

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

WRIT PETITION NO.2153 OF 2021

Petitioner : Shahabaj Subhan Luluwale,
Age 27 years, Occ. Service,
R/o. Frezarpura, Gawalipura, Amravati,
Tq. & Dist. Amravati.
– Versus –

Respondents : 1. Education officer (Secondary),
Zilla Parishad, Camp. Amravati,
Tq. & Dist. Amravati.

2. Shri Dadasaheb Gawai Charitable Trust, Amravati,
through its President/Secretary,
R/o Shyam Nagar, Amravati.

3. Madan Maharaj Vidyalaya and Kamaldeep Junior
College, through its Headmaster,
R/o. Fulamala, Tq. Nandgaon Khandeshwar,
Dist. Amravati.

with

WRIT PETITION NO.2375 OF 2021

Petitioner : Bhushan Anil Sardar,
Age 27 years, Occ. Service,
R/o. Narsala, Tq. Achalpur, Dist. Amravati.
– Versus –

Respondents : 1. Education officer (Secondary),
Zilla Parishad, Camp. Amravati,
Tq. & Dist. Amravati.

2. Shri Dadasaheb Gawai Charitable Trust, Amravati,
through its President/Secretary,
R/o Shyam Nagar, Amravati.

3. Matoshri Gangadevi Lulla Vidyalaya Gaurkheda Kumbhi, through its Headmaster,
R/o Gaurkheda Kumbhi, Tq. Achalpur, Dist.
Amravati.

Mr. P.S. Patil, Advocate for the Petitioner.

Mr. D.P. Thakare, Additional Government Pleader for Respondent No.1.

CORAM: **A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.**

DATE : **10th OCTOBER, 2022.**

COMMON JUDGMENT : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

02] In view of the commonality of the facts and law in both these writ petitions, the same have been heard together and shall stand disposed of by this common judgment.

03] Time and again without any exception, this Court has ruled that the appointment of a candidate on compassionate grounds would not be affected by a ban on recruitments or staffing patterns having been undertaken by the Government. Yet in these two cases, the Education Officer (Secondary) rejected to accord approval to the appointments of the petitioners made on

compassionate ground, mainly for the reason that staffing pattern of Class-IV category employees has not been fixed.

04] In both these petitions, the petitioners were appointed on the post of peon on compassionate ground in the school of respondent No.3 against the clear vacancy. Thereafter, respondent No.3 forwarded the proposal for approval of appointment of the petitioners to respondent No.1. By communications/orders dated 21/10/2021 and 27/11/2021, respondent No.1 rejected the proposals of the petitioners in Writ Petition No.2153 of 2021 and Writ Petition No.2375 of 2021, respectively, for the reasons stated hereinbefore.

05] We have heard the learned Counsel for the parties and perused the documents on record. It is submitted by the learned Counsel for the petitioners that the proposals for approval to the appointment of the petitioners were sent to the respondent no.1 by the management of the respective schools. According to him, the appointments on compassionate ground, do not come under new appointments.

06] *Per contra*, the learned Additional Government Pleader submitted that by Government Resolution dated 11/12/2020, the Government has fixed

the pattern of Class-IV posts. Now Class-IV employees will be appointed on payment of honorarium. The schools will be given peon allowances as mentioned in the Government Resolution dated 11/12/2020, out of which the schools will pay the honorarium to peon. The learned Additional Government Pleader supported the decision of respondent No.1.

07] Indisputably, the petitioners in both the writ petitions have been appointed on compassionate ground after following the due procedure of law. The petitioner in Writ Petition No.2153 of 2021 was appointed by an appointment letter dated 03/08/2019, whereas the petitioner in Writ Petition No.2375 of 2021 was appointed by an appointment letter dated 31/03/2020. The learned Division Bench of this Court in Writ Petition No.7507 of 2016 filed by Samita Sameer Desai and another against the State of Maharashtra through Secretary and another, has concluded in paragraph 9 as under:

“9. It is common ground that the appointment is sought by petitioner No.1 on compassionate ground. The very object and purpose of such employment and conferring a power to make appointment on compassionate ground is that the employer assists the family to tide over the financial crises caused by the loss of bread winner. It is an assistance to the family and which is in distress. In the circumstances, this is not a fresh appointment or an appointment which ordinarily

requires the approval. All that would suffice is an intimation from petitioner No.2 that the husband of petitioner No.1 was already appointed as a Peon and that post was permanent and duly sanctioned. Having appointed him, it was revealed that he died suddenly on 2nd November, 2011. In his place, in terms of Government policy, compassionate appointment was sought and it is that appointment which has been made. There is no post created nor is there any question of any appointment being made through recruitment process which was covered by the ban. The ban, thus, could not have covered this appointment.”

08] Rather, the affidavit-in-reply of respondent No.1 contends that the Government of Maharashtra has finalized the staffing pattern vide Government Resolution dated 11/12/2020. Therefore, now the reason for refusal to the approval to the appointments of the petitioners on the ground that the staffing pattern is under consideration, will not sustain.

09] In the light of aforesaid, the reason given by respondent No.1 refusing approval to the appointments of the petitioners is not justifiable and required to be set aside. We hold that respondent No.1 can be directed to consider the grant of approval to the appointments of the petitioners in view of the decision of this Court. Hence, the following order :

- (i) The order dated 21/10/2021 in Writ Petition No.2153 of 2021 and order dated 27/11/2021 in Writ Petition No.2375 of 2021 passed by the Education Officer (Secondary), Zilla Parishad, Amravati are set aside.
- (ii) The Education Officer shall reconsider the proposal for grant of approval to the appointment of the petitioners in the light of observations made herein above. In case the Education Officer seeks any further clarification in the matter, he is free to hear the petitioners as well as the respective Managements in that regard.
- (iii) Necessary exercise be completed within a period of two months from receipt of copy of this order.
- (iv) The decision taken be communicated to the petitioner.
- (v) Rule is made absolute in aforesaid terms with no order as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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