

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3061 OF 2020

,Prashant s/o Vishwambhar Chavan

,Age-30 years, Occu-Service

R/o Pakharsangavi, Tq. and Dist.

Latur

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PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai - 32.

2. The Director of Education,
Secondary and Higher Secondary
Directorate of Education,
Maharashtra State, Pune-1

3. The Deputy Director of Education,
Latur Region, Latur,

4. The Education Officer (Secondary),
Zilla Parishad, Latur,

5. Head Master,
Lal Bahadur Shastri Vidyalaya,
Udgir, Tq. Udgir, Dist.Latur

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RESPONDENTS

Mr.R.K.Ashtekar, Advocate for the petitioner.

Mrs.M.A.Deshpande, Advocate for respondent Nos. 1 to 4.

Mr.V.V.Bhavthankar, Advocate for respondent No.5.

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

DATE : DECEMBER 1, 2021

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

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

2. The only issue raised in this petition is whether the petitioner, was rightly appointed on compassionate basis in place of his father, who was declared medically unfit due to paralysis and was retired on 30/06/2009. He was a permanent employee as a “*Lab Assistant*”. Consequent to his retirement, the said post fell vacant. The petitioner filed an application on 30/07/2012 seeking compassionate appointment in place of his father. The Management appointed him on compassionate basis on 15/06/2015, after almost three years.

3. Since the petitioner was not granted approval, he approached this Court in WP No.5763/2017 praying for a direction to decide the proposal. By order dated 27/04/2017, this Court disposed off the petition and issued directions to decide the proposal within 6 months. Since the proposal of the petitioner was rejected, he preferred WP No.14728/2017 challenging the rejection and praying for an order of

approval from this Court. This Court disposed off the writ petition by order dated 20/12/2017 and again sent the petitioner back to the Education Officer for reconsideration.

4. By an order dated 14/05/2018, the Education Officer again declined to grant approval as his appointment was made without the prior permission of the Education Officer. The petitioner again came to this Court in WP No.7741/2018. This Court, by order dated 12/02/2019, set aside the impugned order and again sent the petitioner back for a fresh decision on his proposal.

5. By the impugned order dated 16/04/2019, the Education Officer once again rejected the proposal on the ground that there was no staffing pattern formalized for the non teaching staff. Hence this petition.

6. The Head Master Shri Pradip Prabhakar Kulkarni has stated in the affidavit in reply that the post of "Laboratory Assistant" was available since 2014-2015. The Deputy Education Officer (Secondary) Zilla Parishad, Shri Dnyaneshwar s/o Adnyan More has filed an

affidavit in reply dated 28/10/2020 stating therein that there are two sanctioned posts of Lab Assistants. A chart, as regards private secondary school – non teaching staff – sanch manyata year 2018=2019, is also placed on record.

7. This Court has held in **Writ Petition No.4219/2018** filed by **Smt.Yogita w/o Shivsing Nikam Vs. The State of Maharashtra and others** and **Writ Petition No.163/2020** filed by **Sachin Shivajirao Suryawanshi Vs. The State of Maharashtra and others**, decided on 11/08/2021 that in so far as compassionate appointments are concerned, the ban on recruitment or absence of staffing pattern, would not be a ground for refusing compassionate appointment to a candidate who is appointed in place of his deceased father/mother.

8. In view of the above, this petition is allowed in terms of paragraph No.25(B), which reads as under :-

"25(B) By issuing writ of certiorari or in the like nature the order passed by respondent Nos. 4 on 16.04.2019 and communicated on 11.10.2019 rejecting the approval of the petitioner may kindly be set aside and the respondent No.4 be directed to grant approval in favour of the petitioner."

As such, the approval to the appointment of the petitioner shall be from the date of his appointment as there was a vacant post.

9. Respondent No.5 is directed to calculate the difference of salary and forward such bills to the Education Officer/ respondent No.4, on or before 20/12/2021. The Education Officer shall scrutinize the said bills and shall sanction them in accordance with the rules, as expeditiously as possible and preferably on or before 05/01/2022. The mode of payment shall be as per the policy of the Government in vogue.

10. Rule is made absolute in the above terms.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)