

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2678 OF 2020

Bhushan S/o Sudamrao Ekonkar, Tah. Arvi, Dist. Wardha
-vs-

State of Maharashtra, Thr. Its Secretary, School Education Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Smt Smita Deshpande, Advocate for petitioner.
Smt Sangita Jachak, Assistant Government Pleader for respondent
Nos.1 and 2.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : December 16, 2021

P.C.

Rule. Rule made returnable forthwith and heard finally.

The petitioner's father was working on the post of 'Peon' at the respondent No.4-School conducted by respondent No.3. During the course of service he expired on 05/07/2013. The petitioner sought appointment on compassionate ground and ultimately on 03/05/2014 he was appointed on the post of 'Peon'. Thereafter the said School submitted a proposal for grant of approval to his appointment. Thereafter on 18/01/2020 the Education Officer refused to approve the petitioner's appointment on two grounds namely, that there was a ban to recruitment and secondly the revised staffing pattern had not been prepared. Being aggrieved, the said order has been challenged in the present writ petition.

2. Smt Smita Deshpande, learned counsel for the petitioner submitted that the order passed by the Education Officer on both counts is not sustainable in view of the decisions of this

Court in Writ Petition No.7614/2015 (*Swapnil s/o Sanjay Patil vs. The State of Maharashtra and ors.*) decided on 16/10/2015, Writ Petition No.11180/2016 (*Anand Jalinder Chavan vs. State of Maharashtra and ors.*) decided on 22/12/2018, Writ Petition No.4219/2018 (*Smt. Yogita w/o Shivsing Nikam vs. The State of Maharashtra and ors.* with connected matter) as well as decision in *Suraj Uttam Kamble vs. State of Maharashtra and ors.* 2019 (4) *Mh.LJ.* 332. It is submitted that this Court has held in clear terms that want of sanction of staffing pattern as well as ban on recruitment cannot be a justification for refusing to approve an appointment made on compassionate basis.

3. Smt S. Jachak, learned Assistant Government Pleader for the respondent Nos.1 and 2 initially sought time to file reply on behalf of the respondents. It is however seen that the reasons for refusing to approve the petitioner's appointment are contained in the impugned order itself and its validity would have to be determined on that basis. The learned Assistant Government Pleader however does not dispute the legal position that now stands settled in view of the decisions relied upon by the learned counsel for the petitioner.

4. The impugned order gives the reasons for refusing approval to the appointment of the petitioner which are non-preparation of the revised staffing pattern and ban on fresh recruitment. We find that these grounds have been considered by this Court in the decisions relied upon by the learned counsel for the petitioner it has been found that said reasons are not sufficient to refuse the approval to an appointment on

compassionate ground. It is also pertinent to note that the father of the petitioner was serving on the post of 'Peon' and the petitioner has been appointed as 'Peon' on compassionate basis. In view of aforesaid legal position the impugned order is not sustainable.

5. Accordingly, order dated 18/01/2020 passed by the respondent No.2 is set aside. The respondent No.2 shall approve the appointment of the petitioner on the post of 'Peon' if there is no other legal impediment other than the reasons mentioned in the impugned order. Needless to state that petitioner would be entitled for consequential benefits accruing on account of grant of approval to his appointment if the same is granted. Necessary exercise be conducted within period of six weeks from production of this order.

Rule is made absolute in aforesaid terms. No order as to costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

Asmita