

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

WRIT PETITION NO.2458 OF 2019

1. Bhawbhuti Shikshan Sanstha,
through its Secretary, Risama,
Amgaon, District Gondia
2. Adarsh Vidyalay,
Thr. its Head Master,
Amgaon, District Gondia
3. Dayashankar Jailal Chute,
Occ. Service as Peon,
Aged about 23 years,
R/o C/o Adarsh Vidyalay Amgaon,
District Gondia
4. Suhas Vijay Ramteke,
Occ. Service as Peon,
Aged about 25 years,
R/o C/o Adarsh Vidyalay Amgaon,
District Gondia

... Petitioners

-vs-

1. State of Maharashtra through its
Secretary, Department of School
Education and Sports, Mantralaya,
Mumbai 32
2. The Deputy Director of Education,
Nagpur Division, Nagpur
3. Education Officer (Secondary),
Zilla Parishad, Gondia

... Respondents

Shri Anand Parchure, Advocate for petitioners.

Shri A. S. Fulzele, Additional Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE : January 02, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

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

The petitioner Nos.3 and 4 came to be appointed on the post of Peon on compassionate ground at the petitioner No.2-school that is run by the petitioner No.1-Society. The petitioner Nos.1 and 2 sought approval to the appointment of the petitioner Nos.3 and 4 by moving a proposal dated 14/03/2018. The petitioners were informed by a communication dated 22/03/2018 that the Government Resolution dated 15/02/2018 on which the petitioners were relying was issued by the General Administration Department and not by the School Education Department. For that reason the said Government Resolution was stated to be not applicable. By a subsequent communication dated 20/11/2018 the petitioners were informed that no fresh appointment ought to be made till the staff pattern was verified. Being aggrieved, the present writ petition has been filed.

2. It is submitted by the learned counsel for the petitioners that insofar as communication dated 22/03/2018 is concerned, the stand taken therein that the Government Resolution dated 15/02/2018 having been issued by the General Administration Department and not by the School Education Department was not justified in view of the observations of this Court in Writ Petition No.5542/2014 (*Dr Anil Wamanrao Dhage vs. State of Maharashtra and ors.*) in order dated 14/10/2014. He further submits that during pendency of the proceedings said directions have been issued by the State Government on 14/09/2022

laying down the modalities for considering the proposals seeking approval for appointment on compassionate ground. He submits that the proposal in question is liable to be considered and granted.

3. The learned Additional Government Pleader for the respondents has relied upon the affidavit in reply and opposed the prayers made in the writ petition. It is stated that since the appointments are made after a period of about ten years from the death of the erstwhile employees, the approval could not be granted.

4. We find that insofar as the communication dated 22/03/2018 is concerned, the same refers to the Government Resolution dated 15/02/2018. As per that Government Resolution which is issued by the General Administration Department, 20% of the Open posts could be filled in on compassionate basis from 01/01/2017 onwards. Though the said Resolution has been issued by the General Administration Department, there is no reason to hold that it would not apply to School Education Department especially in the light of the observations in Writ Petition No.5542/2014 referred to above.

5. Be that as it may, we find that the proposal submitted by the petitioner Nos.1 and 2 can be directed to be re-considered and a decision thereon can be taken in the light of the communication dated

14/09/2022 which is taken on record and marked 'A' for identification.

6. Hence for aforesaid reasons the following order is passed :
- i) It is directed that the respondent No.3-Education Officer (Secondary) shall re-consider the proposal dated 14/03/2018 seeking approval to the appointment of petitioner Nos.3 and 4 in the light of the instructions contained in the communication dated 14/09/2022.
 - ii) Necessary decision on the same be taken within a period of six weeks from the receipt of copy of the aforesaid order.
 - iii) It is made clear that the impugned communications dated 22/03/2018 and 20/11/2018 would not come in the way of the petitioners or the Education Officer (Secondary) while re-considering the proposal. The decision taken be communicated to the petitioners.
 - iv) Rule is disposed of in aforesaid terms. No order as to costs.

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)