

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

WRIT PETITION NO. 3523 OF 2019

Premkunar s/o Yashwant Bhelave,
Aged about 34 years, Occ. Nil,
R/o Mhasgaon, Tah. Goregaon,
District – Gondia.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary, School Education and Sports Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Gondia.
3. Goregaon Education Society, Goregaon,
Through its Secretary,
R/o At & Post Goregaon, Tah. Goregaon, District – Gondia.
4. The Head Master,
Swatantra Sangram Senani Shri Pannalalji Dube High School,
Mhasgaon, at and Post – Mhasgaon, Tah. Goregaon, District – Gondia.

RESPONDENTS

Shri I.N. Choudhari, Advocate for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for respondent Nos. 1 and 2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : SEPTEMBER 14, 2022

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

In view of notice for final disposal issued earlier, we have heard the learned Counsel for the parties by issuing Rule and making it returnable forthwith.

2. The father of the petitioner was serving on the post of 'Attendant' at the respondent No.4 – School run by respondent No.3 – Society. He expired on 14/2/2016 in harness. The petitioner made an application for grant of appointment on compassionate basis on 6/3/2017. The Education Officer (Secondary) was pleased to reject the request for appointment on compassionate basis on two counts namely that there was a ban on recruitment in view of the Government Resolution dated 12/2/2015 and that the staffing pattern for the non-teaching staff was yet to be finalized.

Being aggrieved, the petitioner has challenged the aforesaid rejection.

3. We have heard the learned Counsel for the petitioner as well the learned Additional Government Pleader for respondent Nos. 1 and 2. It is seen that both the grounds on which the request for grant of appointment on compassionate basis has been refused are held to be not applicable by various decisions of this Court. In *Yogita w/o Shivsing Nikam Vs. State of Maharashtra and others* [2022(2) Mh.L.J. 370], a similar challenge was considered by the Division Bench wherein appointment on compassionate basis was refused for the reason that there was a ban on recruitment in view of the Government Resolution dated

12/2/2015 and that the staffing pattern for non-teaching post was to be finalized. It has been held that these reasons cannot be the proper reasons for refusing grant of appointment on compassionate basis. We find that the aforesaid position has been considered and decided in the said decision. On that ground, the rejection of the request for appointment on compassionate basis is liable to be set aside.

4. In paragraph 8 of the affidavit-in-reply filed by respondent No.2, it has been stated that at present, there is no vacant post available at respondent No.4 – School since promotion has been given to a Peon on the post of Junior Clerk. Even if there is no vacant post available at respondent No.4 – School, the Education Officer (Secondary) can include the name of the petitioner in the waiting list of the candidates seeking appointment on compassionate basis in terms of the Government Resolution dated 31/12/2002.

5. In view of aforesaid and for the reasons recorded in the decision in *Yogita w/o Shivsing Nikam (supra)*, the order dated 11/10/2018 passed by respondent No.2 is set aside. It is directed that the name of the petitioner shall be included in the waiting list of the candidates seeking appointment on compassionate basis. As and when the petitioner becomes entitled for such appointment, necessary steps shall be

taken in that regard.

6. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit