

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.323 OF 2021

Sadhana Rajkumar Gedam,
Aged about 48 years,
Occupation : Service,
R/of at Post Ward No.4,
Nagsen Colony, Tahsil : Saoli,
District : Chandrapur

... Petitioner.

-vs-

1. The State of Maharashtra,
Thr. Its Secretary, School Education
and Sports Department,
Mantralaya, Mumbai -32
2. Deputy Director of Education,
Nagpur Division, Nagpur
3. Education Officer (Secondary),
Zilla Parishad, Chandrapur
4. Dr Babasaheb Ambedkar Smarak
Samiti Shikshan Prasarak Sanstha,
Saoli, District Chandrapur,
Through its Secretary/President
5. Ramabai Ambedkar Vidyalaya,
Saoli, District Chandrapur,
Through Headmaster

... Respondents

Shri N. S. Warulkar, Advocate for petitioner.

Ms H. N. Jaipurkar, Assistant Government Pleader for respondent Nos.1 to 3.

Shri S. S. Shingane, Advocate for respondent Nos.4 and 5.

CORAM : A. S. CHANDURKAR AND SMT M. S. JAWALAKR, JJ.

DATE : March 01, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard finally.

The husband of the petitioner was working on the post of 'Peon' in the school run by respondent No.4-Education Society. During the course of service he expired on 09/11/2011 and hence on 12/12/2011 the petitioner made an application to the respondent No.4 thereby requesting the Society to appoint her on compassionate ground. Pursuant to her application, the petitioner was appointed on the post of 'Peon' on 27/07/2015 on a post that was vacant due to the retirement of one Shri N. V. Gedam. Thereafter on 08/12/2015 the respondent No.5-School submitted a proposal to the respondent No.3-Education Officer for grant of approval to the petitioner's appointment. The respondent No.3-Education Officer by his communication dated 30/07/2020 refused to approve the petitioner's appointment on the ground that as per Government Resolution dated 12/02/2015 and letter of Directorate dated 24/02/2015 there was a ban on recruitment of non-teaching employees until further orders and that the revised staffing pattern had not been prepared. Being aggrieved, the order dated 30/07/2020 has been challenged in the present writ petition.

2. Shri N. S. Warulkar, learned counsel for the petitioner submitted that the order passed by the Education Officer on both counts is not sustainable in view of the decision of this Court in Writ Petition No.7918/2019 (*Priti d/o Bhikanrao Kiratkar vs. The State of*

Maharashtra and ors.) dated 15/09/2020. It is submitted that this Court has held in clear terms that ban on recruitment cannot be a justification for refusing to approve an appointment made on compassionate basis. Further, the Government Resolution dated 28/01/2019 by which the revised staffing pattern has been approved is also prior to rejection of approval to the petitioner's appointment and hence the impugned order is liable to be set aside.

3. Ms H. N. Jaipurkar, learned Assistant Government Pleader for the respondent Nos.1 to 3 initially sought time to file reply on behalf of the respondents. It is however seen that the reasons for refusing to approve the petitioner's appointment are contained in the impugned order itself and its validity would have to be determined on that basis. The learned Assistant Government Pleader however does not dispute the legal position that now stands settled in view of the decisions relied upon by the learned counsel for the petitioner.

4. The impugned order gives two reasons for refusing to grant approval to the appointment of the petitioner which are, the direction not to grant approval to the appointment of non-teaching employees and the ban on fresh recruitment. We find that these grounds have been considered by this Court in the decision relied upon by the learned

counsel for the petitioner. It has been found that said reasons are not sufficient to refuse the approval to an appointment on compassionate ground. It is also pertinent to note that the petitioner has been appointed as 'Peon' on compassionate basis on a sanctioned vacant post. In view of aforesaid legal position the impugned order is not sustainable.

5. Accordingly, order dated 30/07/2020 passed by the respondent No.3 is set aside. The respondent No.3 shall approve the appointment of the petitioner on the post of 'Peon' if there is no legal impediment other than the reasons mentioned in the impugned order. Needless to state that petitioner would be entitled for consequential benefits accruing on account of grant of approval to her appointment if the same is granted. Necessary exercise be conducted within period of six weeks from production of this order.

Rule is made absolute in aforesaid terms. No order as to costs.

(Smt M. S. Jawalkar, J.)

(A. S. Chandurkar, J.)

Asmita