

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 589 OF 2021

Shri Sagar Yashwant Mene

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. N.V. Bandiwadekar a/w Mr. Vinayak Kumbhar i/by Ms. Ashwini N. Bandiwadekar for the Petitioner.

Mr. N.C. Walimbe, AGP for the Respondent Nos. 1 and 2.

Mr. Ashutosh Gavnekar i/by Mr. C.G. Gavnekar for Respondent Nos. 3 and 4.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 11 August 2021

ORDER :

1. Rule.

2. Learned AGP waives service for Respondent Nos. 1 and 2. None appears for Respondent Nos. 3 and 4, inspite of being served.

3. Heard finally by consent of the parties.

4. By this Petition filed under Article 226 of the Constitution of India, the Petitioner is seeking quashing and setting aside the impugned order dated 25th November 2019 issued by the Respondent No. 2 and Respondent No. 2 be directed to grant approval to the appointment of the Petitioner on compassionate basis in the Respondent No. 4-School with effect from 1st August 2018 and release the grant-in-aid for payment of salary in pay-scale from the said date of appointment, together with arrears.

5. The Petitioner was working as permanent and approved Peon in the aided school run by Respondent No. 3-Management. The Petitioner's father died on 13th January 2018 while in service. The Petitioner who is permanent Peon, one of his legal heir became entitled to appoint on compassionate basis.

6. The Petitioner has made Application to Respondent Nos. 2 to 4 requesting for appointment on compassionate basis

in the school on 16th February 2018. Respondent No. 2 issued order on 12th March 2018 and directed Respondent Nos. 3 and 4 to complete the proposal regarding appointment of the Petitioner.

7. Accordingly, Respondent No. 3 issued an order on 30th July 2018 to the Petitioner as Peon in the Respondent No. 4-School. It is the case of the Petitioner that one Ahire Krushna Rajaram has retired on 31st May 2018 from the service as Peon.

8. Respondent No. 4 submitted the proposal on 10th September 2018 to Respondent No. 2 seeking approval to the appointment of the Petitioner as a Peon on compassionate basis.

9. The Respondent No. 2 issued the impugned order dated 25th November 2019 refusing to grant the proposal by placing reliance upon Government Resolution dated 28th January 2019 by which no appointments could be approved due to finalising of staffing pattern of non-teaching posts of the

State Government. Thus, the Respondent No. 2 declined to grant approval of compassionate ground of the Petitioner. Being aggrieved by the same, the present Petition.

10. Learned Counsel for the Petitioner has submitted that the impugned order dated 25th November 2019 has been passed by placing reliance upon the Government Resolution dated 28th January 2019 which was issued after the appointment of the Petitioner as Peon on 30th July 2018. He has submitted that the Government Resolution dated 28th January 2019 being subsequent to the appointment of the Petitioner from 30th July 2018 could not have been taken into consideration in the impugned order dated 25th November 2019. He has submitted that the Government Resolution dated 28th January 2019 cannot have retrospective operation.

11. He has placed reliance upon the order of the Division Bench of this Court dated 7th November 2019 which was a case similar to that of the Petitioner i.e. appointment on compassionate basis. It was observed by this Court that there was no Government Resolution which prevented the Respondent No. 3-Management from approving the

appointment of the Petitioner on compassionate basis. It was held by this Court that Government Resolution dated 2nd May 2012 which imposed a ban on appointments could not apply to the compassionate appointments. Accordingly, the Petition was allowed.

12. Learned AGP appearing for the Respondent Nos. 1 and 2 has opposed the Petition and has supported the impugned order dated 25th November 2019 passed by the Respondent No. 2-Education Officer.

13. Having considered the submissions, it is to be noted that the impugned order dated 25th November 2019 has been opposed by placing reliance on the Government Resolution dated 28th January 2019 which was issued after the appointment of the Petitioner on 30th July 2018.

14. Learned AGP for the Respondent Nos. 1 and 2 has not been able to rely upon the decision and/or produced any contra material to show that the Government Resolution dated 28th January 2019 applies retrospectively.

15. In our view, since the only basis for passing of the impugned order dated 25th November 2019 is the Government Resolution dated 28th January 2019 and which has no retrospective operation insofar as the appointment of the Petitioner on 30th July 2018 in the Respondent No. 4-School is concerned, the impugned order is erroneous and is required to be quashed and set aside. Further, it has been held that the Government Resolutions imposing ban on fresh appointments does not apply to compassionate appointments. Hence, we pass the following order:-

- (i) The impugned order dated 25th November 2019 issued by Respondent No. 2 is quashed and set aside.
- (ii) Respondent No. 2 is directed to grant approval to the Petitioner on compassionate basis in the post of peon in the Respondent No. 4-School with effect from 1st August 2018 within a period of four weeks from the date of this order.
- (iii) Respondent No. 2 is directed to release the grant-in-

aid for payment of salary in pay-scale from the date of appointment, together with arrears within a period of six weeks thereafter.

(iv) Writ Petition is disposed of in the above terms.

(v) Respondent No. 2 shall insert the name of the Petitioner in Shalarth Pranali within a period of one week from the date of approval.

(vi) Rule is made absolute.

(vii) There shall be no order as to costs.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]