

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

WRIT PETITION NO.11272 OF 2019

Ashish s/o Balu Bule,
Age 25 years, Occ. Nil.
R/o. Dhumalwadi, Akole,
Tq. Akole, Dist. Ahmednagar.

... **Petitioner.**

VERSUS

1) The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai-32.

2) The Chief Executive Officer,
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar.

... **Respondents.**

...

Advocate for the Petitioner : Mr. SD. Munde.
A.G.P. for the Respondent No. 1 : Mr. S.B. Yawalkar
Advocate for the Respondent No. 2 : Mr. A.D. Aghav.

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 22.08.2022.

ORAL JUDGMENT :

We have heard the learned advocates of both the sides.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner is seeking compassionate appointment in place of his father who died in harness on 02.02.2011 while serving as a primary teacher with respondent No.2.

4. The petitioner soon after death of his father applied for compassionate appointment on 27.07.2011. A seniority list was published. His name appeared at Sr. No. 72. However, subsequently he was called upon to comply with an objection regarding failure of affidavit/undertaking to complete the typing course within two years of appointment. The objections were notified to him on 07.09.2018. Pursuant thereto he seems to have submitted such an undertaking on 14.09.2018.

5. The petitioner's primary objection seems to be regarding the fact that the objection was raised belatedly. Though the seniority list was finalized he was not immediately notified the objection. His name was included in the list. Some persons who were junior to him in the seniority list as mentioned in paragraph No. 13 of the petition were given appointments in preference to him.

6. After hearing both the sides it does appear that the petitioner had submitted the application in time and his name was included in the waiting list at Sr. no. 72. It is also a matter of record that seven persons who were appearing after him in the list were subsequently given appointments as late as in 2019.

7. True it is that the petitioner ought to have been aware about the government guidelines dated 05.02.2010 which *inter alia* required the aspirant to submit all the necessary documents showing his eligibility for getting appointment on compassionate ground. However, it is a matter of record that though he had submitted the application way back in the year 2011, for the first time the objection was raised in the year 2017.

8. Besides, to our mind, the objection was too technical to deprive the petitioner of a legitimate claim for compassionate appointment. Though he was not having the requisite typing qualification he was merely expected to furnish an undertaking that he would complete it within two years of appointment. Had the objection been notified to him promptly he would

have certainly been able to comply with it. Once having accepted his candidature and his name was included in the wait list, it must be assumed that he was entitled to have a legitimate expectation that he would get the appointment according to the seniority.

9. All the aforementioned circumstances, in our considered view, require this Court to take a lenient view while exercising the constitutional powers.

10. In similar set of facts this Court in the matter of **Ajinkya Sharad Govekar .Vs. State of Maharashtra and another**, in Writ Petition No. 13131/2017 by the order dated 17.01.2019 has exercised the discretion in allowing the writ petition and directing the name of the petitioner to be included commensurate with the date of his application.

11. Since the petitioner has been superseded by as many as seven candidates, we allow the Writ Petition and direct the respondent No. 2 to consider his candidature and give him appointment against the next immediate vacancy.

12. The Rule is made absolute in above terms.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-