

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

935 WRIT PETITION NO.8211 OF 2021

Smt. Aparna W/o Vijay Revgade,
Age : 36 Years, Occ. Service,
R/o. Hiwargaon Ambre,
Taluka Akole, Dist. Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
School Education Department,
Mantralaya, Mumbai- 32
2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar
3. Netaji Subhashchandra Bose Gramin
Vikas Mandal, Dongargaon,
Tq. Akole, Dist. Ahmednagar
Through its President. ..RESPONDENTS

...
Advocate for Petitioner : Mr. S. T. Shelke
AGP for Respondents: Mr. M. A. Deshpande
...

**CORAM : R. D. DHANUKA &
S.G. MEHARE JJ.
DATE : 09.03.2022.**

ORAL JUDGMENT (PER R.D. DHANUKA J) :-

Rule. Learned A.G.P. waives service for respondent
Nos. 1 and 2.

2. Learned counsel for respondent No.3 waives service
of notice . Rule is made returnable forthwith.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for writ of certiorari for quashing and setting-aside the order dated 9th August 2019 passed by the Education Officer, Zilla Parishad, Ahmednagar, rejecting the proposal for grant of approval to the appointment of the petitioner on compassionate basis for the post of peon.

4. The husband of the petitioner who was serving in the school run by respondent No.3 as peon died on 14.06.2004. The petitioner has passed 12th Standard and is eligible for the post of peon. Respondent No.3 passed resolution dated 28.12.2017, thereby appointing the petitioner on the post of Peon and submitted proposal to the Education Officer, Zilla Parishad, Ahmednagar on 22nd May 2019 seeking approval to the appointment of the petitioner on compassionate basis.

5. On 9th August, 2019, the Education Officer rejected the proposal on the ground that appointment of the petitioner on compassionate basis does not fall in the waiting list of 31st December, 2011 as per the Government resolution dated 22nd March, 2012. The rejection is also on the ground that there is a ban on recruitment of non-teaching staff as per Government Resolution dated 12th February, 2015 and circular dated 8th August 2017 issued by the Finance Department.

6. Respondent No.3 has filed affidavit-in-reply stating that the petitioner is widow of ex-employee of respondent No.3 who was appointed as peon in the school died on 11.10.2017. The appointment of the petitioner is on the compassionate basis in place of husband of the petitioner. In paragraph No.2 of the affidavit it is stated that respondent No.3 is running one school namely *Netaji Subhashcandra Bose Madhyamik Vidyalaya at Dongargaon Tq. Akole, District Ahmednagar*. The case of the petitioner for compassionate appointment is the first case of the school and therefore there is no necessity to maintain any waiting list of the applicants desiring compassionate appointment.

7. The learned counsel for the petitioner submits that the reasons recorded in the impugned order by respondent No.2 are totally perverse and contrary to the factual position and the law laid down by this Court in catena of decisions. He submits that no Government resolution imposing any ban on the appointment of any employee would apply to any appointment made on compassionate basis. The learned counsel for the petitioner relied on the Judgment of this Court dated 7th September, 2020 in the case of *Buldana Education Society*,

Buldana and another Versus State of Maharashtra and others in the Writ Petition No. 6187 of 2019 and would submit that the said Judgment would clearly apply to the facts of this case holding that in case of compassionate appointment, the post occupied by the employee, who expired, was already sanctioned, the question of sanction approving of the same again by way of approval of the staffing pattern does not arise. Insofar as the issue of ban in recruitment is concerned, the same applies to creation of new post and not otherwise. There was no waiting list of the applicant in the School run by the respondent No.3. The said G.R relied upon by the respondents does not apply to appointments made on compassionate basis.

8. In our view the impugned order is contrary to the principles of law laid down by this Court in catena of the decisions including decision of this Court in the case of Buldhana Education Society (supra) and thus deserves to be quashed and set aside. We accordingly pass the following order.

9. Writ Petition is allowed in terms of prayer clause 'B'

10. The Education Officer, Zilla Parishad, Ahmednagar is directed to grant approval to the post of the petitioner within two weeks from today without fail.

11. The petitioner would be also entitled for all consequential benefit including payments which shall be released in favour of the petitioner within four weeks from the date of granting approval. The name of the petitioner shall also be included in *Salarth Pranili* within four weeks from the date of granting approval.

Rule is made absolute . No order as to costs.

The parties shall act on the authenticated copy of this order.

(S.G. MEHARE J.)

(R.D. DHANUKA J.)

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