

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

WRIT PETITION 2086 OF 2022

Smt. Savita wd/o. Arun Wanre,
Aged about 38 years, Occ. Service,
r/o. Paras-Asra Colony, Near Babu
Jagjivanram School, Akot,
Tahsil Akot, District Akola

.....PETITIONER

..V E R S U S..

1. Education Officer (Secondary),
Zilla Parishad, Akola
Tahsil & District Akola

2. Akot Education Society, Akot
through its President/Secretary
R/o. Keshavraaj Vetel, Akot
Tahsil Akot, District Akola

3. Shri Saraswati Vidyalay, Akot
through its Headmaster, Akot
Tahsil Akot, District Akola.

..RESPONDENTS

Mr. P.S. Patil, counsel for petitioner.
Mr. S.M. Ukey, Addl.GP for respondent 1/State.

CORAM:- ROHIT B. DEO & M.W. CHANDWANI, JJ.

DATE : 19.06.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Petitioner is appointed on the establishment of
respondent 3 – School as Peon vide order dated 22.1.2018.

3. The Management forwarded the proposal seeking approval to the appointment of the petitioner to the Education Officer.

4. The Education Officer sat over the matter. The Management approached the High Court in Writ Petition 2023/2021 which was disposed of on 31.1.2022 and Education Officer was directed to decide the proposal.

5. The proposal is rejected by the Education Officer vide order dated 31.1.2022. The reason for rejection is that the staffing pattern of class IV employees is not prepared since 2012-13.

6. The Education Officer filed affidavit in response dated 30.4.2023. In paragraph 3, it is stated that as per the staff justification for non-teaching employees for the year 2018-19, there is no sanctioned post of Peon. However, paragraph 6 of the affidavit dated 22.1.2023, filed earlier,

reads thus:

“6. It is further necessary to submit here that, on 14.9.2022, the State Government issued a clarification in respect of compassionate appointment. Clause-2 of the said communication contemplates that in order to grant compassionate appointment, if the legal heirs of the deceased is eligible to be appointed on the post which the deceased held, in that case the appointment shall be given on the said post and if the candidate seeking compassionate appointment is not eligible in that post, if there is a post in existence then the candidate shall be given an appointment on compassionate ground in the said lower cadre post. Copy of the communication dated 14.9.2022 is annexed herewith at Annexure-R-1-A.

In the instant case in hand, as the petitioner's husband was appointed as Junior Clerk and after going through the documents presented by the petitioner, it is clear that, she can be given appointment on the post of Junior Clerk on which the petitioner's husband was appointed.

In view of the matter, the petitioner as well as the society needs to file a proposal to that effect and necessary appointment on compassionate ground can be considered and be granted”.

7. We find that the view of the Education Officer is that the petitioner can be appointed on compassionate

ground in the post of Junior Clerk which was held by her deceased husband. In paragraph 7 of the said affidavit, the Education Officer states that the post of Junior Clerk is vacant and the Management has deliberately appointed the petitioner on the post of Peon which is not in existence.

8. The petitioner has filed affidavit dated 5.2.2023 and we may extract paragraph 8, which reads thus:

“8. It is stated that one Satish Shankarrao Chandan was holding the post of Peon in the School. Due to promotion of late Arun Wanare as a Senior clerk, the post of Junior clerk falls vacant in the School. Therefore, the School Committee by his Resolution dated 21.6.2015 decided to promote Shri Santosh Chandan as a Junior Clerk w.e.f. 1.7.2015. The copy of Resolution of School Committee dated 21.6.2015 is annexed herewith as Annexure – V.

Accordingly, Promotion Order as a Junior clerk was issued in favour of Santosh Chandan on 1.7.2015 and he joined the post of Junior Clerk on 1.7.2015. The copy of Appointment Order and Joining Report of Santosh Chandan dated 1.7.2015 is annexed herewith as Annexure-VI”.

9. It is now not in dispute that the post of Junior clerk to which the Education Officer is referring is not vacant. The post is filled in by Mr. Santosh Chandan, who was working as

Peon. Resultantly, the post which Mr. Santosh Chandan held failed vacant in 2015 and was vacant as on the date, the petitioner was appointed on compassionate grounds. There does not appear to be any dispute that the petitioner is qualified to hold the post of Peon. The appointment of the petitioner is much prior to the Government Resolution dated 11.12.2022, by which, the posts of Peon are abolished. In our considered view, the order of rejection of approval is unsustainable, and we quash and set aside the same.

10. We direct the Education Officer to issue approval order to the petitioner with effect from the date of appointment of petitioner, if there is no other impediment, within the next 14 days.

11. Needless to say, the petitioner shall be entitled to every consequential benefits.

(M.W. Chandwani, J.)

(Rohit B. Deo, J.)

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