

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

WRIT PETITION NO. 7710/2019

1. Data Minority Education & Welfare Organization, Akola, Registration No.F-8880, through its Secretary, Zulfikar Nagar, Dabki Road, Old City, Akola.
2. Taj Urdu High School, Agar Base, Old City, Akola, through the Headmaster.
3. Uzma Tajim wd/o Syed Nijazuddin, Aged about adult, Occupation : Service, Resident of Dahihand Base, Near Arbi Madarsa, Akola – 444 002.

PETITIONERS

.....VERSUS.....

Education Officer (Secondary),
Zilla Parishad, Akola.

RESPONDENT

Shri C.M. Samarth, counsel for the petitioners.
Mrs. K.R. Deshpande, Assistant Government Pleader for the respondent.

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

DATE : 27TH JUNE, 2022.

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

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

2. The petitioners are aggrieved by the communication dated 25.06.2019 issued by the Education Officer (Secondary) refusing to approve the appointment of the petitioner no.3 on compassionate basis. The husband of the petitioner no.3 was serving on the post of Peon at the petitioner no.2-

School. He died in harness after which the petitioner no.3 was appointed on that post on 01.09.2017. While seeking approval to such appointment, the petitioner nos.1 and 2 put forth the case that the post on which the petitioner no.3 was appointed was a sanctioned post and the same was lying vacant. The Education Officer (Secondary) however has refused to grant approval on the ground that there were no directions of the State Government to fill up posts on compassionate basis and that there was no staff justification at the Institution.

3. It is the specific case of the petitioners that for the year 2016-17, two posts of Class-IV employees were sanctioned out of which one post was vacant on which the petitioner no.3 came to be appointed. It is further submitted that insofar as compassionate appointments are concerned, it would not be necessary to obtain any directions from the State Government. Hence, the approval in question was liable to be granted.

4. The learned Assistant Government Pleader for the respondent by relying upon the affidavit-in-reply submits that prior permission of the Education Officer (Secondary) was not taken to make such appointment. The petitioners did not take immediate steps to seek approval to the appointment of the petitioner no.3. Since the post in question was not considered as a sanctioned post the approval is rejected.

5. It is seen from the documents placed on record and as asserted by the petitioners that one sanctioned post of Class-IV employee was available for accommodating the petitioner no.3. Insofar as the appointment on compassionate basis is concerned, it would not be necessary to obtain sanction of the State Government if a sanctioned post is lying vacant considering various decisions of this Court in that regard. In these facts, we find that the Education Officer (Secondary) could be directed to re-consider the proposal forwarded by the petitioners seeking approval to the appointment of the petitioner no.3. This could be done by granting an opportunity of hearing to the petitioners and considering all relevant records.

6. Accordingly, the order dated 25.06.2019 is set aside. The Education Officer (Secondary) is directed to re-consider the said proposal by granting an opportunity of hearing to the petitioners. For such adjudication, the petitioners shall attend the Office of the Education Officer (Secondary) on 06.07.2022. The decision on the said proposal be taken within a period of four weeks from that date and communicated to the petitioners.

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

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE

Signed By: Digitally signed
by ROHIT DATTATRAYA
APTE
Signing Date: 29.06.2022 10:18