

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

WRIT PETITION NO. 4453/2021

1. Late Sanjay Gandhi Shikshan Prasarak Mandal,
Wangi, through its Secretary Sanjabrao
Tulshiram Shinde, Aged about 44 years,
R/o Jumda, Tq. & Dist. Washim.
2. Amol Rajaram Pattebahadur,
Aged about 34 years, Occ. Nil,
R/o Wangi, Tah. & Dist. Washim.

PETITIONERS

.....VERSUS.....

1. The State of Maharashtra,
Through its Secretary,
Department of School Education and Sports,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Washim.

RESPONDENTS

Shri Anup J. Gilda, counsel for the petitioners.
Shri D.P. Thakare, Additional Government Pleader for the respondents.

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

DATE : 22ND JUNE, 2022.

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

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The father of the petitioner no.2 was in employment as Peon with the petitioner no.1-Institution at the school run by it. He expired in harness on 06.05.2020. The petitioner no.2 therefore sought appointment on compassionate basis. The petitioner no.2 was

accordingly appointed on the post of Peon on 10.10.2020. The petitioner no.1 therefore by its communication dated 19.10.2020 sought approval to the appointment of the petitioner no.2 on compassionate basis. By the impugned order dated 03.11.2020 such approval was refused by the respondent no.2 for the reason that the staffing pattern of the school was not final and there was a ban on recruitment. Being aggrieved, the order dated 03.11.2020 has been challenged by the petitioners in the present writ petition.

3. Shri Anup J. Gilda, learned counsel for the petitioners submitted that the order passed by the respondent no.2-Education Officer is not sustainable on both counts in view of the decisions of this Court in **Writ Petition No.7614 of 2015** [*Swapnil Sanjay Patil Versus The State of Maharashtra & Others*] decided on 16.10.2015, **Writ Petition No.11180 of 2016** [*Anand Jalinder Chavan Versus State of Maharashtra & Others*] decided on 22.12.2018, **Writ Petition No.4219 of 2018** [*Yogita Shivsing Nikam Versus The State of Maharashtra & Others with connected matter*] as well as decision in *Suraj Uttam Kamble Versus State of Maharashtra & Others* [2019 (4) Mh.L.J. 332]. It is submitted that this Court has held in clear terms that want of sanction of staffing pattern as well as ban on recruitment cannot be a justification for refusing to approve an appointment made on compassionate basis.

4. Shri D.P. Thakare, learned Additional Government Pleader for the respondents initially sought time to file reply on behalf of the respondents. It is however seen that the reasons for refusing to approve the appointment of the petitioner no.2 are contained in the impugned order itself and its validity would have to be determined on that basis. The learned Additional 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 petitioners.

5. The impugned order gives the reasons for refusing approval to the appointment of the petitioner no.2 which are non-preparation of the revised staffing pattern and 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 petitioners and 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 father of the petitioner no.2 was serving on the post of Peon and the petitioner no.2 has been appointed as Peon on compassionate basis. In view of aforesaid legal position, the impugned order is not sustainable.

6. Accordingly, the order dated 03.11.2020 passed by the respondent no.2 is set aside. The respondent no.2 shall approve the

appointment of the petitioner no.1 on the post of Peon if there is no other legal impediment other than the reasons mentioned in the impugned order. Needless to state that the petitioner no.2 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 a period of six weeks from production of this order.

7. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE