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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

947 WRIT PETITION NO.3342 OF 2018

Chandrakant s/o Shantaram Bhoi,
Age: 24 years, Occu: Service,
R/o. At post : Shindad, Tq. Pachora,
Dist. Jalgaon

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Tq. and Dist. Jalgaon
3. Samaj Vikas Vidyalaya, Shindad,
Tq. Pachora, Dist Jalgaon,
Through its Headmaster

...RESPONDENTS

Mr A. D. Pawar, Advocate for petitioner;
Mr S. B. Yawalkar, A.G.P. for respondent Nos.1 & 2;
Mr C. T. Jadhav, Advocate for respondent No.3

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

DATE : 27th October, 2021

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

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

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2. The petitioner has put forth prayer clauses (B) and (C), which read as under :

“B) To quash and set aside order dated 01.01.2018 passed by the respondent No.2 Education Officer (Secondary), Zilla Parishad, Jalgaon thereby rejected the proposal of petitioner being appointed on compassionate ground as Peon in respondent No. 3 school by issuing Writ of Certiorary or any other appropriate Writ or directions as the case may be;

C) To direct respondent No.2 Education Officer (Secondary), Zilla Parishad, Jalgaon to grant approval in favour of petitioner as Peon being appointed on compassionate ground from the date of his initial appointment i.e. 19.09.2016 and also make the payment of salary from the date of initial appointment till today and also in future by issuing Writ of Mandamus or any other appropriate writ or directions as the case may be;”

3. The undisputed factors are as under :-

- (a) The father of the petitioner - Shantaram Bhoi, was a ‘Peon’, working with respondent No.3 – School;
- (b) He passed away on 30/03/2016;

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(c) The mother of the petitioner applied for compassionate appointment on 12/04/2016;

(d) The respondent – School, in tune with the direction issued by respondent No.2 – Education Officer, dated 23/06/2016, appointed the petitioner as a ‘Peon’ on compassionate ground, on 19/09/2016;

(e) The proposal of the petitioner was forwarded to the Education Officer by the Headmaster on 07/11/2016;

(f) On 01/01/2018, the Education Officer refused to accord approval to the compassionate appointment of the petitioner on two grounds. Firstly, that there is a ban on recruitment and secondly, the staffing pattern of the non-teaching staff is yet to be formalized and is pending with the Government.

4. The learned A.G.P. submits that this Court has delivered a Judgment exactly on the issue involved in this petition on 11/08/2021, in Writ Petition No.4219/2018, filed by Smt. Yogita Shivsing Nikam versus The State of Maharashtra and others; and in Writ Petition No.163/2020, filed by Sachin Shivajirao Suryawanshi versus The State of Maharashtra and others.

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5. The learned Advocate for the respondent – School submits that the School had forwarded the proposal of the petitioner and the School was aware that the petitioner was entitled for compassionate appointment.

6. In view of the above, we deem it apposite to reproduce paragraph Nos.28 to 31 of the Judgment delivered in Smt. Yogita Shivsing Nikam (supra), 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.

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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

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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.”

7. In view of the above, this petition is allowed in terms of prayer clauses (B) and (C) and we order as under :-

a) The approval to the compassionate appointment of the petitioner from 19/09/2016, shall be granted by the Education Officer, as expeditiously as possible and in any case, on or before 15/11/2021.

b) The concerned Education Officer (the authority which issued the impugned order), shall deposit costs of Rs.25,000/- (Rs. Twenty Five Thousand) in this Court, on or before 30/11/2021.

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c) The petitioner is at liberty to withdraw the said amount without conditions, under proper identification from the learned Advocate.

d) Rule is made absolute in the above terms.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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