



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

939 WRIT PETITION NO. 9156 OF 2022

AJAY DATTATRAYA SHINDE  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND  
OTHERS

...  
Mr. A . N. Nagargoje, Advocate for the Petitioner.  
Mrs. Kalpalata Patil Bharaswadkar, AGP for Respondent Nos.1 to 6.  
Mr. N. K. Chaudhari, Advocate for Respondent Nos.7 and 8.  
...

CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.

DATE : 19<sup>th</sup> MARCH, 2024.

ORDER :-

. The present petition has been filed by the petitioner for following  
reliefs :-

"A] For a writ of certiorari order or direction in the nature of certiorari calling for the record and proceeding of the Impugned order dated 27.06.2022 (Exhibit 'H'), passed by the respondent No.3 and after examining the legality, validity and propriety thereof, the said order may kindly be quashed and set-aside.

B] For a writ of mandamus, order or direction in the nature of mandamus directing the respondents Nos.3 and 6 to grant Approval to the petitioner as Peon w.e.f. 14.02.2022 along with all consequential benefits including back-wages, salary, increments etc.

C] That, clause No.2(E) of G.R. dated 28.03.2001 be declared as unconstitutional and ultra-virus and the clause No.2 (E) of G. R. dated 28.03.2001 may kindly be quashed and set-aside.”

2. The factual matrix leading to the present petition are that the petitioner’s father, namely, Dattatraya Jagannath Shinde was appointed as Peon (Hamal) in respondent No.8-College on 19.05.1995. He was a permanent employee. Petitioner’s father expired on 09.03.2011. Petitioner’s birth date is 23.04.1999, that means he was minor at the time when his father died. Petitioner attended the majority on 22.04.2017 and he says that he has also passed 12<sup>th</sup> exam. Since there was no person to look after the family, he made an application for appointment on compassionate ground on 25.07.2017 to the concerned authorities including respondent Nos.6 to 8. However, it is stated that no steps have been taken. Thereafter, he had made several representations, but they were not considered and, therefore, he had approached this Court by filing Writ Petition No.10618 of 2021. This Court then disposed of the said petition by directing respondent Nos.7 to 8 to take decision on the application filed by the petitioner within a period of four months. The petitioner says that even a post of Clerk became vacant on account of retirement of an employee on 30.04.2022 in the institution and, therefore, another application was filed by the petitioner that since he is qualified

to be appointed as Clerk, he should be considered for the post of Clerk or Peon. That application came to be filed on 04.02.2022. However, respondent No.7 by its order dated 14.02.2022 appointed the petitioner as Peon in respondent No.8-College on compassionate ground. Thereafter, respondent No.8 forwarded proposal dated 07.04.2022 to respondent Nos.3 and 6 for grant of approval to his appointment. Thereafter there was communication, but by order dated 27.06.2022, the said proposal came to be rejected on the ground that the petitioner is the third child after 31.12.2001. It was then stated that the father of the petitioner had third child after 31.12.2002 and therefore, in view of Government Resolution dated 31.10.2001, the petitioner is not entitled to get the appointment on compassionate ground. The said order is under challenge in this petition.

3. Heard learned Advocate Mr. A. N. Nagargoje for the petitioner, learned AGP Mrs. Kalpalata Patil Bharaswadkar for respondent Nos.1 to 6 and learned Advocate Mr. N. K. Choudhari for respondent Nos.7 and 8.

4. The point involved in the petition is very short. In fact, it appears that respondent No.3, who has passed the impugned order on 27.06.2022 had not considered the separate Government Resolution, which was applicable to the employees of private school. Government Resolution dated 31.12.2002 issued by the School Education Department ought to have would then be applicable to the facts of the

case, wherein there is no such stipulation as he was referring in the Government Resolution dated 31.10.2001. In other words the respondent No.3 was applying a wrong Government Resolution and, therefore, the order passed by him cannot be allowed to sustain. Hence, the following order :-

**ORDER**

- I) The impugned order dated 27.06.2022 passed by respondent No.3 stands quashed and set aside.
- II) The matter is relegated to respondent No.3 to consider it in the light of the Government Resolution dated 31.12.2002 issued by the School Education Department.
- III) The proposal of the petitioner should be then decided within a period of one month from today by respondent No.3.
- IV) Accordingly, the writ petition stands disposed of.

[ S. G. CHAPALGAONKAR ]  
JUDGE

[ SMT. VIBHA KANKANWADI ]  
JUDGE

scm