

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

WRIT PETITION NO.1234 OF 2021

Smt. Kavita Pramod Patil,
Age-41 years, Occu:Service,
R/o-Umbarkhede, Taluka-Chalisgaon,
District-Jalgaon.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Taluka and District-Jalgaon,
- 3) Ramrao Jibhau Madhyamik Vidyalaya,
Umbarkhde, Taluka-Chalisgaon,
District-Jalgaon,
Through its Headmaster.

...RESPONDENTS

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Mr.Ajay D. Pawar Advocate for Petitioner.
Mr.A.S. Shinde, A.G.P. for Respondent Nos.1 and 2.
Mr.D.B. Thoke Advocate for Respondent No.3.

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**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.**

DATE : 11th OCTOBER, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule returnable forthwith. With the consent of the parties, Petition is taken up for final disposal at the admission stage.

2. The petitioner, who is an unfortunate widow, is seeking redressal of her grievance regarding rejection of approval of her appointment on the basis of compassionate appointment by the Government on the ground that new staffing pattern for Class-IV employees has not been sanctioned by the Government.

3. Petitioner's husband, late Pramod Vasanaatrao Patil was serving as assistant teacher from 18th January 2001 in respondent No.3 school. Unfortunately, he expired on 30th June 2016 due to cancer. He is survived by the petitioner - widow and two children. As the petitioner was in dire need of service to run her house, she applied for the post of Class-IV as a peon, since she was having qualification of H.S.C. Thereafter, she had completed D.Ed. qualification also in the year 2019. Respondent No.3 school appointed her on compassionate ground with effect from 1st November 2016, as the petitioner was possessing

qualification for the post of peon only on that date. That decision to appoint petitioner on compassionate ground was taken by the management of respondent No.3 on the basis of Government Resolution dated 22nd March 2012. Thereafter, by Government Resolution dated 20th January 2016 the Government lifted ban for appointment on compassionate ground. The joining report of the petitioner is dated 1st November 2016. The post of peon was vacant with respondent No.3 school. The headmaster of respondent No.3 submitted proposal on 22nd February 2017 to respondent No.2 along with relevant documents. However, respondent No.2 rejected the proposal on 17th February 2020, on the ground that new staffing pattern has not been sanctioned by the State and till that date approval cannot be granted. Such stand by respondent No.2 is also against the Government Resolution dated 28th October 2015, by which 10% of Class-III and Class-IV employees on compassionate ground to be filled in each year. In fact such restrictions about the staffing pattern ought not to have been attracted for the compassionate appointments. In various Writ Petitions decided by this Court, it has been held that such embargo, as stated in the Government Resolution, is not applicable to the compassionate appointments

and therefore, the writ is required to be issued directing respondent No.2 to grant approval to the appointment of the petitioner.

4. Heard Mr. Pawar learned Advocate appearing for the petitioner, Mr. Shinde, learned AGP appearing for respondent Nos.1 and 2 and Mr. Thoke, learned Advocate appearing for respondent No.3. Perused the documents.

5. Documents on record shows that deceased husband of the present petitioner was in the employment of respondent No.3. After his sad demise, the present petitioner had made an application on 25th July 2016 for employing her on the compassionate ground and the said application can be said to be given within one month of the death of the petitioner. Thereafter, an appointment has been made by order dated 26th August 2016 and the report has been given stating that the petitioner has been allowed to join the services from 1st November 2016. The letter, along with necessary documents, has been forwarded by respondent No.3 to respondent No.2 for according approval. However, respondent No.2 has refused to accord approval on the ground that the new staffing pattern has not been approved.

6. In fact this point is not *res integra*. In ***Pramod s/o Nagraj Shirsath vs. the State of Maharashtra (Writ Petition No.1777 of 2016, decided on 4th July 2016)***, ***Hemangi Ramesh Mahajan vs. the State of Maharashtra and others (Writ Petition No.2089 of 2017, decided on 14th February 2017)***, ***Virendra Ravindra Deore vs. the State of Maharashtra and others (Writ Petition No.14738 of 2017, decided on 20th December 2017)***, ***Smt. Samita Sameer Desai and another vs. the State of Maharashtra, through Secretary and another (Writ Petition No.7507 of 2016, decided on 11th December 2018)***, further recently also in ***Smt. Yogita w/o Shivsing Nikam vs. the State of Maharashtra and others (Writ Petition No.4219 of 2018 with companion matters, decided on 11th August 2021)***, this Court has consistently held that such reason for rejecting the approval is illegal. We would like to rely on the observations in Para No.28 in the decision of ***Smt. Yogita W/o Shivsing Nikam vs. the State of Maharashtra and others*** (supra), which runs thus:-

“ 28. To say the least, we are shocked by the stand taken by the State Government, which is not only against logic and reason, but is in complete contradiction to the law crystallized by this Court in numerous judgments. It is unconscionable for the State to canvass such grounds virtually rendering the bereaved family to starvation. We find that the State has consistently ensured that not a single Government Resolution, pertaining to ban on recruitment, stay on filling in vacant posts and prohibition on appointments until the staffing pattern of the non teaching posts is formalized, would apply to appointments made on compassionate grounds. This Court has also consistently taken a view that compassionate appointment would be an exception to the mandatory rule of following specific selection procedure for recruitment on vacant posts or on newly created posts. ”

7. Therefore, taking into consideration the ratio laid down in the aforesaid decisions, the Writ Petition deserves to be allowed. According the Writ Petition stands allowed. The impugned order dated 17th February 2020 passed by Respondent No.2 – Education (Secondary), Zilla Parishad, Jalgaon stands quashed and set aside. It is declared that the Petitioner’s appointment as a peon on compassionate basis in the place of her deceased husband would be effective from 1st November 2016 and that she would be entitled to all the benefits, salary, emoluments etc.

attached to the said post. The appointment of the petitioner stands approved accordingly. The formal order to that effect shall be issued by Respondent No.2 / concerned authority within a period of SIX WEEKS from the date of communication of this order.

8. Rule is made absolute in above terms with no order as to costs.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCT22