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

WRIT PETITION NO.12490 OF 2022

**JAGDISH JANARDHAN BODKHE
VERSUS
THE STAE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND ANOTHER**

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Mr K. P. Rodge, Advocate for petitioner;
Mr S. K. Tambe, A.G.P. for respondent No.1

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 13th December, 2022

PER COURT:

1. This is a peculiar case. The peculiarity would be evident from the paragraphs to follow.
2. The petitioner has put forth prayer clauses (B) and (C), which read as under :-

“B. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no. 2 may kindly be directed to appoint the petitioner on the vacant post of Special Teacher on compassionate ground either in Shrutiwani Vikas Vidyalaya, Ram Mandir, Kiradpura, Aurangabad or in Late Indira Gandhi Residential School for Handicapped, Jatwada Road, Aurangabad as per his qualifications of H.S.S. D.Ed. ;

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C. Pending hearing and final disposal of this writ petition, the respondent no.2 may kindly be directed to provisional appoint the petitioner to the vacant post of Special Teacher on compassionate ground either in Shrutiwani Vikas Vidyalaya, Ram Mandir, Kiradpura, Aurangabad or in Late Indira Gandhi Residential School for Handicapped, Jatwada Road, Aurangabad and release salary of the post of Special Teacher to the petitioner ;”

3. The petitioner's father was working on the post of 'Caretaker' from 12/01/1997. He passed away on 10/02/2012. The petitioner is his son who was an adult and had the qualification of H.S.C. D.Ed. The name of the petitioner was entered in the list of eligible candidates after four years on 02/12/2015 (3 years and 10 months). On 12/03/2021, which is after 9 years of the demise of the father of the petitioner, he was appointed as a 'Peon' in the Blind School. The petitioner is now 32 years of age and is a married person.

4. Contention is, that the Government Resolution dated 04/07/2009 prescribes vide Clause 4(d) of the Annexure appended thereto, that if a post is not available to absorb a compassionate appointee, he can be appointed on any other post, and later on, as the post would become vacant, he can be accommodated on the said post. The petitioner, therefore, submits that though his father

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has passed away almost 11 years ago (10 years and 10 months), the post of a 'Special Teacher' has become vacant and the petitioner can be migrated from the post of a 'Peon' to the post of a 'Special Teacher', without being subjected to the process of advertisement, application, selection and appointment procedure.

5. We are of the view that, merely because a provision is found in the GR, that a right is not created in a candidate, who is seeking compassionate appointment. Recently, the Hon'ble Supreme Court has delivered a judgment in the matter of **Fertilizers and Chemicals Travancore Ltd. and others Vs. Anusree K.B., AIR 2022 Supreme Court 4766**, concluding that appointment on compassionate ground is a mere concession and not a right. It is aimed at enabling the affected family to tide over a sudden financial crisis. In the instant case, the petitioner's father passed away 10 years and 10 months ago. He is a married person and settled in life. He has received compassionate appointment after more than 9 years of the demise of his father and now he desires of migration from the post of a 'Peon' to the post of a 'Special Teacher', without undergoing the selection process. After a passage of 10 years and 10 months from the demise of the father,

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we are unable to accept the request of the petitioner in the light of the **Fertilizers and Chemicals Travancore Ltd.** (supra).

6. In view of the above, this petition is dismissed.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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