

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

WRIT PETITION NO.12996 OF 2019

Pathan Riyaz Khan s/o. Shaukat Khan
Age : 29 years, Occu : Unemployed,
R/o. Balepir, Opposite Sana Function Hall,
Beed, Tal. & Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
Marketing Department,
Ministry of Co-operation,
Marketing and Textiles,
Mantralaya, Mumbai.
2. Directorate of Marketing,
3rd Floor, New Central Building,
Ambedkar Wellesly Road,
Pune.
3. District Deputy Registrar,
Co-operative Societies,
Office - "Sahkar Shakti",
Stadium Complex, Jalna Road,
Beed.
4. Mr. Ashok Waghire,
Secretary,
Agricultural Produce Market Committee,
Beed Market Yard, Kurla Road, Beed.
5. Mr. Dinkar Kadam,
Chairman,
Agricultural Produce Market Committee,
Beed Market Yard, Kurla Road, Beed.
6. Dnyaneshwar Prabhakar Nande
Age : 30 years, Occu : Service,
R/o. Limbrarui (Devi), Pimpalner (G.),
Tal. & Dist. Beed
7. Shaikh Rizwan Shaikh Gaffar
Age : 29 years, Occu : Service,
R/o. Behind Nagar Parishad, Bashir Ganj, Beed.

8. Shaikh Junaid Shaikh Javed
Age : 36 years, Occu : Service,
R/o. Pingle Galli, Karanja Road, Beed,
Tal. & Dist. Beed.
9. Rahul Raghunath Waghmare
Age : 35 years, Occu : Service,
R/o. Patoda (B.), Tal. & Dist. Beed.
10. Vijay Prakash Bhavale
Age : 28 years, Occu : Service,
R/o. Rajuri Navgan, Tal. & Dist. Beed.
11. Satish Rajabhau Gite
Age : 27 years, Occu : Service,
R/o. Kathoda, Tal. & Dist. Beed.
12. Anant Bhaskarrao Mote
Age : 38 years, Occ : Service,
R/o. Pargaon, Tal. Vashi, Dist. Osmanabad.
13. Salikram Ganesh Ghubde
Age : 30 years, Occu : Service,
R/o. Nagoba Galli, Beed, Tal. & Dist. Beed.
14. Satpal Omprakash Tusambad
Age : 38 years, Occu : Service,
R/o. Balbhim Nagar, Beed, Tq. & Dist. Beed. ..Respondents.

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Mr. Sayyed Tauseef Yaseen, Advocate for the petitioner

Mr. S.B. Yawalkar, AGP for Respondent Nos.1 & 2.

Mr. Bhagwan R. Sable, Advocate for Respondent Nos.4 and 5

Mr. Satish S. Manale, Advocate for Respondent Nos.6 to 8 and 10 to 14

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

DATE : 22-09-2022

ORAL JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. Heard. Rule. It is made returnable forthwith.

Learned AGP Mr. S.B. Yawalkar waives service for respondent nos.1

and 2, learned advocate Mr. Bhagwan R. Sable waives service for

respondent nos.4 and 5 and learned advocate Mr. Satish S. Manale waives service for respondent nos.6 to 8 and 10 to 14. At their joint request the matter is heard finally at the admission stage.

2. By this petition, the petitioner has sought following prayers:

*“B. By issuing writ of mandamus and or any other appropriate writ, order and / or direction in the like manner, appointment orders dt.18/05/2018 at **Exhibit-K** issued by the office of A.P.M.C., Beed in pursuance to advertisement dt.07.03.2018 may kindly be quashed and set aside.*

*C. To hold and declare that the appointment orders dt.18/05/2018 at **Exhibit-K** issued by the office of A.P.M.C., Beed in pursuance to advertisement dt.07/03/2018 is an illegal and arbitrary act.*

D. By issuing writ of mandamus and or any other appropriate writ, order and / or direction in the like manner, respondent nos.4 and 5 may kindly be directed to appoint the petitioner on the vacant post of clerk in their office.

E. Pending hearing and final disposal of this Writ Petition, the respondent no.4 and 5 may kindly be directed to restrain themselves from recruiting and / or filling the said vacant post of ‘clerk’ or any other vacant class III / IV vacant post in their office.

F Any other relief may kindly be granted in favour of the petitioner.”

3. The claim for appointment on the post of Clerk is premised by the petitioner both towards his entitlement under Compassionate Appointment Scheme as well as the selection process in which he participated. We repeatedly enquired with Mr. Sayyed

Tauseef Yaseen, learned advocate appearing for the petitioner as to on what basis the petitioner is claiming appointment with respondent - organization. He has expressed that the claim is based both towards compassionate appointment as well as result of the selection process. We find this approach of the petitioner to be totally unacceptable. If he indeed deserved compassionate appointment, he ought not to have participated in the direct recruitment process. On the other hand, if he is challenging the direct recruitment process as well as the appointment orders of the successful candidates, he cannot press his claim for compassionate appointment in the present petition. According to us, this would have been a sufficient ground for dismissing the writ petition *in limine*.

4. However, since detailed submissions were advanced before us and by way of indulgence, we proceed to examine both the claims of the petitioner.

5. We first examine the claim of the petitioner for compassionate appointment. The petitioner's father was working on the post of driver in Agricultural Produce Market Committee, Beed (hereinafter referred to as the 'A.P.M.C.'). He died of heart attack on 01.12.2017. The petitioner made applications for grant of compassionate appointment on 18.12.2017, 19.12.2017, 19.01.2018

and 08.03.2018. In the meantime, direct recruitment process was initiated *inter alia* for the post of driver vide advertisement dated 07.03.2018. The petitioner applied in pursuance of the said advertisement and participated in the selection process by appearing for interview on 14.03.2018. He thereafter submitted application dated 22.03.2018 seeking compassionate appointment on the post of driver. In the said application, he also buttressed his claim for direct recruitment in pursuance his participation in the selection process. Thereafter, the petitioner continued pursuing his case for grant of compassionate appointment on the post of driver. However, perusal of the prayers made in the present petition would indicate that the petitioner is claiming appointment on the post of Clerk. It appears that he also filed Writ Petition No.6394 of 2018 which was disposed of by order dated 31.01.2019 observing that though the petitioner was seeking appointment on compassionate ground he had participated in the selection process, but was not selected. It was specifically recorded in the order that no vacant post was available in APMC for petitioner's compassionate appointment. It is purely on account of request made by the petitioner that this Court granted liberty to APMC to appoint him on contract basis for seasonal work and to further consider his case for compassionate appointment as and when vacancy arises. APMC has filed affidavit-in-reply stating

that no post of clerk is vacant for consideration of the case of the petitioner on compassionate ground. It is stated that only 5 vacant posts i.e. Secretary (Open), Accountant (Open), Supervisor (ST) and Junior Clerk (ST) exist in APMC, against none of which the petitioner can be appointed.

6. Considering the facts and circumstances of the case and particularly the conduct of the petitioner in participating in the direct recruitment process, we do not find that any case is made out for exercise our discretionary jurisdiction.

7. Now, we turn to the claim of the petitioner based on his participation in the direct recruitment process. He participated for appointment on the post of driver and secured only 4 marks in the selection process. Candidate securing higher marks in the selection process came to be appointed. The petitioner secured lowest marks amongst 9 candidates in the selection. Therefore, we do not find any error is committed in the selection process.

8. Despite participating in selection process for the post of Driver, the petitioner has sought a prayer for appointment on the post of clerk in the present petition. We deprecate this conduct of the petitioner.

9. We, therefore, find that the petition being devoid of any merits deserves to be dismissed and is accordingly dismissed without any order as to the costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

GGP