

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

940 WRIT PETITION NO.6231 OF 2019

RAJENDRA BHIMAJI THORAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

**WITH
WP/6357/2020**

OMKAR RAJENDRA GOSAVI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

**WITH
WP/9032/2019**

ASHA RAVINDRA JAGTAP AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Shelke Shivaji T.
AGP for Respondents : Mr. S.B. Yawalkar
Advocate for Respondent No.3 : Mr. S.S. Wagh

...

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

DATE : 25th FEBRUARY, 2021

PER COURT:-

. There is no dispute on factual aspects that the petitioners were appointed on compassionate ground in the respective posts having fallen vacant on account of death of their respective relatives who were working. While proposals for approval to their appointments were sent, those have been negatived referring to Government Resolution dated 12-02-2015 whereunder, according to respondents there are instructions imposing ban on gratuity approved to appointment

on the posts other than teachers.

2. Learned AGP has tenders across a Government Resolution dated 11-12-2020, which according to him, supersedes aforesaid government resolution dated 12-02-2015, which had been the cause to negate requests to grant approval to appointments. He further refers to, that it may be possible pursuant to the same to reconsider the proposals submitted by the petitioners.

3. It may not be out of place to refer to order passed by this Court in Writ Petition No.2935 of 2019 wherein, the situation as involved in the present matter had been considered and wherein in paragraphs no. 5 and 6, it has been observed thus:

*“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. "

4. In view of aforesaid matrix, impugned communications dated 18-03-2019, 28-01-2020 and 30-03-2019 are set aside and the proposals are revived for reconsideration and passing appropriate orders, preferably

within a period of three months from the date of receipt of writ of this order. All writ petitions are disposed of.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]

Mujaheed//