

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

WRIT PETITION NO. 8423 OF 2018

Shri Vikas s/o Sukhdas Kamdi,
Age 27 years,
Resident of Nagardhan, Tahsil – Ramtek,
District – Nagpur.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its Secretary, Education and
Sports Department, Mantralaya,
Mumbai -32.
- 2) Deputy Director of Education,
Nagpur Division, Nagpur.
- 3) Education Officer (Secondary),
Zilla Parishad, Nagpur.
- 4) Indira Gandhi Shikshan Sanstha
Nagardhan, Tahsil – Ramtek,
District – Nagpur, through its
President Rameshsingh Khagar.
- 5) Late Indira Gandhi Vidhyalaya,
Nagardhan, Tahsil – Ramtek,
District – Nagpur, through its
Headmistress.

.... **RESPONDENTS**

Mr. S.D. Chande, Counsel for the petitioner,
Mr. N.S. Rao, Assistant Government Pleader for respondents 1 to 3,
Mr. S.K. Jagirdar, Counsel for respondent 4,
Mr. B.H. Shambharkar, Counsel for respondent 5.

CORAM : ROHIT B. DEO & Y.G. KHOBRADE, JJ.
DATED : 9th FEBRUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Heard. **Rule.** Rule is made returnable forthwith by consent of the parties.

2. The petitioner is assailing the order dated 08-8-2018 rendered by the Deputy Director of Education whereby the approval granted by the Education Officer to the appointment of the petitioner as Peon on compassionate ground is set aside.

3. Facts lie within narrow compass.

(a) Petitioner's father was working with respondent 5-School as Laboratory Attendant. He was full-time, permanent and approved employee, who died in harness on 17-7-2012.

(b) The petitioner was initially appointed as Laboratory Assistant on compassionate ground vide order dated 08-8-2012. However, the Education Officer refused to approve the appointment of the petitioner as Laboratory Assistant since there was no sanctioned post of Laboratory Assistant available.

(c) It appears that notwithstanding the rejection of approval to the appointment of the petitioner as Laboratory Assistant, he continued to work. On 13-6-2014 the staffing pattern of the school was

sanctioned. The petitioner contends that the post of Peon was available in accordance with the staffing pattern. The petitioner was accordingly appointed as Peon vide order dated 24-7-2014. The appointment of the petitioner as Peon was duly approved by the Education Officer vide order dated 20-1-2015.

(d) It appears that the approval granted by the Education Officer to the appointment of the petitioner on compassionate ground is cancelled by the order impugned on the premise that the appointment of the petitioner was in breach of Government Resolution dated 02-5-2012.

(e) The petitioner submits that the cancellation of approval is patently illegal inasmuch as the ban on recruitment has no applicability to appointment on compassionate ground. The petitioner contends that several decisions of the Coordinate Bench have taken a view that the ban on recruitment has no application if the appointment is made on compassionate ground.

4. We are not required to address the broader question in view of the fair stand in the affidavit-in-response filed on behalf of the Deputy Director of Education in response to the order dated 05-1-2023.

5. Vide order dated 05-1-2023 we called upon the Deputy Director

of Education to clarify whether the post on which the petitioner was appointed was approved and vacant on the date of his appointment. The clarification was sought since the ban on recruitment was, in any event, in contemplation of the revision in the staffing pattern.

6. We may extract paragraph 2 of the affidavit-in-response filed on behalf of the Deputy Director of Education, which reads thus :

*“2. It is further submitted that, in pursuance to the communication dated 23-01-2023 the Education Officer has issued communication dated 25-1-2023 and informed that, four posts of Class-IV employee was sanctioned as per staff justification of academic session 2013-2014 and it is clear from the list of working employees of Late Indira Gandhi Vidyalaya, Ramtek, District-Nagpur. After the death of the Sukhdas Kamdi one post of Class-IV employee fell vacant. Therefore, it is clear that, the post of the petitioner was sanctioned post and vacant. The copy of the communication dated 25-01-2023 is annexed herewith and marked as **Annexure R-2** for king perusal of this Hon’ble Court.*

In view of the above explanation this Hon’ble Court may be pleased to pass appropriate order in the present petition in the interest of justice.”

7. We, therefore, find that apart from the view taken by the Coordinate Bench, since as a fact, even according to the staffing pattern then in force, albeit a revised pattern was in contemplation, there was vacant and sanctioned post of Peon available to which the petitioner was appointed. The Education Officer rightly approved the appointment of the petitioner as Peon.

8. We, therefore, quash and set aside the order impugned which cancels the approval granted by the Education Officer to the appointment of the petitioner.

9. Needless to observe that the petitioner shall be entitled to all consequential benefits.

10. We direct the management-respondents 4 and 5 to submit the bill of the arrears of salary and other financial benefits, as the case may be, to the appropriate authority within next four weeks. The appropriate authority shall process the bills and sanction the same, if permissible, within next eight weeks.

11. Petition is allowed in the afore-stated terms.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

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