

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

WRIT PETITION NO.1510 OF 2021

1. Roshan S/o Vilasrao Deshmukh
Aged about 23 years, Occ. Service,
R/o Shrirampur, Pusad, Tahsil Pusad,
District Yavatmal
2. Gunwantrao Deshmukh Secondary and
Higher Secondary School through its
Head Master, Kawadipur (Tanda), Pusad,
District Yavatmal

... Petitioners

-vs-

- 1.. The Education Officer (Secondary),
Yavatmal, Zilla Parishad, Yavatmal

... Respondents

Shri K. S. Narwade, Advocate for petitioner.

Shri A. A. Madiwale, Assistant Government Pleader for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.
DATE : February 23, 2022

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

Rule. Rule made returnable forthwith and heard finally.

The petitioner No.1's father was working as Laboratory Assistant in the petitioner No.2-School. During the course of service he expired on 05/02/2016. The petitioner No.1 made an application to the Petitioner No.2 thereby requesting to appoint him on compassionate ground. On 01/03/2016 the petitioner No.1 was appointed on a clear and vacant post of 'Peon'. Thereafter the petitioner No.2- School submitted a proposal on 11/04/2016 to the respondent-Education Officer

for grant of approval to the petitioner No.1's appointment. The Education Officer by his communication dated 10/02/2021 refused to approve the petitioner No.1's appointment in view of Government Resolution dated 28/01/2019. Being aggrieved, the said order dated 10/02/2021 has been challenged in the present writ petition.

2. Shri K. S. Narwade, learned counsel for the petitioner submitted that the order passed by the Education Officer is not sustainable in view of the decisions of this Court in Writ Petition No.8115/2018 (*Renuka d/o Munjaji Pondhe and anr. vs. The State of Maharashtra and ors.*) decided on 22/07/2021, Writ Petition No.4219/2018 (*Smt Yogita w/o Shivsing Nikam vs. State of Maharashtra and ors.*) with connected matter decided on 11/08/2021 and Writ Petition No.8933/2018 (*Syed Asad S/o Syed Yusuf vs. The State of Maharashtra and ors.*) as well as decision of Honourable Supreme Court in Special Leave Petition No.19252/2018 (*Seema Kausar vs. The State of Maharashtra and ors.*) dated 06/09/2021. It is submitted that this Court has held in clear terms that appointment on compassionate basis would be exception to the mandatory rule following selection procedure and that the appointment on compassionate ground should be made as per the policy prevailing at the time of death of the employee.

3. Shri A. A. Madiwale, learned Assistant Government Pleader for the respondent filed reply on behalf of the respondent. It is submitted that as per Government Resolution dated 28/01/2019 guidelines for recruitment of the non-teaching staff in the aided and non-aided schools in the State of Maharashtra have been issued and that it has been mentioned therein that separate guidelines would be issued for recruitment of Class-IV employees as in the case of petitioner No.1. It is further submitted that vide Government Resolution dated 11/12/2020 the State Government has clarified that recruitment of Class-IV employees is honorarium only. There is no specific Government Resolution in respect of the recruitment and granting approval to the post of Class-IV employees issued thereafter. In view of this, the Education Officer has rightly rejected the proposal for approval to the petitioner No.1's appointment. 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 merely refers to the Government Resolution dated 28/01/2019 by which guidelines for recruitment of the non-teaching staff in the aided and non-aided schools in the State of Maharashtra have been issued. It has been mentioned therein that separate guidelines would be issued for recruitment of Class-IV

employees. We find that these grounds are not sufficient to refuse the approval to the appointment on compassionate ground. This aspect has also been considered by this Court in the decisions relied upon by the learned counsel for the petitioner. 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 10/02/2021 passed by the respondent is set aside. The respondent 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 his 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.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

Asmita

Digitally signed by ASMITA
ADWAIT BHANDAKKAR
Signing Date: 25.02.2022
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