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

7 WRIT PETITION NO.3944 OF 2020

PRADNESH BALASAHEB PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr A. D. Pawar, Advocate for petitioner;
Mr S. R. Yadav, A.G.P. for respondent Nos.1 to 3;
Mr S. S. Patil, Advocate for respondent Nos.4 & 5

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

DATE : 20th December, 2021

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B) and (C), which read as under :-

“B) To direct respondent No. 4 Management and/or respondent No.5 School to appoint the petitioner as a class-III/ class-IV employee in respondent No. 5 school or any other school run by the Respondent no. 4 management on compassionate ground by issuing Writ of mandamus or any other appropriate Writ or directions as the case may be;

C) The respondent Nos. 3 and 5 may kindly be directed to consider the request application dated 27.11.2015, 3.3.2016 and 25.7.2017 submitted by petitioner and take action as per letter dated 6.3.2017 issued by the Deputy Director of Education Nashik Division Nashik, Zilla Parishad, thereby it has been

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directed to take necessary decision so that the petitioner could be appointed on compassionate ground in respondent No. 4 Management, within stipulated time of 4 weeks by issuing Writ of Mandamus or any other any other appropriate writ or directions as the case may be;”

2. The petitioner’s father was an ‘Assistant Teacher’ with respondent No.5 – Junior College from 1995-96. He was a permanent employee. He passed away on 07/07/2015 while in service. The petitioner made an application for compassionate appointment in the non-teaching staff category, on 27/11/2015.

3. Since the Management did not consider the claim of the petitioner on the ground that the staffing pattern is yet to be formalized by the Education Officer, he approached respondent No.2 - Deputy Director of Education, Nashik Division, Nashik by moving several applications.

4. Respondent Nos.4 and 5 have filed an affidavit-in-reply through Shri. Kishor Rangarao Patil (though affidavit does not evidence this fact that the affiant is the Chairman of respondent No.4 – Education Society). In paragraph Nos.3 and 5, it is stated that one Lab Attendant, namely, Chindha Baburao Thakare has died on on 08/08/2021 and one Peon, namely, Dilip Baliram

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Yadave retired on 31/05/2021. It is further stated in paragraph 9 that the Headmaster Mali Bhata Kashiram died on 29/11/2006 (wrongly typed as 29/11/2016) and his legal heir Prashant Bhata Sonawane was appointed on compassionate basis on 20/01/2016. It is then submitted that one Assistant Teacher, namely, Bagale Dilip Totaram died on 10/08/2016 and it is also submitted that Desale Adhar Vishram, an Assistant Teacher died on 10/07/2005. His son Parag Adhar Desale applied for compassionate appointment on 31/03/2016 and 27/05/2017.

5. We are informed that, vide Government Resolution dated 15/02/2020, the percentage of recruitment on compassionate basis has been extended from 10% to 20%.

6. The learned Advocate for the petitioner submits that there are two more non-teaching employees, who are due for retirement in February 2022 and August 2022.

7. In view of the above, this petition is disposed off with the following directions :-

- a) The petitioner be listed by the respondent Nos.4 and 5 Management, in the wait-list of the eligible candidates for

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compassionate appointment on the basis of his application dated 27/11/2015 and also forward such list to respondent No.3 – Education Officer (Secondary), Zilla Parishad, Dhule;

b) Respondent Nos.4 and 5 Management, when the turn of the petitioner arrives, would grant him compassionate appointment and forward the said file to respondent No.3 for approval;

c) While considering the appointment of wait-listed candidates on compassionate basis as per their seniority, respondent No.3 shall scrutinize the application made by each candidate, the Government Resolution that would be applicable, and by considering the vacancies available, would proceed to grant approval for such compassionate appointment made by respondent Nos.4 and 5 – Institution;

d) If any candidate, is picked and chosen by jumping the wait-list, for appointment on compassionate basis prejudicial to the interest of the petitioner, we grant liberty

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to the petitioner to seek redressal of his grievance by availing of a remedy, as is permissible in law.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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