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

902 WRIT PETITION NO.2012 OF 2021

**SWARAJ SAMBHAJI SHIDLING (GAWALI)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Mr B. B. Kulkarni, Advocate h/f Mr A. N. Ayachit, Advocate for
petitioner;
Mr P. K. Lakhotiya, A.G.P. for respondent Nos.1 to 3
Mr M. S. Deshmukh, Advocate for respondent No.4

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

DATE : 26th April, 2022

PER COURT:

1. By this petition, the petitioner puts forth prayer clauses (B)
and (C) as under :-

*B) This Hon'ble Court be pleased to set aside the
impugned communication Dt. 21.09.2019 by
respondent No.4.*

*C) This Hon'ble Court be pleased to direct the
respondents to appoint petitioner on any class III or
class IV post in respondent No.4 institution on
compassionate ground."*

2. We have considered the strenuous submissions of the
learned Advocates for the appearing parties. The issue in this

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matter is that as the father of the petitioner passed away while in employment and his widow i.e. the petitioner's mother was appointed on compassionate basis on 29/06/2002. She passed away after 17 years.

3. There is no dispute that a person must be in permanent employment and the post occupied should not be a supernumerary post. The petitioner's father Sambhaji was a Peon on a permanent post in respondent No.4/Institution. After his demise, while in service, the petitioner's mother Ushabai was appointed on the post of Peon on compassionate ground. She put in 17 years in service and there is no dispute that she was in permanent employment. She passed away on 01/08/2019. The petitioner put forth his claim for compassionate appointment on the post of Peon vide application dated 10/08/2019. By the impugned order dated 21/09/2019, the claim application was rejected.

4. The learned Advocate representing respondent No.4 submits that, presently there is no post of Peon, vacant with the institution. One vacancy of a Peon would occur on 31/05/2023 due to the superannuation of an employee. If all things are normal until then, the said vacancy can be allocated to the eligible person as

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per the seniority in the list of eligible candidates for compassionate appointment.

5. We find from the record and in view of there being no controversy that the petitioner would have a claim for compassionate appointment as his mother was a permanent employee and passed away while in service after putting in 17 years. The impugned order, therefore, would not be justified.

6. As such, this petition is partly allowed.

The impugned order dated 21/09/2019, issued by the Headmaster of the respondent No.4/School, is quashed and set aside.

7. We direct the Institution to enlist the petitioner in the list of eligible candidates for appointment on compassionate basis by considering the date of his application, which is 10/08/2019, in respect of maintaining the seniority of the enlisted candidates. As and when, the turn of the petitioner arrives, the Institution would consider him for appointment on compassionate basis.

(S. G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)