

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

WRIT PETITION NO.3225 OF 2021

Rakesh S/o Chhaganlal Thakre,
Aged about 33 years,
Occupation – Service,
R/o At & Post Zarpada,
Tah. Arjuni (Mor), District Gondia

-vs-

1. State of Maharashtra,
Thr. Its Secretary, School Education Dept.
Mantralaya, Mumbai 400 032
2. The Education Officer (Secondary),
Zilla Parishad, Gondia,
Tah. And District Gondia
3. Bhartiya Bahuuddheshiya Shikshan Sanstha,
Sakoli, Through its Secretary, R/o Sakoli,
Tah. Sakloli, District Bhandara
4. The Head Master,
Dr Bhabha Vidyalaya, Zarpada,
Tah. Arjni (Mor), District Gondia

... Respondents

Shri I. N. Choudhari, Advocate for petitioner.
Smt S. S. Jachak, Assistant Government Pleader for respondent Nos.1 and 2.

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

DATE : February 22, 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 'Assistant Teacher' at the respondent No.4-School conducted by respondent No.3.

During the course of service he expired on 07/01/2017. The petitioner sought appointment on compassionate ground and ultimately on 20/03/2017 he was appointed on the post of 'Peon'. Thereafter the said School submitted a proposal on 03/04/2017 to the respondent No.2 for grant of approval to the petitioner's appointment. The Education Officer by his communication dated 03/06/2017 refused to approve the petitioner's appointment on two grounds namely, that as per Government Resolution dated 12/02/2015 there was a ban on recruitment and secondly there was a direction for not to grant approval to the appointment of non-teaching employees. 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.4219/2018 (*Smt. Yogita w/o Shivsing Nikam vs. The State of Maharashtra and ors.* with connected matter) as well as decision in *Suraj Uttam Kamble vs. State of Maharashtra and ors.* 2019 (4) *Mh.LJ.* 332. 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. Smt S. S. Jachak, 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 after the retirement of the earlier incumbent on 30/09/2016. The appointment is thus on a sanctioned

vacant post. In view of aforesaid legal position the impugned order is not sustainable.

5. Accordingly, order dated 03/06/2017 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