

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

WRIT PETITION (WP) 314/2022

1. Bhartiya Shikshan Mandal
Through Its Secretary,
Rajabaksha, Ajni, Nagpur
 2. Pandit Bachharaj Vyas Vidyalaya
Va Kanishtha Mahavidyalaya,
Through Its Headmistress,
Rajabaksha, Ajni, Nagpur.
 3. Shri Gaurav Sharad Lohi
Aged about 36 years,
Occ. Service – Peon
R/o 120, Sundarwan Colony,
Narendra Nagar, Nagpur
- PETITIONER(S)

// VERSUS //

1. State of Maharashtra
Through Its Secretary,
Department of Education,
Mantralaya, Mumbai – 32.
 2. The Dy. Director of Education
Nagpur Division, Nagpur.
 3. Education Officer (Sec.)
Zilla Parishad, Nagpur.
- RESPONDENT(S)

Mr. Anand Parchure, Advocate for the petitioners
Mrs. Kalyani R. Deshpande, AGP for the respondents

CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.

DATED : 06/02/2023

ORAL JUDGMENT : (PER:- ROHIT B. DEO, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent.

3. The challenge is to the order dated 20.04.2022 passed by respondent 2 – Deputy Director of Education, Nagpur Division, Nagpur whereby the proposal to include the name of the petitioner 3 - Mr. Gaurav Lohi in Shalarth Pranali is rejected, and a consequence, the petitioner 3 is not in a position to receive the salary although the order of appointment is duly approved by the Education Officer.

4. It does not appear to be in dispute that due to the death of the father of petitioner 3 in harness, petitioner 3 was appointed as Peon in petitioner 2 – School on 01.09.2008, and the appointment was duly approved by the Education Officer vide order dated 21.03.2016 with effect from 24.07.2014.

5. The petitioners aver that although appointment of petitioner 3 has been so approved with effect from 24.07.2014, respondents 1 and 2 did not receive the grant-in-aid since the name of petitioner 3 was not included in Shalarth Pranali Portal. Petitioner 2 – School issued communication dated 29.04.2019 requesting the Pay Unit of the Zilla SM Gate

Parishad, Nagpur to include the name of petitioner 3 in Shalarth Pranali Portal.

6. It further appears that the Education Officer submitted recommendatory proposal for inclusion of the name of petitioner 3 in the Shalarth Pranali Portal vide communication dated 06.08.2019.

7. In view of the proposal submitted by the Education Officer, the Deputy Director of the Education sought explanation from petitioner 1 – Institution seeking clarification on certain aspects. It appears that the clarification was sought on the premise that in the year 2014-2015 the post of Peon was not sanctioned and the Staffing Pattern was not finalized, and ultimately the decision is taken by the Deputy Director of Education not to include the name of petitioner 3 in Shalarth Pranali Portal.

8. We have perused the affidavit in response dated 19.01.2023 filed on behalf of the Deputy Director of Education, Nagpur Division, Nagpur. An attempt is made in paragraph 3 of the affidavit to question the very grant of appointment on compassionate basis on the ground that the family was not in distress. We are of the view, the Management having appointed petitioner 3 on compassionate basis and the Education officer having approved the appointment, the Deputy Director of

Education was not justified in questioning the very appointment on compassionate basis. In any event, the order impugned is not founded on the correctness or otherwise of the decision of the Management to appoint petitioner 3 on compassionate basis.

9. We further note from the affidavit in response that the stand is that the State Government issued Government Resolution dated 12.02.2015 and stayed the effect and operation of Government Resolution dated 23.10.2013 which introduces the Staffing Pattern. The further stand is that Government Resolution dated 12.02.2015 directed that no appointment shall be made till the Staffing Pattern is finalized and ultimately the State Government issued Government Resolution dated 11.12.2020 whereunder the posts of Class IV employees are abolished and a provision is made for extending financial aid/subsidy to the Schools presumably to enable the Schools to make alternate arrangements like outsourcing etc..

10. In our considered view, the order impugned is unsustainable in law. The petitioner 3 was appointed on compassionate basis in 2008 and the Education Officer duly approved the appointment with effect from 24.07.2014. The petitioners have filed rejoinder clarifying that there was indeed a post of Peon available in accordance with the Staffing Pattern then invoked. We need not delve deeper since the approval of

the appointment presupposes that the Education Officer must have verified that there is a sanctioned post of Peon available at the relevant time. The ban on recruitment cannot be invoked to refuse the inclusion of the name of petitioner 3 in Shalarth Pranali Portal. We, therefore, quash and set aside the order made and allow the petition in terms of prayer clauses 1 and 2 which read thus:-

1) Quash and set aside the impugned order dated 20.04.2020 (Annex-IX) passed by the respondent no. 2 Dy. Director of Education, Nagpur Division, Nagpur.

2) Direct the respondents to add the name of the petitioner no. 3 employee in 'Shalarth Pranali' in order to get his regular salary;

11. Needless to further observe, petitioner 3 shall be entitled to receive the salary from petitioners 1 and 2 till grant of approval, and thereafter from the State Exchequer.

12. Rule is made absolute in the aforesaid terms with no order as to costs.

SANDIP
MAHADEV
GATE

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)