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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2935 OF 2019

Popat s/o Sudhakar Gangawane
Age – 21 years, Occ – Service,
At present working as “Peon”
Shri Vinayak Secondary and Higher
Secondary Vidyalaya,
Chandai Eko, Taluka – Bhokardan,
District - Jalna

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Sectary,
Education & Sports Department,
Mantralaya, Mumbai – 32
2. The Director of Education,
Maharashtra State, Pune
3. The Deputy Director of Education,
Aurangabad Region, Aurangabad
4. The Education Officer (Secondary)
Zilla Parishad, Jalna
5. Kholeshwar Shikshan Sanstha
Chandai Eko, Taluka – Bhokardan
District – Jalna
Through its President
6. Shri Vinayak Secondary and Higher
Secondary Vidyalaya, Chandai Eko,
Taluka – Bhokardan, District – Jalna
Through its Head Master

RESPONDENTS

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Mr. Ramesh I. Wakode h/f Mr. V. B. Patil, Advocate for petitioner
Mr. S. P. Sonpawale, AGP for respondents No. 1 to 4
Mr. R. S. Patil, Advocate for respondents No. 5 and 6

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**[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]**

DATE : 21st JANUARY, 2021

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally, by consent.

2. The petitioner is before us aggrieved by communication dated 30th January, 2019, whereunder proposal for approval to his appointment as a 'peon' has been declined, for, there is no sanction to staffing pattern and that recruitment, pursuant to government resolution dated 6th February, 2004, had been banned.

3. There is no dispute on factual aspect that petitioner's father had been employed as a 'peon' with effect from 1st June, 1992 on a permanent and approved post in respondent No. 6 school. He died on 18th November, 2013 while he was in service. The school, where father of the petitioner had been working, has been receiving grant in aid.

4. On attaining majority, the petitioner had requested for appointment on compassionate ground. The management had resolved to appoint him in the place of his father and had issued

appointment order accordingly. The petitioner had also joined duty on 11th January, 2019. Management had submitted a proposal for approval to said appointment of the petitioner on 17th January, 2019 to the education officer and on 30th January, 2019, impugned communication has been issued.

5. Mr. Wakode, learned advocate submits that the reasons given under the impugned communication are untenable, as it would not be the case that ban would hold appointments on compassion and that the objection in respect of non sanction to staffing pattern is also untenable, since the post, on which father of the petitioner had been working, had been a sanctioned post. He refers to a decision of division bench of this court (Nagpur) in civil writ petition No. 6187 of 2019 dated 7th September, 2020 (*Buldana Education Society, Buldana and another V/s State of Maharashtra and others*) wherein it has been observed, thus,

“ 3. The petitioner seeks to challenge the order dated 20.03.2018, passed by the respondent No. 3, whereby the approval to the appointment of the respondent No. 4, has been refused on the ground that there was ban of recruitment and the staffing pattern was not sanctioned. Insofar as the issue of non sanctioning of staffing pattern is concerned, it has already been held in the case of **Suraj Uttam Kamble Vs. State of Maharashtra and Ors. 2019 (4) Mh.L.J., P.332**, that in the case of compassionate appointment, as the post occupied by the employee, who expired, was already sanctioned, the question of sanction approving of the same again by way of approval of the

staffing pattern does not arise. The staffing pattern deals with working posts. Insofar as the issue of ban in recruitment is concerned, the same applied to creating of new post and not otherwise.

4. In that light of the matter, the impugned order, therefore, cannot be sustained and the same is quashed and set aside. The respondent No. 2 is directed to grant approval to the appointment of respondent No. 4 on the post of peon on compassionate ground from the date of his appointment. ”

6. He along side refers to another order dated 11th February, 2020 in writ petition No. 3095 of 2019 (*Mohd. Ashraf Shaikh Aslam V/s State of Maharashtra and Others*), wherein it has been observed, thus,

“ 2. *The claim of the petitioner for employment on compassionate ground has been rejected on the ground that there is ban imposed upon the recruitment by Government Resolution dated 12.02.2015. The Division Bench decision of this Court in the case of **Suraj Uttam Kamble Vs. State of Maharashtra, reported in 2019 (4) Mh.L.J. 332**, it is been held that ban on recruitment does not apply to the appointment on compassionate ground made in terms of Government Circular dated 31.12.2002.*

3. The petitioner is not being appointed on fresh post but, on the post vacant due to death of his father, which was in employment and hence the ban under the Government Resolution dated 12.02.2015 does not apply.

4. In view of above, Writ Petition is allowed.

5. The respondents have taken a stand due to which decision on

the question of grant of approval to the appointment of the petitioner is pending and therefore, the same shall be considered ignoring the ban on recruitment imposed by Government Resolution dated 12.02.2015. We direct the respondents to take decision in the matter, in accordance with law. ”

7. In the circumstances, we deem it appropriate to set aside impugned communication dated 30th January, 2019 passed by respondent No. 4 – Education Officer (Secondary), Jalna and direct the Education Officer (Secondary), Jalna to decide on the proposal in respect of approval to appointment of the petitioner as a ‘peon’ in respondent No. 6 school, in right earnest, preferably within a period of two months from the date of receipt of writ of this order and shall not decline approval for the very reasons under the impugned order.

8. Writ petition is disposed of. Rule is made absolute in aforesaid terms.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE