

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.8174 OF 2020

AVINASH PRADIP GOSAVI
VERSUS
THE STATE OF MAHARASHTRA THR ITS PRINCIPAL
SECRETARY AND OTHERS

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Advocate for Petitioner : Mr. Shivaji T. Shelke.
AGP for Respondent/s-State : Mr. S. G. Sangle.
Advocate for Respondent No.3 : Mr. P. B. Shirsat.
Advocate for Respondent Nos.3 & 5 : Mr. C. K. Shinde.

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

DATE : 24.11.2021

PER COURT :-

1. This matter has been extensively heard on 22.11.2021 and before we could commence the dictation of the judgment, we desired to peruse the application dated 22.06.2020, which is admittedly filed by the petitioner with the Education Officer – Respondent No.2. The reason for our desire to go through the said application was to seek information as to whether the petitioner had been continuously filing applications for seeking appointment on compassionate ground. Today, a copy of the

said application filed by the petitioner, which is acknowledged by the Education Officer, is placed before us and we have perused the same.

2. By this petition, the petitioner has put forth prayer clauses "A" and "B" which read as under :

"(A) Issue a writ of mandamus or writ in the nature of mandamus or a direction in the like nature thereby directing the respondents nos.2 & 3 to issue compassionate appointment order to the petitioner either on the post of Sr. Clerk / Jr. Clerk or Lab Assistant in Shetkari Madhyamik Vidyalaya run by respondent No.3 within a stipulated period."

"(B) Direct the respondents nos.2 & 3 during the pendency of this petition to issue compassionate appointment order to the petitioner either on the post of Sr. Clerk / Jr. Clerk or Lab Assistant in Shetkari Madhyamik Vidyalaya within a stipulated period."

3. There is no dispute that the father of the petitioner was in permanent service as a peon with the Shetkari Madhyamik Vidyalaya, the only school operated by respondent No.3 - Avarshan Pravan Kshetra Shikshan Prasarak Mandal, at Post Javalke - Dhondewadi, Taluka Kopargaon. It is also an admitted position that the said peon Pradeep Gosavi, passed away on 04.02.2017 while in service.

4. The controversy in this matter has its roots in the claim of the petitioner that he had moved an application for compassionate appointment on 20.02.2017.

5. There are two factions in the Management of respondent No.3. Two advocates, namely Mr. Shinde and Mr. Shirsath have filed Vakilpatra on behalf of two persons namely Uttam Pachore and Navnath D. Darekar, respectively. Both claim to be the Secretary of the trust. Both admit that the change reports submitted by the two factions with the learned Assistant Charity Commissioner, have been rejected with liberty to prefer fresh change reports along with relevant documents. Mr. Pachore has filed such a change report. Mr. Darekar has not filed such a change report and, instead, has moved an application under Section 47 of the Maharashtra Public Trusts Act seeking appointment of trustees for administering the trust. The learned Joint Charity Commissioner has issued a public notice dated 14.02.2019, interviews have been held and further orders are awaited.

6. We have perused the application dated 20.02.2017 filed by the petitioner. The stamp of the Secretary of the trust is

visible to the naked eye and there is a signature above the said stamp on the said application indicating that the application was received by the Secretary. There is no stand taken before the Court by either of the purported secretaries that the said stamp has been surreptitiously affixed and that some action is initiated against any person who could have had the custody of the said stamp and who could be said to have allegedly misused the said stamp.

7. The Education Officer has addressed the Secretary of the Trust vide communication dated 25.06.2020, in relation to the claim of the petitioner for appointment on compassionate basis, as a Lab Assistant or Junior Clerk. There is no dispute that he is qualified to occupy either of the two positions. However, it cannot be ignored that the father of the petitioner was working as a peon and was not in the Class III category.

8. The petitioner has placed reliance on a Government Resolution dated 31.12.2002. Clause 5 of the said Government Resolution mandates the employer to visit the bereaved family and appraise the eligible member of the family, of a right to be appointed on compassionate basis. This exercise has to be

performed by the deputed Officer of the employer and it is his further responsibility to get the necessary papers filled in by the eligible candidate so as to be tendered to the competent authority for processing the claim for compassionate appointment. Admittedly, this has not been done by respondent No.3-Management. Failure to do so has been dealt by this Court in a judgment delivered at the Aurangabad Bench on 11.08.2021 in Writ Petition No.4219 of 2018 filed by Smt. Yogita W/o Shivsing Nikam Vs. The State of Maharashtra and others and Writ Petition No.163 of 2020 filed by Sachin Shivajirao Suryawanshi Vs. The State of Maharashtra and others, concluding that the employer who fails to comply with this Clause, thereby leaving the family oblivious of a right for compassionate appointment, cannot take the plea that the application for compassionate appointment is belatedly filed.

9. Mr. Shelke, further submits on the basis of Clause 4(D) of Annexure-A to the Government Resolution dated 31.12.2002 that, notwithstanding whether the deceased employee was working in the Class-C or Class-D or Class-III or IV category, an eligible member of the family can be appointed in any class, if he is qualified. He clarifies by saying that his father was

working as a peon and he can be appointed as a Junior Clerk or a Lab Assistant as he is qualified for such appointment depending upon the availability of the said post. His contention, therefore, is that a post suitable to his qualification should be granted to him as compassionate appointment and not the post of his father.

10. Clause-4(D) of the Government Resolution dated 31.12.2002 reads in Marathi as under :

- “४. अ) ...
 ब) ...
 क) ...
 ड) वर्ग—३ मधील शिक्षक व शिक्षकेतर पदावर अनुकंपा तत्वावर नियुक्तीसाठी / नियुक्तीच्या वेळी पात्र असणा—या कर्मचा—याला पदाच्या उपलब्धते अभावी वर्ग—४ मधील शिक्षकेतर पदावर नियुक्ती दिल्यास पद उपलब्ध होताच वर्ग—३ मधील शिक्षक व शिक्षकेतर पदावर त्याला प्राधान्याने नियुक्ती देण्यात यावी. मात्र वर्ग—३ मधील शिक्षकेतर पदावर अनुकंपा योजनेअन्वये नियुक्ती देण्याच्या आदेशात तसा स्पष्ट उल्लेख करण्यात यावा. तसा उल्लेख करण्यात आला असेल तरच वर्ग—३ मधील शिक्षक व शिक्षकेतर पदावर नियुक्ती देता येईल. परंतु त्यासाठी वरील अनुक्रमांक—४(ब) मध्ये विहित केलेली शैक्षणिक अर्हतेची अट पूर्ण होणे आवश्यक राहिल.”

11. We are not convinced by the submissions of the learned advocate for the petitioner that while granting compassionate appointment, a post suitable to the qualifications of the applicant / candidate should be made available to him. This

would defeat the rights of other candidates, as the post can be filled in from the public at large with an open competition.

12. An identical issue was before the Hon'ble Apex Court in the matter of *The State of Uttar Pradesh and others Vs. Premlata* decided on 05.10.2021 (Civil Appeal No.6003 of 2021). In the said case, Rule 5 of the 1974 Rules applicable to the Police Department facilitated appointment to the post, to which a candidate was eligible to be appointed. The learned Single Judge of the Allahabad High Court dismissed the claim of the candidate that while granting compassionate appointment, he should be granted a post, not which was occupied by the deceased father, but which is suitable to his qualifications. The learned Division Bench set aside the judgment of the learned Single Judge and concluded that a post suitable to the qualifications of the candidate should be appointed.

13. Negating this view, the Hon'ble Apex Court has held in paragraph Nos.10.1, 10.2, 10.3 and 11 as under :

"10.1 Applying the law laid down by this court in the aforesaid decisions and considering the observations made

hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the submissions on behalf of the respondent and the interpretation by the Division Bench of the High Court on Rule 5 of Rules 1974, is required to be considered."

"10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of Rules 1974 and has held that 'suitable post' under Rule 5 of the Rules 1974 would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. 'Suitable post' has to be considered, considering status/post held by the deceased employee and the educational qualification /eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis a vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment. In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of ClassII or ClassI post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that

he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the bread earner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet."

"10.3 In the present case as observed hereinabove initially the respondent applied for appointment on compassionate ground on the post of Assistant Operator in Police Radio Department. The same was not accepted by the Department and rightly not accepted on the ground that she was not fulfilling requisite eligibility criteria for the post of Assistant Operator. Thereafter the respondent again applied for appointment on the compassionate ground on the post of Workshop Hand. The case of the respondent was considered, however, she failed in the physical test examination, which was required as per the relevant recruitment rules of 2005. Therefore, thereafter she was offered appointment on compassionate ground as Messenger which was equivalent to the post held by the deceased employee. Therefore appellants were justified in offering the appointment to the respondent on the post of Messenger. However, the respondent refused the appointment on such post."

"11. In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the Rules 1974 and in observing and holding that the 'suitable post' under Rule 5 of the DyingIn Harness Rules 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependent. As observed hereinabove such an interpretation would defeat the object and purpose of appointment on compassionate ground."

14. It was thus, concluded that the Rule facilitating compassionate appointment should not be misinterpreted and misconstrued to mean that a post suitable to the qualification of the candidate should be offered, in disregard to the post occupied by the deceased employee.

15. We have perused the communication dated 25.06.2020 addressed by the Education Officer to respondent No.3-Secretary, referring to the application dated 22.06.2020 filed by the petitioner. The said application of the petitioner dated 22.06.2020 refers to his earlier applications made to the Secretary of the institution. The petitioner has placed before us the copies of the postal receipts dated 13.06.2018 as evidence of dispatching the letter dated 29.05.2018 to the

Education Officer, the Secretary of the trust and the Head Master. An acknowledgment receipt of the Head Master dated 13.06.2018 is also placed on record. Nevertheless, we are inclined to rely on the application dated 20.02.2017, which appears to have been delivered by hand to the Secretary. Respondent No.3, i.e. Mr. Navnath Darekar and Mr. Uttam Pachore, both claiming to be Secretaries, make a statement that they do not oppose the appointment of the petitioner on compassionate ground.

16. The learned counsel for the petitioner submits on instructions that as the petitioner is well qualified to be a Lab Assistant, he would not seek compassionate appointment as a peon, which position was held by his father.

17. Considering the law laid down in *Premlata (supra)*, we do not find that we could entertain this request of the petitioner. However, if the State Government introduces any law of facilitating compassionate appointment to a candidate liable to be appointed as such, not on the post occupied by the deceased father / mother, but on a post suitable to the

qualifications held by such a candidate, the petitioner would be at liberty to renew his request.

18. At this stage, the learned advocate for the petitioner submits that, subject to the above liberty, he is willing to accept the post of a peon. The Education Officer submits in his affidavit that there is no post of peon available today in view of the Government Resolution dated 11.12.2020 vide which two out of the four posts of peon have been declared as lapsed.

19. In view of the above, this petition is partly allowed. We, therefore, direct that the petitioner shall be listed at Serial No.1 in the list of eligible candidates for appointment on compassionate basis as a peon and, as and when the post of peon becomes vacant with respondent No.3-School, the Management, or in the event of any dispute between the Management, the Education Officer, shall direct the appointment of the petitioner on compassionate basis on the post of a peon.

20. The serious controversy that Mr. Uttam Pachore has appointed his cousin brother as Head Master, his daughter-in-law Tejaswini as a Lab Assistant and the son of his cousin sister,

Nilesh as Junior Clerk, is an issue not to be considered by this Court as we are informed that this issue is already pending before a Co-ordinate Bench.

21. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-