

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

WRIT PETITION NO.7993 OF 2020

Dwarka w/o Bhausahab Anuse,
age: 40 years, Occ: Service,
R/o Sai Laxmi Nagar, Yeola Road,
Kopargaon, Taluka Kopargaon,
District Ahmednagar.

Petitioner

Versus

01 The State of Maharashtra,
through its Secretary,
Department of School Education,
Mantralaya, Mumbai.

02 The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar.

03 Jagdamba Shikshan Mandal,
Brahmangaon, Taluka Kopargaon,
District Ahmednagar, through
its Secretary.

04 Madhyamik Vidyalaya, Brahmangaon,
Taluka Kopargaon, District Ahmednagar,
through its Head Master.

Respondents

Mr. S.S.Jadhavar, advocate for the Petitioner.
Mr. K.S.Patil, AGP for Respondents No.1 & 2.
Mr. S.R.Shirsat, advocate for Respondents No.3 & 4.

**CORAM : RAVINDRA V. GHUGE AND
AVINASH G. GHAROTE, JJ.**

DATE : 23rd June, 2021.

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

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

2. By this petition, the petitioner, who was appointed on compassionate basis due to untimely demise of her husband on 07.03.2017, has put forth prayer clauses "B" and "C" which read as under:

(B) By issuing writ of certiorari or any other appropriate writ, order or direction, clause No.4 of order dated 13.01.2020 issued by respondent No.2, raising unsustainable objections in the proposal seeking approval to the appointment of the petitioner i.e. regarding non submission of caste validity certificate of petitioner, may kindly be quashed and set aside.

(C) By issuing writ of mandamus or any other appropriate writ, order or direction, respondent No.2 may kindly be directed to grant approval to the appointment of petitioner as Peon in respondent No.4 school, without insisting for submission of caste validity certificate of petitioner and by accepting affidavit of the petitioner stating that, Smt.Anuse Dwarka Bhausaheb (petitioner) and Smt. Dwarka Nagerao Kare are one and the same person.

3. The petitioner's husband was working as an Assistant Teacher in Respondent No.4 – private educational Institution. On 07.03.2017, he unfortunately passed away. The petitioner was about 37 years of age at the time when she became eligible for compassionate appointment. As her application was not being considered by Respondent No.4 – School, she approached this Court in Writ Petition No.6191 of 2018. This Court had delivered an order on 06.08.2019 directing Respondent No.4 to appoint the petitioner on compassionate basis if the post was vacant and if the petitioner was eligible to be appointed. In this backdrop, she was appointed as a Peon on 03.09.2019.

4. The Respondent No.3-Management submitted a proposal for seeking approval to the appointment of the petitioner on 09.09.2019 to Respondent No.2 – Education Officer (Secondary), Zilla Parishad, Ahmednagar. He raised an objection on 13.01.2020 claiming that the caste validity certificate was not tendered by the petitioner.

5. The grievance of the petitioner is that as her appointment is on compassionate basis, she is not required to tender the caste validity certificate since that aspect is not at issue.

The petitioner placed reliance upon the judgment delivered by this Court at the Principal Seat in **Pramod Shivaji Shinde Vs. State of Maharashtra and others**, 2017 (3) MhLJ 925, which had relied upon the judgment dated 14.01.2016 delivered at Nagpur in **Vinodkumar Singh Rajkumar Vs. State of Maharashtra and others**, in Writ Petition No.4185 of 2015 and concluded in paragraphs no.5 to 12, as under:

“5. *The petitioner makes a statement, on instructions, that the Petitioner is giving up his claim to the extent of seeking validity for his caste claim as being belonging to the caste “Vadar” and consequentially he does not press for prayer clause 21(b).*

6. *We have heard the learned counsel for the respective sides and have gone through the Petition paper-book with their assistance.*

7. *The impugned order of termination dated 06.08.2013 has been passed by Respondent No.3-MSRTC on the ground that the Petitioner has not produced his validation certificate with regard to his caste certificate as belonging to “Vadar” which falls under Vimukta Jati-A. There is no dispute that the impugned order of termination is issued solely for the reason that the Petitioner has failed to produce the caste validity certificate.*

8. *The issue before us is no longer res integra in the light of the judgment of this Court dated 14.01.2016 delivered at the Nagpur Bench in Writ Petition No.4185/2015-Vinodkumar Singh Rajkumar v. State of Maharashtra and ors. This Court has specifically concluded that an appointment made on compassionate basis and in the absence of making such an appointment on a post reserved for a particular category, such an appointment would not be deemed to have been made as against a reserved post and as such, the candidate so appointed would not be required to submit a caste or tribe validity certificate.*

9. *It is not in dispute that the father of the Petitioner namely Shivaji Gurappa Shinde was an employee of Respondent No.3, who met with an accident out of and in the course of his employment. He was seriously injured in the said accident and subsequently he has died on account of the injuries so sustained. It is equally undisputed that the Petitioner was appointed on compassionate grounds in place of his deceased father by Respondent No.3.*

10. *The Petitioner had submitted his documents while being appointed on compassionate basis. One of such documents was his caste certificate. Respondent No.3 forwarded his caste certificate for validation to Respondent No.2-Committee under the assumption that the Petitioner could be continued in service only if his*

caste certificate was validated. By order dated 4.4.2013, the caste claim of the Petitioner was invalidated which consequently led to his termination at the hands of Respondent No.3 vide the impugned order dated 6.8.2013.

11. *We are not required to deal with the caste claim of the Petitioner in the light of the specific statement made, on instructions, that the Petitioner is giving up his claim to the said caste in the peculiar facts as above and as such is not pressing prayer 21(b) reproduced as above. In this backdrop, we are not deciding the caste claim of the Petitioner only to the extent of the Petitioner in the fact situation as above and as such the verdict in this Petition would be restricted only to the Petitioner.*

12. *In the judgment delivered by this Court in the matter of Vinodkumar Singh (supra), it has been concluded by this Court as under:*

“Shri S.P.Bhandarkar, the learned counsel for the petitioner submitted that the petitioner was appointed on compassionate ground and hence the respondents were not justified in directing the petitioner to produce the caste validity certificate. It is stated that merely because the caste of the petitioner is Gond (Scheduled Tribes), the respondents cannot seek the caste validity certificate when the appointment of the petitioner was made on compassionate ground. It is stated

that since the petitioner was appointed on compassionate ground and the reservation policy is not applied while appointment a person on compassionate ground the respondents were not justified in terminating the services of the petitioner on his failure to produce the caste validity certificate from the competent authority in the State of Maharashtra. It is submitted that the Tribunal ought to have allowed the original application and should have directed the reinstatement of the petitioner without a further direction to the respondents to forward the proposal of the petitioner to the Scrutiny Committee. It is submitted that since it is an admitted fact that the petitioner was appointed on compassionate ground and since the reservation policy was not followed while making the appointment, the Tribunal could not have been directed the respondent to forward the proposal of the petitioner to the Scrutiny Committee for verification of his caste claim.

Shri K.L.Dharmadhikari, the learned Assistant Government Pleader supported the order of the Tribunal. It is submitted that the petitioner was appointed on compassionate ground and since the caste of the petitioner is Gond (Scheduled Tribes) it was necessary for the petitioner to produce the caste validity certificate from a competent authority in the State of Maharashtra. It is however fairly admitted that nothing was produced on behalf of the respondents before the Tribunal to point out that the reservation policy was

followed while making the appointments on compassionate ground in the year 2005.

On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal it appears that the Tribunal was not justified in directing the respondents to refer the caste claim of the petitioner to the Scrutiny Committee for verification. Admittedly the petitioner was appointed as a Constable in the year 2005 on compassionate ground. We do not find anything on record to show that the reservation policy was followed by the State Government while making the appointments on compassionate ground in the year 2005. In the absence of any policy of the State Government for making appointments on compassionate ground by adhering to the reservation policy the appointment of the petitioner could not have been made on a post earmarked for the Scheduled Tribes. No material was placed before the Tribunal in regard to any State policy for applying reservation policy while making appointments on compassionate ground. No such material is placed in this Court despite grant of time to the respondents to point out whether any such material is available. Since the petitioner was appointed on compassionate ground, we find that the respondents were not justified in directing the petitioner to produce the caste validity certificate. The Tribunal was not justified in directing the respondents to refer the caste claim of the petitioner to the Scrutiny Committee for verification.

Hence, for the reasons aforesaid the writ petition is allowed. The order of the Maharashtra Administrative Tribunal is modified. Clauses (iii), (iv), (v) and (vi) of the operative part of the order of the Tribunal are hereby quashed and set aside.

Since we find that the respondents have wrongly issued a fresh order of appointment in favour of the petitioner after the Tribunal decided the matter, we direct the respondents to strictly comply with the order of the Tribunal and reinstate the petitioner in service with continuity but without back wages.”

6. It cannot be ignored that on the one hand, the petitioner Pramod S. Shinde had categorically made a statement that he would not claim any service benefits in connection with his caste (“Vadar”) and on the other hand, this Court had concluded that there was no material placed before the Court by the respondents to indicate that the petitioner Pramod was appointed on a post that was reserved for the backward category. This court, therefore, concluded that as the reservation policy was not applicable to compassionate appointments and as the respondents have failed to point out any policy decision of the State Government indicating that the reservation policy would also apply

to compassionate appointments, that this Court allowed the claim of the petitioner and set aside the direction that he should produce the caste validity certificate.

7. The petitioner then relied upon the judgment delivered by this Court at the Principal Seat in the matter of **Ajinkya Rajiv Khadatkar Vs. Managing Director, Maharashtra State Electricity Distribution Company Limited, Prakashgad and others**, 2019 (2) Mh.L.J. 654; wherein a similar issue was raised before the Court. This Court concluded in paragraphs no.3 to 7 as under:

“3 The learned counsel for the petitioner submits that the petitioner’s father was working in respondent No.2 on the post of Asstt. Lineman. On 20th September 2003, petitioner’s father died due to ill health. On the death of the petitioner’s father, the mother of the petitioner came to be appointed in his place on temporary basis. However, she subsequently relinquished her appointment in the name of the petitioner with a request to appoint the petitioner on compassionate ground. Thereafter, the petitioner applied for the employment on compassionate ground. Respondent No.2, by order dated 19th July 2014, appointed the petitioner on temporary basis on the post of Jr. Office Assistant. By an order dated 26th February 2016, the petitioner was declared as permanent employee.

4. By the impugned communication dated 29th March 2017, the petitioner has been informed that since his appointment was made under scheduled tribe category, he is required to submit the caste validity certificate and, as such, on failure to submit the caste validity certificate, his appointment will liable to be cancelled. In this context, the learned counsel for the petitioner relied upon the judgment of a Division Bench in *Pramod Shivaji Shinde Vs. State of Maharashtra & Ors.*, 2017 (3) Mh.L.J. 925.

5. The learned counsel for respondent Nos.1 to 3 supported the stand taken by respondent No.2. However, no material is placed before us to indicate that the appointment of the petitioner was on a post reserved for the scheduled tribe category and, therefore, respondent No.2 was not justified in demanding a caste validity certificate.

6. On perusal of the material on record and the annexed documents, it is revealed that the appointment of the petitioner was purely on compassionate ground and not under any reserved category. As noted above, the petitioner's father was working with respondent No.2 who died in harness. Petitioner's mother relinquished her rights and, thus, the petitioner came to be appointed on compassionate ground by the communication dated 26th February 2016. In view of the settled position of law that unless the Rules and the Policy of the State specifically carve out or

provide a reservation policy applicable to compassionate appointments, there cannot be a presumption that a compassionate appointment would be subject to the validation of a caste or a tribe claim only because the candidate belongs to a scheduled caste or tribe.

7. *In view of above, the petition is allowed. The impugned communications dated 29th March 2012 and 18th April 2017 are quashed and set aside. Since in the impugned communications itself, it is mentioned that the petitioner is appointed on compassionate ground, the petitioner is not required to submit his caste validity certificate.”*

8. The learned AGP has drawn our attention to paragraph 8 of the affidavit-in-reply filed by Mr.Satyajit s/o Vitthal Machchindra, Superintendent Class-II, Office of the Education Officer (Secondary), Zilla Parishad, Ahmednagar. We find it apposite to reproduce para 9 of the said affidavit dated 19.06.2021, hereunder:

“9 *I say and submit that, now in pursuance to the change in policy, the post of peon is lapse and no post is in existence in new staffing pattern for approval as no salary grants are admissible to the said post. I say and submit that, in pursuance to the new policy and the direction given in the Government Resolution dated*

12.02.2015 no appointment should have been made by the management during the pendency of the decision on new staffing pattern. However, some appointments were made on compassionate ground and therefore, question arose before the authorities whether the proposals which are pending with the deponent shall be decided in pursuance to the new policy or it has to be decided on the basis of old staffing pattern? Therefore, the office of present deponent has sought guidance from the office of Director of Education (Secondary & Higher Secondary), Maharashtra State, Pune by the letter dated 15.03.2021 and 08.06.2021. The guidance is yet to be received and as soon as the office of present deponent will receive the guidance from the office of Director of Education (Secondary & Higher Secondary), Maharashtra State, Pune the office of present deponent will decide the proposal on its own merit expeditiously. The copies of communications dated 15.03.2021 and 08.06.2021 are annexed herewith and marked as Exhibit "R-4" (Colly) to the present affidavit in reply."

9. It is quite apparent from the affidavit entered on behalf of the Education Officer (Secondary), Zilla Parishad, Ahmednagar, that the said Officer has ignored the judicial pronouncements in **Pramod Shivaji Shinde Vs. State of Maharashtra and others** (*supra*) and **Ajinkya Rajiv Khadatkar Vs. Managing Director, Maharashtra State Electricity Distribution Company Limited,**

Prakashgad and others, (*supra*) so also the brief order passed by this Court on 06.08.2019 in Writ Petition No.6191/2018 filed by Smt.Dwarka Anuse (the petitioner before us), wherein it is reiterated that there cannot be a ban on the appointments on compassionate ground. Apparently, the ignorance of the Education Officer (Secondary) has added to the miseries of the petitioner who has already suffered bereavement due to the demise of her husband and is now compelled to litigate against an unsustainable direction that she should produce her caste validity certificate, failing which, her services would not be approved.

10. The order dated 06.08.2019 in Writ Petition No.6191/2018, passed by this Court, is in the petition filed by this very petitioner who had approached this Court in 2018, as the Education Officer (Secondary), Zilla Parishad, Ahmednagar, was not considering the proposal of the Management for seeking approval to her compassionate appointment on the ground that there is a ban which would apply even to compassionate appointments.

11. The impugned order dated 13.01.2020 carries seven (7) directions to the Management while considering the proposal for

approval to the compassionate appointment of the petitioner. Only clause 4 deals with the demand for the caste validity certificate of the petitioner which has put her employment in jeopardy. The rest of the directions are to be complied with by the Educational Institution. It is informed that the Respondent-Institution has submitted its compliance report. Yet, the Education Officer is not considering the same only because the petitioner has not submitted her caste validity certificate.

12. In the light of the facts and circumstances of this case, and the law crystallized by this Court and keeping in view that there is no policy decision of the Government of Maharashtra applying reservation policy to the compassionate appointments, which in any case, could not have been made applicable, we find that Clause 4 of the impugned order dated 13.01.2020 demanding caste validity certificate of the petitioner as a precondition for granting approval to her compassionate appointment is unsustainable and deserves to be set aside.

13. The learned advocate for the petitioner has submitted, on instructions, that the petitioner will not claim any service benefits available to the reserved category to which she belongs,

keeping in view that she has been appointed on compassionate basis.

14. In view of the above, this petition is allowed with costs. Clause 4 of the impugned order dated 13.01.2020 is quashed and set aside. The Education Officer (Secondary), Zilla Parishad, Ahmednagar – Shri Dilip Thore, shall pay costs of Rs.25,000/- (Rs. Twentyfive thousand) to the petitioner by depositing the said amount by cheque drawn on his savings bank account or may transfer the said amount by RTGS in the petitioner's bank account within a period of thirty days from today.

15. Rule is made absolute in the above terms.

(AVINASH G. GHAROTE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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