

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

WRIT PETITION NO. 15177 OF 2019

Smt. Varsha Deepak Desale,
Age 28 years, Occu : Service,
R/o. C/o. Somnath Arjun Pawar,
Plot No.16, Shanti Nagar,
Behind Rest House, Pachora,
Tq. Pachora, Dist. Jalgaon.

..PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai-32.
- 2] The Education Officer [Secondary],
Zilla Parishad, Jalgaon,
Tq. and Dist. Jalgaon.
- 3] Shrimant Digvijay Krushnarao Pawar
Madhyamik Vidyalaya, Nibhori (Wanegaon)
Tq. Pachora, Dist. Jalgaon,
Through its Headmaster.

..RESPONDENTS

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Mr.Ajay D. Pawar, Advocate for the petitioner
Ms.M.A.Deshpande, Addl.G.P. for respondent-State
Mr.Deepak B.Rasve, Advocate h/f. Mr.Chetan T. Jadhav,
Advocate for respondent no.3.

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**CORAM : SMT. SADHANA S. JADHAV &
S.G.DIGE, JJ.**

Reserved on : 22.03.2022
Pronounced on: 25.03.2022

JUDGMENT Per : S.G.Dige, J. :

1] Rule. Rule made returnable forthwith. With the consent of both the sides, heard finally at admission stage.

2] By this Petition, the petitioner is challenging the order dated 04.12.2019 passed by respondent No. 2 Education Officer (Secondary), Zilla Parishad, Jalgaon thereby rejecting the proposal of petitioner being appointed on compassionate ground as Peon in respondent No. 3 School and the petitioner is also seeking directions against respondent no.2 to grant approval in favour of petitioner as Peon being appointed on compassionate ground from the date of initial appointment i.e. 01.11.2018 and also to make the payment of salary from the date of initial appointment till today and also in future.

3] The undisputed factors are as under:

- [a] The husband of the petitioner – Deepak Desale, was a 'Peon', working with respondent no. 3 – School;
- [b] Husband of the petitioner passed away on 26.09.2018;

- [c] The petitioner applied for the post of 'Peon' on compassionate ground on 06.10.2018.
- [d] Respondent no.3-School by passing a Resolution on 27.10.2018 appointed the petitioner as Peon on 01.11.2018.
- [e] The proposal of the petitioner was forwarded to respondent no.2 Education Officer by respondent no.3 – School on 27.11.2018.
- [f] On 04.12.2019, respondent no.2 - Education Officer refused to accord approval to the compassionate appointment of the petitioner on the ground that the proposal seeking sanction to the new staffing pattern is pending with the Government and as yet no sanction is received from the Government.

4] The learned counsel for the petitioner submits that the reasons assigned in the impugned order are not sustainable in the light of decision of this Court in Writ Petition No.4219/2018 [Smt.Yogita Shivsing Nikam Versus The State of Maharashtra and others], Writ Petition No.163/2020 [Sachin Shivajirao Suryawanshi versus The State of Maharashtra and others] and also in Writ Petition No.3342/2018 [Chandrakant Shantaram Bhoi Versus The State of Maharashtra and others].

5] It is the contention of the learned AGP that new staffing pattern has not been sanctioned by the State

Government, therefore, approval cannot be granted to the petitioner as Peon.

6] Upon hearing the learned counsel for the respective parties, we find that issue involved in this petition is no longer *res-integra* and is covered by the decision / order of this Court in the case of Smt.Yogita Shivsing Nikam [supra]. While considering similar fact situation in para nos. 28, 29 and 30 of the order, this Court has observed 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.

29. We have noticed the agony caused to litigants in such cases. We, therefore, find it appropriate at this stage to record that after the delivery of this judgment, if any case refusing approval to a compassionate appointment which is otherwise legally sustainable satisfying the eligibility criteria, comes to this court, we would be issuing directions recommending strict disciplinary action against the Education Officer and we would not hesitate to initiate contempt of Court proceedings against persons responsible, since they are interpreting the Government Resolutions in the most inappropriate manner, despite the crystalised position of law. Because of such acts of the Education Officers, widows and eligible candidates are compelled to rush to this Court after having suffered mental and physical agony of a personal loss of a sole bread earner and also spend on litigation which is costly these days. We would also impose heavy costs to be recovered from the salaries of such Education Officers for the pain caused to such petitioners. We find it appropriate to record that if the Education Officer notices that a particular Management is attempting to defeat the rights of an eligible candidate for compassionate appointment, the Education Officer would be at liberty to initiate appropriate action against such Management.

30. In view of the above, these petitions are allowed. The impugned orders stand quashed and set aside. Approvals stand granted

to these petitioners from the dates of their joining duties on compassionate basis, with all monetary benefits accruing to their posts. Formal approval orders shall be issued by the concerned Education Officers, before 30.09.2021.

7] In view of the above, there is no necessity to have sanction to the new staffing pattern for appointment on compassionate ground, therefore, the petition deserves to be allowed. Hence we pass the following order :

ORDER

a] Writ Petition is allowed. The impugned order dated 04.12.2019 is set aside. Respondent no.2 is directed to accord approval to the petitioner's appointment on compassionate ground from 01.11.2018, as expeditiously as possible.

b] Rule is made absolute in the above terms.

[S.G.DIGE, J.]

[SMT. SADHANA S. JADHAV, J.]