

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1973/2021

1. Tapar Education Society,
Kholapur, Through its President,
R/o. Kholapur, Tq. Bhatkuli,
Dist. Amravati
2. Rashtriya Shetki Vidyalaya,
Kholapur, Through its Headmaster,
R/o. Kholapur, Tq. Bhatkuli,
Dist. Amravati.
3. Sumit Suresh Namekar,
Aged 30 years, Occ. Service,
R/o. C/o. Ramesh Namekar,
Rahatgaon Chowki, Rahatgaon,
Tq. & Dist. Amravati. PETITIONER(S)

// VERSUS //

Education Officer (Secondary),
Zilla Parishad, Camp, Amravati,
Tq. & Dist. Amravati. RESPONDENT

Shri P.S. Patil, Advocate for the petitioners
Shri Amit Madiwale, AGP for the respondent/State

CORAM : A.S. CHANDURKAR AND G.A. SANAP, J.J.

DATED : 22/02/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned
counsel for the parties.

2 The father of the petitioner no. 3 was employed by the respondent as Peon with the petitioner no. 2 – School that is being run by the petitioner no. 1 – Society. During the course of his service, he expired on 01.08.2015. The petitioner no. 3 had thus sought compassionate appointment. After following the required procedure, the petitioner no. 3 was appointed on the post of Peon. The Education officer (Secondary) on 09.02.2016 issued a communication directing a proposal in that regard to be submitted to his office for necessary action. After the petitioner nos. 3 was appointed, the Headmaster sought approval to his appointment by the application dated 30.08.2016. This was followed by the reminder dated 24.04.2017. A fresh proposal was thereafter again submitted on 25.07.2017 which was again followed by reminders dated 13.05.2020 and 13.08.2020. Ultimately on 25.02.2021, the Education Officer informed the Headmaster that since the post in question was not duly sanctioned, the appointment of the petitioner no. 3 would not be approved. Being aggrieved, the petitioners have challenged the aforesaid order.

3. The facts on record indicate that the petitioner no. 3's father was serving as a Peon with the petitioner no. 2 – School and that he was seeking compassionate appointment on the very said post of Peon. This Court in *Suraj Uttam Kamble Vs. State of Maharashtra and others* [2019

(4) Mh.L.J. 332] has held that an appointment made on compassionate basis is not a fresh appointment that would require any approval. It is an appointment on the post held by the earlier incumbent who expired during the course of service. As no new post is created there would be no question of following the prescribed procedure while making a fresh appointment. This decision has been subsequently followed by this Court in various other cases.

4. The learned Assistant Government Pleader for the respondent has sought to rely upon the Government Resolution dated 11.12.2020 to submit that there has been change in the policy and instead of sanctioning the post of Peon, allowance would be released by the State wherever engagement of such Peon is required to be made in the school.

5. We, however, find that this Government Resolution dated 11.12.2020 cannot be made applicable to the case in hand for two reasons. Firstly, the appointment of the petitioner no. 3 is on compassionate basis and it is not a fresh appointment and secondly, the petitioner no. 3 having been appointed in the year 2016, there would be no occasion to retrospectively apply that Government Resolution. It is well settled that in the matter of compassionate appointment the policy which prevails at the time of death of the employee in question is

required to be considered and not any subsequent policy as held in *The State of Madhya Pradesh & Ors Vs. Ashish Awasthi* [2021(13) SCALE 620].

6. Hence, for the aforesaid reason, we find that the impugned order passed by the Education Officer (Secondary) refusing to approve the appointment of the petitioner cannot be sustained. It is accordingly set aside.

7. The Education Officer (Secondary) is directed to approve the appointment of the petitioner by passing a suitable order within a period of four weeks from the date of production of this order.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

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MAHADEV
GATE

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