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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3475 OF 2021

Ashwini S. Patil & Ors.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Laxman S. Deshmukh for the Petitioners.

Mr.S.B. Kalel, AGP for the State – Respondents.

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

DATE : 1ST SEPTEMBER, 2021.

P.C. :-

1. Rule. Learned AGP waives service for the respondents.

Heard finally by consent of the parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek quashing and setting aside of the impugned communication / letter dated 27th March, 2020 issued by the respondent no.3 and for directions against the respondent no.3 to grant approval to the appointment of the petitioner no.1 to the post of Peon with effect from 28th January,, 2014 along with all consequential benefits including the arrears of salary and further directions against the respondent no.2 to issue Shalarth Number to petitioner no.1 by adding her name in the Shalarth Pranali.

3. The petitioner no.1's husband – Mr.Sarjerao Patil was eligible for being appointed to the post of Peon in a private school and after following procedure appointed the 1st petitioner's husband in the petitioner no.3 school as Peon with effect from 11th July, 2009.

4. The respondent no.3 – Education Officer by a letter dated 30th November, 2009 approved the appointment of the first petitioner's husband. The respondent no.3 while issuing the letter dated 30th September, 2012 granted approval to the appointment of the first petitioner's husband on regular pay scale.

5. The first petitioner's husband expired on 5th December, 2013 before attaining the age of superannuation. The first petitioner and her seven year minor son are the legal heirs of the first petitioner's husband. It is the case of the petitioners that the petitioner no.1 is eligible and qualified for being appointed for the post of Peon in private school in terms of the provisions of the Maharashtra Employees of Private Schools (Service Conditions) Regulation Act, 1977.

6. The first petitioner applied for appointment to the post of Peon in the petitioner no.2 school and the first petitioner was appointed to the post of Peon with effect from 1st February, 2014 in the petitioner no.3 on compassionate ground in terms of Government Resolution (GR) dated 31st December, 2003. The second petitioner

submitted the proposal for approval to the first petitioner's appointment. The respondent no.3 – Education Officer by the impugned communication/order dated 27th March, 2020 refused to grant approval to the appointment of petitioner no.1. Being aggrieved by the impugned communication / order , the present petition has been filed.

7. Learned counsel for the petitioner has referred to the impugned order dated 27th March, 2020 in which the respondent no.3 had referred to the GR dated 12th February, 2015 as well as the earlier GR dated 23rd October, 2013 as being the basis on which the respondent no.3 – Education Officer rejected the approval to the appointment on compassionate ground. He submitted that the GR dated 23rd October, 2013 has been considered by the Division Bench of this Court in **Ganesh Maruti Kamble vs. The State of Maharashtra & Ors.** dated 16th March, 2021. This Court has held that the GR dated 12th February, 2015 which refers to earlier GR dated 23rd October, 2013 was to establish a committee to review staffing pattern. The said GR dated 12th February, 2015 simply states that till the committee as per GR dated 23rd October, 2013 submits its report, further appointment should not be made. The Division Bench of this Court has further held that the appointment of the petitioner in that case being on 23rd October, 2014, the ground of rejection of the

petitioner's approval on the basis of the subsequent GR dated 12th February, 2015 cannot be sustained.

8. It is submitted that the said GR dated 23rd October, 2013 does not contain any specific embargo. Plain language in the GR dated 12th February, 2015 shows that it has been brought into force post 12th February, 2015. Therefore the embargo cannot be applied prior to 12th February, 2015. The appointment of the petitioner no.1 was dated 28th January, 2014 with effect from 1st February, 2014 prior to embargo being brought into force on 12th February, 2015, the embargo cannot be applied to the prior appointment of the petitioner no.1.

9. The petitioners have relied upon the decision of this Court in **Smt.Samita Sameer Desai & Anr. vs. The State of Maharashtra & Anr.** dated 11th December, 2018, wherein this Court has held that the petitioner's appointment being on compassionate basis will not be a new appointment. It has been further held that the decision to appoint was taken much prior to the ban imposed by the GR and even assuming that such ban applies to compassionate appointments, the appointment being much prior to the GR being in force which can only have prospective operation, the refusal to approve the appointment of the first petitioner's husband cannot be sustained. He accordingly submitted that the issue that has arisen in

this petition is clearly covered by the decisions of this Court referred to above.

10. Learned AGP appearing for the respondents has relied upon the affidavit in reply filed on behalf of the respondent no.3 dated 12th August, 2021. He has submitted that the non-teaching staffing pattern decided by GR dated 23rd October, 2013 says in point No.5 that non-teaching posts are abolished ultimately after superannuation of existing post. The learned AGP has further relied upon the statement made in the said affidavit in reply that on new or vacant non-teaching post should not be filled by any way till next orders from the Government. This is mentioned in GR dated 12th May, 2015. It has been further stated in the said affidavit in reply that as per GR dated 28th January, 2019, the staffing pattern for non-teaching post declared by the State Government except post of class -IV employee and in para no.5 of the said GR it is said that staffing pattern of fourth class non-teaching post i.e. Peon will be published independently. He has submitted that the impugned order rejecting approval to the appointment of the petitioner no.1 to the post of Peon has been correctly passed as it is based on the GR dated 23rd October, 2013 as well as subsequent GR's.

11. We have considered the submissions and in our view the basis for passing the impugned order dated 27th March, 2020 is the

GR dated 23rd October, 2013 and 12th February, 2015. Both the said GRs have been considered by this Court in **Ganesh Maruti Kamble** (supra) and **Smt.Samita Sameer Desai & Anr.** (supra) relied upon by the learned counsel for the petitioners. In the decision of **Ganesh Maruti Kamble** (supra), this Court has clearly held that the GR dated 23rd October, 2013 relied upon was in respect of future staffing pattern.

12. There was no specific embargo contained in the GR dated 23rd October, 2013 and this is clear from the plain language of the GR dated 12th February, 2015 that the embargo had been created post GR dated 12th February, 2015. The appointment of the first petitioner was with effect from 1st February, 2014 i.e. prior to embargo being brought into force and thus the approval could not be rejected by placing reliance upon the GR dated 12th February, 2015 or the GR dated 23rd October, 2013.

13. We are of the view that the basis for passing the impugned order is clearly erroneous and the refusal to approve the appointment of the first petitioner to the post of Peon being with effect from 1st February, 2014 cannot be sustained. The impugned order dated 27th March, 2020 is quashed and set aside. The respondent no.3 is directed to grant approval to the post of the first petitioner as Peon with effect from 1st February, 2014 along with consequential

benefits including arrears of salary within a period of six weeks from today.

14. We direct the respondent no.2 to issue Shalarth Number to the petitioner no.1 by adding the name of the first petitioner in the Shalarth Pranali within a period of two weeks after granting approval to the post of the petitioner no.1 as Peon.

15. The writ petition is accordingly disposed of in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)