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

915 WRIT PETITION NO.468 OF 2021

SURYAKANT SHANKARRAO PANCHAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr K. P. Rodge, Advocate h/f Mr P. G. Rodge, Advocate for
petitioner;
Mrs M. A. Deshpande, A.G.P. for respondent Nos.1 to 3
Mr K. M. Nagarkar, Advocate for respondent Nos.4 & 5

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

DATE : 30th March, 2022

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B), (C) & (D), which read as under :-

“B. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent No.’s 1 to 3 may kindly be directed to consider the claim of the petitioner for appointment on the vacant post of Assistant Teacher on compassionate ground in the respondent No.5 – School and further direct the respondent No.’s 4 and 5 to provide such compassionate appointment to the petitioner within stipulated period;

C. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent No.3-Education Officer may kindly be

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directed to grant approval to the petitioner as Assistant Teacher in respondent No.5-School by calling proposal from the respondent No.5-Headmaster;

D. Pending hearing and final disposal of this Writ Petition, the respondent No.'s 4 and 5 may kindly be directed to appoint the petitioner on compassionate ground on the post of Assistant Teacher in the respondent No.5- School provisionally;”.

2. We have heard the submissions of the learned Advocates for the respective parties and the learned AGP on behalf of respondent Nos.1 and 3. Despite service of Court notice on respondent No.2 – Zilla Parishad, no appearance is entered. Affidavit-in-reply has been filed on behalf of respondent Nos.4 and 5.

3. The undisputed factors are as under :-

(a) The father of the petitioner joined service as an ‘Assistant Teacher’ in respondent No.5 - School, on 19/06/1991 and started teaching at the secondary level.

(b) The school receives 100% grants.

(c) On 13/06/2019, the father of the petitioner died due to a severe heart attack, while on duty.

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(d) The Government Resolutions dated 03/09/1990 and 31/12/2002 provide for compassionate appointment.

(e) The Government Resolution dated 31/12/2002 has been interpreted by this Court, vide Judgment dated 31/01/2012 in Writ Petition No.6678/2011, filed by Shaikh Mohamad Rizwan Abdul Quadir Vs. The State of Maharashtra and others, holding in paragraph 13 as under :-

“13. Insofar as the submission of the learned counsel for the respondent-management raised on the basis of clause 6 of the schedule to said Govt. Resolution dated 31.12.2002, is concerned, the said clause has to be read in harmony with clause 6(B) and on harmonious reading of the said clauses, it is amply clear that if the vacancy is available in the school in which deceased employee was working, claimant seeking appointment on compassionate ground should be accommodated in that school, and only in the event of the post not being available in that school, he has to be absorbed in another school.”

(f) Pursuant to the above, the learned Division Bench issued the following directions at paragraph 15 :-

“15. In that view of the matter, we find that the petition deserves to be allowed. The petition is,

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accordingly, allowed. Respondent-management is, therefore, directed to appoint the petitioner on compassionate ground on the post of Assistant Teacher, within one week from today and shall send necessary proposal in that respect to the Zilla Parishad/ Education Officer within two weeks from today. On receipt of such proposal, since the petitioner possesses requisite qualification of H.S.C. D.Ed. required for Assistant Teacher in the Primary School, the Education Officer shall grant his approval to the same within four weeks thereafter.”

(g) The petitioner has filed several applications for seeking compassionate appointment on 11/09/2019, 18/09/2019, 20/09/2019, 23/09/2019, 25/09/2019, 20/12/2019, 28/07/2020 and 11/08/2020.

(h) The petitioner possesses the qualification of Diploma in Technical Education (D.T.E.).

(i) On account of the demise of his father, the post of an ‘Assistant Teacher’ has become vacant.

(j) An Assistant Teacher, namely, Subhash Rajappa Agashe, was earlier declared surplus from the same school and was absorbed in another school.

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(k) After the demise of the father of the petitioner, Mr Agashe has now been absorbed in the said position and his proposal for approval is pending.

4. We have considered the affidavit-in-reply of respondent Nos.4 and 5. It appears from the affidavit-in-reply that the Management was not averse to the claim of the petitioner. The reason for not considering the application of the petitioner for immediate appointment is on account of the absorption of Shri. Subhash Rajappa Agashe. This Assistant Teacher was earlier declared surplus and the Education Officer, considering the vacancy available, directed his absorption in Panchashil High School, Hadgaon, vide order dated 13/11/2017. It is a matter of record that, Mr Agashe was not allowed to join by the Panchashil High School, Hadgaon. Subsequently, due to the demise of the petitioner's father, he has now been absorbed and presently there is no vacancy.

5. The learned AGP draws our attention to the affidavit-in-reply filed by the Deputy Education Officer (Secondary), Zilla Parishad, Nanded, namely, Shri. Madhav Sakharam Salgar, in

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which he has stated that as the School Management did not submit any proposal to his office, he did not have an occasion to consider the case of the petitioner.

6. Considering the above, we find that as on date, there appears to be no vacancy for an 'Assistant Teacher' in the School, wherein, the father of the petitioner had worked. The learned Advocate for the petitioner informs us on instructions that, one Assistant Teacher Shri. Rajure Ramrao Chandoba from this School would superannuate on 31/03/2023. A further vacancy is likely to arise in 2024 when the Headmaster would retire and a senior most Assistant Teacher would be accommodated as the Headmaster, thereby creating a vacancy for an 'Assistant Teacher'.

7. In view of the law laid down by this Court in Shaikh Mohammad Rizwan Abdul Quadir (*supra*), it would be appropriate for us to direct the Management to immediately forward the proposal of the petitioner for being eligible to be appointed on compassionate basis, to the Education Officer. Consequentially, the Education Officer would enter the name of the petitioner in the list of eligible candidates, who can be

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appointed on compassionate basis by taking into account his first application for compassionate appointment, dated 11/09/2019.

8. In view of the above, this petition is disposed off with the following directions :-

(a) Respondent No.4 – Management, shall forward the proposal of the petitioner for appointment on compassionate basis to respondent No.3, on or before 30/04/2022.

(b) Once the proposal, as above, is received by the Education Officer, he shall scrutinize the same and enter the name of the petitioner in the list of eligible candidates for compassionate appointment and maintain his seniority in such list on the basis of his first application dated 11/09/2019.

(c) Needless to state, as and when the vacancy arises, the Education Officer shall forward the name of the petitioner, either to the same Management, respondent No.4, or to any Management within the District limits, where a vacancy may have arisen with the direction that the said Management would appoint him on compassionate basis.

(d) In the event, the above option is not available till March 2023 when an 'Assistant Teacher' Shri. Rajure Ramrao Chandoba would superannuate, the petitioner could be accommodated in his place under the order of the Education Officer, provided that, the petitioner has the requisite qualifications for being eligible for such appointment.

9. Needless to state, the above directions are keeping in mind the present Educational qualifications of the petitioner, who can be appointed wherever he is eligible.

(S. G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)

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