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

WRIT PETITION NO.8933 OF 2018

Syed Asad S/o Syed Yusuf,
Age : 33 years, Occup: Service as
Peon, r/o Peerburhannagar
Galli No.9, Nanded,
Tq. and Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32
2. The District Collector,
Nanded, District Nanded
3. The Director of Higher Education,
Maharashtra State, Pune
4. The Joint Director of
Higher Education,
Nanded Region, Nanded
5. The Education Officer (Primary),
Zilla Parishad, Nanded
6. Pratibha Niketan Primary School run by
Pratibha Niketan Education Society,
Shrinagar, Nanded, Dist. Nanded,
Through its Headmaster
7. Pratibha Niketan Education Society
Vazirabad, Nanded, Dist. Nanded
Through its President/General Secretary
8. Pratibha Niketan Mahavidyalaya,
Banda Ghat Road, Vazirabad,
Nanded, Dist. Nanded, through its
Principal

..RESPONDENTS

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Mr V.S. Panpatte, Advocate for petitioner;
Mr S.B. Yawalkar, A.G.P. for respondent nos.1 to 4;
Mr S.M. Kulkarni, Advocate for respondent nos.6 to 8;
Mr N.S. Kadam, Advocate for respondent no.5

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

DATE : 24th August, 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 petitioner has put-forth prayer clauses (B), (C), (D) and (E) as under :-

“(B) By a writ of certiorari or any other appropriate writ or direction in the like nature, the communications/orders dated 05.06.2017 and 20.01.2018 issued by the respondent no.5 – Education Officer (at Exhibit ‘H’ colly.) may please be quashed and set aside;

(C) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.5-Education Officer may please be directed to forthwith grant approval to the appointment of the petitioner on compassionate ground as Peon in the respondent no.6-School w.e.f. 18.02.2014 and to release arrears of salary of the petitioner from 18.02.2014 till today;

(D) In the alternate, by a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent nos.7 and 8 may please be directed to appointment the petitioner on Class-IV vacant post in the respondent no.8-

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College on compassionate ground and submit proposal to the respondent nos.3 and 4 for getting approval to such appointment of the petitioner;

(E) The respondent nos.3 and 4 may please be directed to consider the proposal that may be forwarded by the respondent nos.7 and 8 for grant of approval to the appointment of the petitioner to Class-IV post in the respondent no.8-College within further stipulated period and release the salary of the petitioner regularly.”

3. The learned Advocate makes a statement that prayer clause (D) and (E) are by way of an alternate relief and considering the judgment of this Court dated 22.7.2021 in **Writ Petition No.8115 of 2018, filed by Renuka Munjaji Pondhe & anr. vs. The State of Maharashtra & ors.** and the judgment dated 11.8.2021 delivered in **Writ Petition No.4219 of 2018, etc.,** filed by **Smt. Yogita w/o Shivsing Nikam vs. The State of Maharashtra & ors.**, these two prayers are not pressed and stand given up.

4. We have considered the extensive submissions of the learned Counsel for the respective sides. We have also perused the orders passed by this Court reproduced at page 34 and 38 of the petition paper-book.

5. Considering the view taken in the two extensive judgments in the matters of Renuka and Smt. Yogita (supra), we are not advertent to the entire submissions of the litigating parties, who stand on identical footing.

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6. The following dates and events are relevant to this case:-
- a) The father of the petitioner, namely, Syed Yusuf Syed Ali, was in the permanent service of respondent no.8 college as a Library Attendant. He unfortunately passed away on 1.8.2008.
 - b) The mother of the petitioner made an application to respondent no.7 on 3.1.2009 praying for compassionate appointment for her son (present petitioner).
 - c) Respondent no.7 did not grant compassionate appointment and published an advertisement on 9.7.2013 for filling up eight posts in the Class III and IV categories.
 - d) The petitioner approached this Court in Writ Petition No.6236 of 2013 for questioning the advertisement and praying for appointment on compassionate basis in the Class IV category.
 - e) By an order dated 29.1.2014, this Court allowed the writ petition and directed the management to appoint the petitioner in the Class IV category.
 - f) On 17.2.2014, respondent no.7 appointed the petitioner on compassionate basis in the Class IV category in respondent no.6 school.

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- g) Respondent no.6 forwarded the proposal for seeking approval to such appointment, on 1.3.2014.
- h) Since approval was not granted, the petitioner filed Writ Petition No.10524 of 2014 praying for approval to his appointment in the said school.
- i) By order dated 19.1.2015, this Court directed the Education Officer to decide the said proposal within four months.
- j) Respondent no.5 Education Officer did not grant approval to the petitioner on the ground that the Government Resolution dated 2.5.2012 bans recruitment. In addition, he took a stand that his permission for recruitment was not obtained, though this Court had ordered his appointment.
- k) The petitioner again preferred Writ Petition No.7136 of 2015 and by judgment dated 19.7.2016, respondent no.5 was again directed to reconsider the proposal of the petitioner within four weeks.
- l) Since no decision was taken for almost a year, the petitioner preferred Contempt Petition No.72 of 2017.

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m) By the impugned order dated 20.1.2018, respondent no.5 Education Officer refused to accord approval to the petitioner on the ground that the Right of Children to Free and Compulsory Education Act, 2009 (for short, "RTE Act, 2009"), does not prescribe non-teaching employees in any school and Section 25 of the said Act does not give power to the Education Officer to grant approval to a compassionate appointment in the Class IV category.

n) Hence, this fifth writ petition.

7. The sequence of events recorded above speak for themselves. We have come across several cases in which we have noticed such employees being deprived and made to suffer mental agonies. The present case in hand, however, is one such extreme example which indicates the vindictiveness shown by the Education Officer.

8. Initially while refusing approval, the stand was taken that there is ban on recruitment. Thereafter a stand is taken that there is no staffing pattern. Then a stand is taken that the permission of the Education Officer was not taken while appointing the petitioner. Now a stand is taken that the RTE Act, 2009 does not provide for non-teaching posts and, therefore, no candidate appointed in the non-teaching category can be granted approval by the Education Officer. To say the least, we are shocked by the conduct of the Education Officer, namely, Shri S.S. Sontakke.

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9. This Court has laid down the law in **Smt. Samita Sameer Desai & anr. vs. The State of Maharashtra & anr.**, Writ Petition No.7507 of 2016, decided at the principal seat on 11.12.2018. So also, this Court at Aurangabad has delivered a judgment on 10.3.2021 in **Writ Petition No.15018 of 2019, filed by Bharati Bhausaheb Thakare vs. The State of Maharashtra & ors.** Yet again, this Court has taken a view vide judgment dated 22.7.2021 in **Writ Petition No.8115 of 2018 filed by Renuka Munjaji Pondhe and anr. vs. The State of Maharashtra & ors.** In **Suraj Uttam Kamble vs. The State of Maharashtra, 2019 (4) Mh.L.J. 332**, this Court has considered the ban imposed on recruitment vide Govt. Resolution dated 12.2.2015 and has concluded that such ban on recruitment would not apply to appointments on compassionate ground made in terms of the Government Circular dated 13.12.2002. This Court has also interpreted the Govt. Resolution dated 12.2.2015 in **Mohammad Ashraf Shaikh Aslam vs. State of Maharashtra, Writ Petition No.3095 of 2019, decided on 11.2.2020** and has held that the appointment on compassionate basis is beyond such ban.

10. In a recent judgment delivered on 11th August, 2021, in Writ Petition No.4219 of 2018, **Smt. Yogita (supra)**, this Court has observed in the concluding paragraph nos.31 to 33 as under:-

“31. The Education Officer (Secondary), Zilla Parishad, Jalgaon and the Education Officer (Secondary), Zilla Parishad, Nanded shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) each, as costs, from their salary bank account in this Court, on or before 30.09.2021 and these two petitioners namely **Smt. Yogita** and **Mr. Sachin**, shall be entitled to withdraw the said amount

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subject to proper identification, without conditions. In the event, any of these two Education Officers has retired, the said amount shall be recovered from his pension. Compliance of this order shall be reported to this Court upto 15.10.2021, by the respective Chief Executive Officer, Zilla Parishad.

32. We direct the learned Registrar (Judicial) of this Court to place this order before the Secretary, School Education Department, Mantralaya to be circulated to all concerned. The concerned Secretary shall pass appropriate instructions to all concerned officers in the State of Maharashtra.

33. We need to clarify that, in cases relating to a candidate not being eligible to occupy the post of the deceased father/parent and, therefore, has to be accommodated on some other inferior post in another class, the authority empowered to make compassionate appointment, shall verify whether such post is available or not and shall list the candidate in the wait list of eligible candidates.”

11. The learned Counsel representing the Education officer respondent no.5 submits that as the RTE Act, 2009 does not prescribe staffing pattern for the non-teaching employees, no school can be permitted to recruit such employees and there is no question of granting approval by the Education Officer. We are astonished by such abstruse submission. We need not spend much energy with such submission lest it would amount to wastage of our time. It is most unfortunate that we have come across several Education Officers who are not able to interpret a Govt. Resolution and probably are not inclined to take legal advice if they don't understand the intent and object of such Govt. Resolutions. However, the end result is that litigants like the present petitioner feel tortured by such mental agony and the cost of litigation. This petitioner was compelled to file five petitions

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solely on account of the Education Officer not being able to understand the concept of compassionate appointment. In this backdrop, we do not intend to remit this matter to the Education officer. We have, therefore, decided to grant approval to the petitioner under the orders of this Court.

12. In view of the above, this petition is allowed in terms of prayer clauses (B) and (C), reproduced above.

13. Since the learned Advocate for the management and the Education Officer submit that the post occupied by the petitioner is 100% grant-in-aid, that respondent nos.6 and 7 would calculate the arrears of salary of the petitioner from 18.2.2014 as per the approved rates and submit necessary bills to respondent no.5 on or before 30.9.2021. Respondent no.5 shall thereafter sanction the said bills and release the funds for making the payment to the petitioner on or before 30.10.2021.

14. Considering the conduct of the Education Officer (Primary), namely, Shri S.S. Sontakke, who is presently posted at Hingoli, we are imposing costs of Rs.50,000/- and this Education Officer shall issue an account payee cheque from his salary bank account and directly pay it to the petitioner on or before 30.9.2021. In the event of non compliance, the petitioner would be at liberty to initiate appropriate proceedings before this Court for disobedience of our directions.

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15. Rule is made absolute in the above terms.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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