

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO.2502 OF 2020

Shaikh Razaik Ahmed Shaikh Samad
Age – 35 years, Occupation-Nil,
R/o. Hind Nagar, New Mondha, Jalna,
Tq. & Dist. Jalna

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through the Secretary of School Education &
Sports Department, Mantralaya, Mumbai-32.
- 2] The Education Officer (Secondary),
Zilla Parishad, Jalna
- 3] The Secretary,
Azim Education and Welfare Society,
Raja Bazar, Aurangabad
- 4] Mumtaz Girls Urdu High School,
Through its Head Master,
Morandi Mohalla, Old Jalna,
Jalna, Dist. Jalna

.. Respondents

...
Advocate for Petitioner : Ms. Ashlesha Kulkarni h/f. Mr. Sudarshan J. Salunke
AGP for Respondents no. 1 and 2 : Smt. M.A. Deshpande
Advocate for Respondents no. 3 and 4 : Smt. A.N. Ansari
...

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 21ST DECEMBER 2021

ORAL JUDGMENT (PER – RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner has put forth prayers at clauses 14-C and 14-D as under :-

“14-C] The Order dated 16/01/2019 passed by the Learned Education Officer (Secondary), Zilla Parishad, Jalna thereby rejecting the application of petitioner for compassionate appointment for the post of Peon may kindly be quashed and set aside, which is at **Exhibit “E”**.

D] The respondents may kindly be directed to consider the application filed by petitioner dated 24/03/2017 and appoint him on compassionate basis, which is at **Exhibit “A”**.”

3. The mother of the petitioner, who was a Peon with respondents no. 3 and 4 – Society, passed away on 03-03-2017. The petitioner moved an application for seeking compassionate appointment of Peon on 24-03-2017. Respondent no. 4 – Headmaster forwarded the application of the petitioner to respondent no. 2. By the impugned order dated 16-01-2019, the Education Officer has treated the application as a proposal and in a single sentence, observed that ‘as the non-teaching category recruitment is banned by Government resolution dated 06-02-2004, the petitioner cannot be appointed’.

4. This Court has extensively dealt with the following three common grounds for rejection of compassionate appointments, in judgment dated 11-08-2021 delivered in the matter of *Smt. Yogita W/o*

Shivsing Nikam Vs. The State of Maharashtra and others (Writ Petition no. 4219 of 2018) with connected writ petition that:-

- a) There is a ban on fresh recruitment or filling up vacant posts,
- b) The staffing pattern of the non-teaching category is not formalized,
- c) The proposal sent by the management is incomplete / deficient etc.

5. In the above referred judgment, placing reliance upon the law crystallized by the Honourable Apex Court in the matter of *Yogesh Nagraoji Ugale Vs. State of Maharashtra, 2019 STPL 9892 SC*, this Court has concluded that when it comes to compassionate appointments in the non-teaching category, the ban on recruitment and the pendency of the formalization of the staffing pattern, would not be an impediment. The law has been extensively discussed in this judgment.

6. In the instant case, the management never appointed the petitioner and, therefore, there was no question of sending a proposal for approval. What was done by the management, was to simply forward the application filed by the petitioner for seeking compassionate appointment, to respondent no. 2.

7. The learned Advocate for the management submits, on instructions, that as the petition is pending and in view of the order of the Education Officer, the post of Peon, which fell vacant due to the demise of the petitioner's mother, is kept vacant.

8. In view of the above, this petition is allowed in terms of prayer clause (C).

9. The management – respondent no. 3 shall appoint the petitioner on compassionate basis in place of his mother, as a Peon with respondent no. 4 - school, on or before 15-01-2022 and serve a copy of the appointment order upon the petitioner. Thereafter, the management shall forward the proposal to respondent no. 2 – Education Officer, for passing appropriate orders with regard to approval of such appointment, on or before 21-01-2022. Upon receipt of such proposal, respondent no. 2 shall consider the same and pass appropriate orders of granting approval, on or before 05-02-2022.

10. Rule is made absolute accordingly.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

arp/