

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

WRIT PETITION NO.11840 OF 2019

Jitendra s/o Somnath Mandlik,
Age-22 years, Occu. Service as a Peon,
R/o. Raitewadi, Tq. Sangamner,
Dist. Ahmednagar.

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
The School Education and Sports Department,
Mumbai.
2. Sharda Education Sanstha,
Through its
The President/Secretary,
Akole Naka, Sangamner,
Tq. Sangamner,
Dist. Ahmednagar.
3. The Principal,
Matoshree Rukhminibai Damodhar Malpani,
Secondary School,
Through its Principal.
4. The Educational Officer (Secondary)
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar.

...Respondents

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Mr. K.N. Shermale, Advocate for the Petitioner.
Mr. K.N. Lokhande, AGP for the Respondent/State.

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**CORAM : A.S. GADKARI &
S.G. MEHARE, J.J.**

RESERVED ON : 08th FEBRUARY, 2022

PRONOUNCED ON : 14th FEBRUARY, 2022

JUDGMENT (PER S.G. MEHARE, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties appeared in the petition, heard finally.

2. Despite the service of notice on respondents nos.2 to 4, they did not prefer to appear. Hence, the Court proceeded ex-parte against them.

3. Petitioner's father served as a peon with respondents nos.2 and 3. His father died in harness on 30.11.2013. Immediately after his father's death, he applied for a compassionate appointment in place of his father to respondents no.2 and 3. Respondents no.2 and 3 appointed him as a peon for the period from 01.04.2019 to 31.03.2022. Thereafter respondents nos.2 and 3 forwarded his proposal for approval to the post of peon to respondent no.4 along with necessary documents. Respondent no.4, vide his letter dated 28.06.2019, declined to approve the appointment for the reasons that, as per Government Resolution dated 12.02.2015, the concerned department has not prepared a roster for the posts of non-teaching staff. The petitioner has impugned the said order dated 28.06.2019, before this Court.

4. Learned counsel for the petitioner vehemently argued that the reasons for declining the claim of the petitioner to be appointed on the compassionate ground are contrary to the law settled by this High Court by its various judgments. The revised staffing roster is not a

precondition for compassionate appointment. To bolster his argument, he relied on the case of Bhushan s/o Sudamrao Ekonkar, Tah. Arvi, Dist. Wardha Vs. State of Maharashtra, Thr. Its Secretary, School Education Dept. Mantralaya, Mumbai and Ors, (Writ Petition No.2678 of 2020 decided by the Division Bench at Nagpur dated 16.12.2021), Renuka D/o Munjaji Pondhe and Others Vs. The State of Maharashtra, School Education and Sports Department and Others, (Writ Petition No.8115 of 2018 decided by the Division Bench at Aurangabad dated 22.07.2021). He also relied on the pronouncement delivered by Principal Seat at Bombay in Writ Petition No.589 of 2021, Shri Sagar Yashwant Mene Vs. The State of Maharashtra and Ors dated 11.08.2021.

5. The learned A.G.P appearing for the State did not dispute the legal position that the law stands settled by the various pronouncements on the issue involved in this petition.

6. The above three pronouncements of the High Court of Principal Seat at Bombay, Nagpur Bench and Aurangabad Bench supports the petitioners. The above judicial pronouncements made the law clear that the absence of the revised staffing roster is not the ground to refuse the appointment on compassionate appointment. The Hon'ble Apex Court in the case of ***Umesh Kumar Nagpal Vs State of Haryana and others (1994) 4 S.C.C. 138*** and ***Local Administration Department and another Vs, M Selvanayagam Alia Kumaravelu, (2011) 13 S.C.C.***

42 has held that, the appointment of compassionate ground is not only a humane act but is aimed at facilitating immediate succour to the family in distress, who has suddenly lost the sole bread earner and is rendered to starvation. Any act on the part of the Government in delaying compassionate appointments causing further distress to the family is unconscionable. The sole object behind the scheme of compassionate appointments is to extend immediate help to the family of the deceased bread earner. It is an exceptional appointment to the routine procedure of the appointments.

7. It is not the case that the petitioner delayed applying for the compassionate appointment, and respondent no.4 did not find any other flaws in the application of the petitioner. It is time and again observed that the law on the compassionate appointments is settled by the Courts long back still the concerned authorities repeatedly declining the compassionate appointments on the same ground. We find substance in the petition as the judgments relied upon by him cover his case.

8. For the reasons stated above, the impugned order passed by respondent no.4 dated 28.06.2019 is quashed and set aside.

9. Respondent no.4 shall forthwith grant the approval to the appointment of the petitioner as a peon to the proposal placed by respondents no. 2 and 3 within four weeks from the date of receipt of this Order, in the absence of any other legal impediment other than

the reasons mentioned in the impugned order.

10. It is needless to state that the petitioner would be entitled for the consequential benefits arising out of the approval granted to his appointment.

11. Rule is made absolute in the above terms.

12. No order as to costs.

(S.G. MEHARE. J.)

(A.S. GADKARI, J.)