

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

WRIT PETITION NO.2640 OF 2021

Kumud s/o Pandurang Wanjari,
Aged 27 years, Occ.: Service,
R/o at and post Murmadi,
Tah. Lakhani, District Bhandara.

..Petitioner.

-vs-

1. State of Maharashtra,
Thr. Its Secretary, School Education Department,
Mantralaya, Mumbai 400 032
2. The Education Officer (Secondary),
Zilla Parishad, Gondia,
Tah. And District Gondia
3. Navodaya Shikshan Sanstha,
Lakhani, through its President,
R/o. Bajrang Chowk, Bhandara,
Tah. and District Bhandara.
4. The Head Master,
Navodaya High School and Junior College,
Keshori / Kelvad,
Tah. Arjuni/Mor, District Gondia.

... Respondents

Shri I. N. Choudhari, Advocate for petitioner.
Ms H. N. Jaipurkar, Assistant Government Pleader for respondent Nos.1 and 2.

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's father was working on the post of 'Peon' in the school conducted by respondent No.3. During the course of service he

expired on 21/06/2000 and hence on 12/01/2001 the mother of the petitioner made an application to the respondent No.3 thereby requesting to appoint the petitioner on attaining the age of 18 years on compassionate ground. On 04/12/2011 the petitioner completed 18 years of age and on 01/11/2014 he was appointed on the post of 'Peon' in pursuance of his mother's application. Thereafter on 05/01/2015 the respondent No.4-School submitted a proposal to the respondent No.2 for grant of approval to the petitioner's appointment. The respondent No.2-Education Officer by his communication dated 07/12/2016 refused to approve the petitioner's appointment on the ground that as per Government resolution dated 23/10/2013 a Committee had been constituted to maintain status-quo on staffing pattern of non-teaching employees and till the receipt of report of said Committee, no approval be given to new appointment as stated in Government Resolution dated 12/02/2015. Being aggrieved, the said order has been challenged in the present writ petition.

2. Shri I. N. Choudhari, learned counsel for the petitioner submitted that the order passed by the Education Officer on both counts is not sustainable in view of the decisions of this Court in Writ Petition No.7614/2015 (*Swapnil s/o Sanjay Patil vs. The State of Maharashtra and ors.*) decided on 16/10/2015, Writ Petition No.11180/2016 (*Anand*

Jalinder Chavan vs. State of Maharashtra and ors.) decided on 22/12/2018, Writ Petition No.3342/2018 (*Chandrakant S/o Shantaram Bhoi vs. The State of Maharashtra and ors.*) decided on 27/10/2021, Writ Petition No.4219/2018 (*Yogita Shivsing Nikam vs. The State of Maharashtra and ors*) as well as decision in Writ Petition No.163/2020 (*Sachin Shivajirao Suryawanshi vs. The State of Maharashtra and ors.*). It is submitted that this Court has held in clear terms that ban on recruitment cannot be a justification for refusing to approve an appointment made on compassionate basis.

3. Ms H. N. Jaipurkar, learned Assistant Government Pleader for the respondent Nos.1 and 2 initially sought time to file reply on behalf of the respondents. It is however seen that the reasons for refusing to approve the petitioner's appointment are contained in the impugned order itself and its validity would have to be determined on that basis. 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 gives two reasons for refusing to grant approval to the appointment of the petitioner which are, the direction not to grant approval to the appointment of non-teaching employees and

the ban on fresh recruitment. We find that these grounds have been considered by this Court in the decisions relied upon by the learned counsel for the petitioner. It has been found that said reasons are not sufficient to refuse the approval to an appointment on compassionate ground. 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 07/12/2016 passed by the respondent No.2 is set aside. The respondent No.2 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