

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2350 OF 2020

Shri. Vivek Shankar Kore
V/s.
The State of Maharashtra & Ors.

...Petitioner
...Respondents

Mr. Prashant Bhavake, Advocate for Petitioners.
Mr. Umesh H. Pawar, Advocate for Respondent Nos.6 and 7.
Mr. V. M. Mali, AGP for Respondent Nos.1 to 5.

**CORAM : R. D. DHANUKA, AND
ABHAY AHUJA, JJ.
DATE : 16th SEPTEMBER, 2021.**

PC. :

1. Rule. Mr. Mali, learned AGP for Respondent Nos.1 to 5 and Mr. Pawar, learned counsel for the Respondent Nos.6 and 7 waives service.
2. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the impugned Order dated 1st February 2018, passed by the Respondent No.5-Education Officer rejecting the proposal for grant of approval to the appointment of the Petitioner made by the Respondent Nos.6 and 7 in the post of Peon on compassionate basis. Father of the Petitioner was working on fully aided post of Peon in Respondent No.7-Secondary School from the academic year 1991-92, till his death on 4th May 2017 due to illness. The Petitioner was thereafter

appointed on the said post on compassionate ground. The School Committee issued appointment Order dated 26th June 2017 in favour of the Petitioner. The management applied for approval to the said post of Peon at Respondent No.7-Secondary School with effect from 15th June 2017. The said proposal is rejected by the Education Officer on the ground by referring the Government Resolution dated 12th February 2015 and the Government Resolution dated 23rd October 2013.

3. Mr. Bhavake, learned counsel for the Petitioner invited our attention to the Judgment delivered by Divisional Bench of this Court (Coram : R. D. Dhanuka & R. I. Chagla, JJ.) dated 30th July 2021 in the case of ***Sunil Gundu Desai V/s. State of Maharashtra and Others in Writ Petition No.4673 of 2019*** and would submit that after adverting to the Judgment delivered by another Division Bench of this Court (Coram : S. C. Dharmadhikari & Smt. Bharati H. Dangre, JJ.) on 11th December 2018 in case of ***Smt. Samita Sameer Desai and Another V/s. State of Maharashtra and Another in Writ Petition No.7507 of 2016***, this Court has held that the appointment on compassionate basis is kept outside the purview of general recruitment by Government Resolution dated 2nd May 2012. The said Judgment clearly applies to the facts of this case. We are bound by the said Judgment.

4. Insofar as the reference to the Government Resolution dated 23rd October 2013 in the impugned Order dated 1st February 2018 is concerned, the said Government Resolution also would not apply to the Petitioner on the compassionate ground. Even otherwise, the said Government Resolution does not apply with retrospective effect and would not have any bearing on the appointment of Petitioner made in the Respondent No.7-Secondary School earlier.

5. Mr. Mali, learned AGP for Respondent Nos.1 to 5 invited our attention to the additional grounds raised in paragraph No.7 of the Affidavit-in-reply filed by the Additional Government Pleader on 20th June 2020. Learned AGP could not distinguish the Judgment of this Court delivered on 30th July 2021 in case of ***Sunil Gundu Desai V/s. State of Maharashtra and Others (supra)***. The Additional reasons recorded in the Affidavit-in-reply in the first time cannot be read in to the impugned Order. Reasons cannot be supplied for the first time in the Affidavit-in-reply. We are not inclined to consider the additional reasons recorded in the first time in the Affidavit-in-reply and thus those reasons are discarded.

6. We accordingly pass the following Order:

- (a). Writ Petition is allowed in terms of prayer clause (b).
- (b). It is, however, made clear that the individual approval shall

be granted not within a period of two weeks but shall be granted within four weeks from today. The Education Officer shall release the requisite grant-in-aid on the said appointment of the Petitioner in the post of Peon in the Respondent No.7-School from the date of initial date of appointment within four weeks from the date of granting approval.

(c). Rule is made absolute. There shall be no order as to costs.

(d). Parties to act on the authenticated copy of this Order.

(ABHAY AHUJA, J.)

(R. D. DHANUKA, J.)

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