

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

WRIT PETITION NO.2299 OF 2021

PETITIONER : Rahulkumar Tejlal Meshram,
Age-Adult, Occupation-Peon, R/o.
Gauttam Buddha Ward, kumbhari
Nagar, Tq. And Dist. Gondia.

..VERSUS..

RESPONDENTS : **1.** The State of Maharashtra,
Through its Secretary, Department
of Education, Mantralaya, Mumbai.

2. The Education Officer (Secondary),
Zilla Parishad, Gondia.

3. Shree Samarth New Education
Society, Through its Secretary,
Raitoli, Gondia.

4. J. M. High School, Gondia, Through
its Headmaster Main Branch,
Gondia.

Shri. R. R. Pimpalkhute h/f Shri. A. S. Thotange, Advocate for Petitioner
Ms. H. N. Jaipurkar, AGP for the Respondent Nos.1 and 2.
Shri. S. S. Tambulkar, Advocate for the Respondent Nos.3 and 4.

CORAM : **SUNIL B. SHUKRE AND**
SMT. M. S. JAWALKAR, JJ.

DATE : **2nd MAY, 2022.**

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The Petitioner was appointed on the post of Peon by Respondent No.3/Management on compassionate basis after the death of father of the Petitioner. The Petitioner was so appointed on 30.11.2016. When approval to such appointment of the Petitioner was sought, it was rejected by the Education Officer i.e. Respondent No.2 on the ground that ban on recruitment as per the Government Resolution dated 12.02.2015 was in operation. The Petitioner was compelled to file petition being Writ Petition No.244 of 2018. By the judgment delivered on 18.11.2019, this Court held that ban on recruitment imposed as per the GR dated 12.02.2018 would not come in the way of the Petitioner who was appointed on compassionate basis in the year 2016, and therefore, this Court, remanded back the matter to the Education Officer for its being considered afresh in accordance with the GR dated 31.12.2002, which prescribed the procedure for making of compassionate appointments of teaching and non

teaching staff.

4. Upon remanding of the matter, the Education Officer again considered the whole issue and found that the issue would have to be decided in terms of the GR dated 23.10.2013, which was the GR on which status quo was imposed by the GR dated 12.02.2015. After all, this Court had held that the GR dated 12.02.2015 would not come in the way of considering the appointment of the Petitioner on compassionate basis for grant of approval or otherwise.

5. The GR dated 23.10.2013 determined the staffing pattern of various teaching and non teaching staff and as per this staffing pattern, in all 15 posts of Peon were admissible in the six schools run by the Management and whereas on the date on which the Petitioner was appointed on compassionate basis, there were seventeen Peons who were working in all six schools of the Management. Thus it was found by the Education Officer that two Peons were already surplus and as such no post of Peon was available for

being filled up by making any compassionate appointment. On this ground, the Education Officer rejected the proposal of the Management seeking approval to such appointment of the Petitioner.

6. We find nothing wrong in the reasons so recorded in the impugned order for refusing to approve appointment of the Petitioner. Once, this Court held that the GR dated 12.02.2015 would not come in the way of considering the issue of grant of approval or otherwise to the appointment of the Petitioner on compassionate basis, the Education Officer was required to examine the issue in the light of the GR dated 23.10.2013, as by the GR dated 12.02.2015, a status quo was directed to be imposed in respect of staffing pattern prescribed by the GR dated 23.11.2013. The Education Officer was obliged under law to consider the issue of grant of approval to the appointment of the Petitioner in the light of the staffing pattern prescribed vide GR dated 23.10.2013. As per this staffing pattern, it was found that there were already two Peons who were in surplus and therefore the Education Officer could not grant

approval to the compassionate appointment of the Petitioner as Peon in one of the schools run by the Management. No fault, therefore, could be found with the reasoning so given by the Education Officer in the impugned order.

7. The learned Counsel for the Petitioner submits that the Education Officer did not consider the issue in a comprehensive manner and certainly not in the manner as directed by this Court in its judgment dated 18.11.2016 delivered in Writ Petition No.244 of 2018. This Court had directed the Education Officer also to consider the issue in light of the GR dated 31.12.2002. The learned Counsel for the Petitioner is right in his submission that the impugned order does not reflect consideration of the case of the Petitioner in the light of the GR dated 31.12.2002. But, this GR also says that if no post is available in the same school where a candidate like the Petitioner applies for grant of compassionate appointment, name of such person be added in the waiting list and that person be considered for being appointed in another school where the vacancy

exists. In other words, as per the GR dated 31.12.2002, the name of the Petitioner should have been added in the waiting list so that, as and when vacancy arose in some other schools, the Petitioner could have been appointed as a Peon on compassionate basis, is the submission of the learned Counsel for the Petitioner. This was certainly possible for the Education Officer to consider and even accept that but for the new developments which have come to the fore. Now, by a decision taken on 11.12.2020 by the State, the post of Peon which falls in Class-IV category in the recognized schools run by Private Management and which schools are on partly/fully aided basis, have been abolished and the State Government has taken a policy decision that instead of recruiting regular Class-IV employees, the Government would sanction the consolidated amount as allowance which is known as Peon allowance to such schools. Such being the new development, which is relevant for the purpose of deciding the controversy involved in the present case, we do not think that now any purpose would be served by remanding the matter back to the Education Officer

for its reconsideration and decision afresh in the light of the GR dated 31.12.2002. Now, the name of the Petitioner cannot be added even in the waiting list as the waiting list itself has, by necessary implication, been scrapped in view of the latest policy decision of the State of Maharashtra taken on 11.12.2020.

8. The learned Counsel for the Petitioner has also relied upon the view taken by the Division Bench of this Court at Principal Seat, Mumbai in the case of **Smt. Manisha Dnyaneshwar Londhe .Vs. The State of Maharashtra and Others, WP No.2619 of 2021** decided on 19.01.2022, in order to support the contention that in-spite of abolition of the post of the Peon, the Division Bench has granted relief to the Petitioner by directing the Education Officer to decide the proposal in accordance with law.

9. On a careful reading of the said judgment dated 19.01.2022, we find that the judgment is distinguishable on facts. In that case, the compassionate appointment was made with effect from 10.06.2016 and there was no dispute about the

fact that on the date on which the appointment was made the post of Peon was available. There was also no issue involved in that Petition regarding putting the name of the Petitioner therein on any waiting list. Such are not the facts of the present case, which have been narrated in the earlier paragraphs and therefore, in our respectful submissions no assistance could be taken by the Petitioner from the said decision rendered in the case of *Manisha* (supra)

10. The learned Counsel for the Petitioner has also referred to us the case of **Yogita Shivsing Nikam .Vs. State of Maharashtra, 2021 (6) ABR 545.**

11. In the said case, a view has been taken that ban on recruitment imposed as per the GR dated 12.02.2015 would not apply to compassionate appointments. There can be no quarrel about the same. But, in the present case, what has been found by the Education Officer that no post of Peon was available in the school i.e. Respondent No.4 when the compassionate appointment of the Petitioner as Peon

was made. In recording such a finding, the Education Officer did not give any such reason that because there was a ban on recruitment, approval could not be granted. Rather, the reason given was that there were no post of Peon available at the relevant time and so approval could not be granted, which reason in the facts and circumstances of this case, has been found by us to be infallible. Therefore, no help in our respectful opinion, would go out from the case of the *Yogita* (supra) to the case of the Petitioner here.

12. In the result, the petition stands **dismissed**.
Rule is discharged.

(JUDGE)

(JUDGE)

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