer clauses C and D
as under :-

“C) *By issue of writ of certiorari or any other appropriate writ, order or directions in the like nature, the impugned communication dated 30.09.2019 bearing outward No.ZPA/EdE/ SC-8/ 2009/ 2020 issued by respondent No.3 thereby rejecting the proposal of the petitioner for grant of approval to the services of the petitioner as peon in respondent No.5 School may kindly be quashed and set aside.*

D) *By issue of writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondent No.3 may kindly be directed to grant the approval to the services of the petitioner as an peon in respondent No.5 School and to release the payment of salary*

*from the date of appointment of the petitioner
i.e. 01.12.2017 onwards.”*

2. We have considered the submissions of the learned counsel for the respective sides. The learned advocate representing respondent No.4/ Management submits that the petitioner was appointed on compassionate ground and his proposal was forwarded for approval. The same has been rejected vide the impugned order dated 30.09.2019.

3. This is yet another case wherein, the Education Officer has declined to approve the appointment on compassionate ground for the reason that there is a ban on recruitment and the staffing pattern for non teaching category employees is pending formalization with the Government.

4. We have extensively dealt with this issue vide our judgment dated 11.08.2021 in Writ Petition No.4219/2018 filed by Smt.Yogita wd/o Shivsing Nikam versus the State of Maharashtra and others and Writ Petition No.163/2020 filed by Sachin Shivajirao Suryawanshi versus the State of Maharashtra and others. We deem it apposite to reproduce paragraphs 28 to 33 of the said judgment hereunder :-

“28. To say the least, we are shocked by the stand taken

by the State Government, which is not only against logic and reason, but is in complete contradiction to the law crystallized by this Court in numerous judgments. It is unconscionable for the State to canvass such grounds virtually rendering the bereaved family to starvation. We find that the State has consistently ensured that not a single Government Resolution, pertaining to ban on recruitment, stay on filling in vacant posts and prohibition on appointments until the staffing pattern of the non teaching posts is formalized, would apply to appointments made on compassionate grounds. This Court has also consistently taken a view that compassionate appointment would be an exception to the mandatory rule of following specific selection procedure for recruitment on vacant posts or on newly created posts.

29. *We have noticed the agony caused to litigants in such cases. We, therefore, find it appropriate at this stage to record that after the delivery of this judgment, if any case refusing approval to a compassionate appointment which is otherwise legally sustainable satisfying the eligibility criteria, comes to this Court, we would be issuing directions recommending strict disciplinary action against the Education Officer and we would not hesitate to initiate contempt of Court proceedings against persons responsible, since they are interpreting the Government Resolutions in the most inappropriate manner, despite the crystalised position of law. Because of such acts of the Education Officers, widows and eligible candidates are compelled to rush to this Court after having suffered mental and physical agony of a personal loss of a sole bread earner and also spend on litigation which is costly these days. We would also impose heavy costs to be recovered from the salaries of such Education Officers for the pain caused to such petitioners. We find it appropriate to record that if the Education Officer notices that a particular Management is attempting to defeat the rights of an eligible candidate for compassionate*

appointment, the Education officer would be at liberty to initiate appropriate action against such Management.

30. *In view of the above, these petitions are allowed. The impugned orders stand quashed and set aside. Approvals stand granted to these petitioners from the dates of their joining duties on compassionate basis, with all monetary benefits accruing to their posts. Formal approval orders shall be issued by the concerned Education Officers, before 30.09.2021.*
31. *The Education Officer (Secondary), Zilla Parishad, Jalgaon and the Education Officer (Secondary), Zilla Parishad, Nanded shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) each, as costs, from their salary bank account in this Court, on or before 30.09.2021 and these two petitioners namely Smt. Yogita and Mr. Sachin, shall be entitled to withdraw the said amount subject to proper identification, without conditions. In the event, any of these two Education Officers has retired, the said amount shall be recovered from his pension. Compliance of this order shall be reported to this Court upto 15.10.2021, by the respective Chief Executive Officer, Zilla Parishad.*
32. *We direct the learned Registrar (Judicial) of this Court to place this order before the Secretary, School Education Department, Mantralaya to be circulated to all concerned. The concerned Secretary shall pass appropriate instructions to all concerned officers in the State of Maharashtra.*
33. *We need to clarify that, in cases relating to a candidate not being eligible to occupy the post of the deceased father/parent and, therefore, has to be accommodated on some other inferior post in another class, the authority empowered to make compassionate appointment, shall verify whether such post is available or not and shall list the candidate in the wait list of eligible candidates.”*

5. In view of the above, this Writ Petition is allowed in terms of prayer clauses C and D. The approval to the appointment of the petitioner on compassionate basis shall be issued on or before 15.11.2021 by the Education Officer. The Management shall tender the pay bills of the months in which the petitioner has not received regular pay scale due to lack of approval, to the Education Officer, on or before 15.11.2021. The Education Officer shall clear such salary bills as expeditiously as possible and not beyond 30.11.2021.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)