



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10019 OF 2022

- 1) Lokesh Sandip Patil,
Age-22 years, Occu: At present Nil,
R/o-Khirwad, Taluka-Raver,
Dist-Jalgaon,
- 2) Savita Sandip Patil,
Age-40 years, Occu:Labour,
R/o-Khirwad, Taluka-Raver,
Dist-Jalgaon.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The Director of Education,
Maharashtra State, Central Building,
Pune,
- 3) The Deputy Director of Education,
Nashik Division, Nashik,
- 4) The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Dist-Jalgaon,
- 5) Khirwad Parisar Shikshan Prasarak
Mandal, Khirwad, Taluka-Raver,
Dist-Jalgaon,
Through its Chairman / Secretary.

...RESPONDENTS

...
Mr. Vinod P. Patil Advocate for Petitioners.
Mr. S.P. Joshi, A.G.P. for Respondent Nos. 1 to 4.
Mr. A.J. Patil Advocate for Respondent No.5.
...

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

DATE : 8th MARCH, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard learned Advocate Mr. Vinod P. Patil for the petitioners, learned AGP Mr. Joshi for respondent Nos.1 to 4 and learned Advocate Mr. A.J. Patil for respondent No.5.

2. Original petitioner i.e. petitioner No.1 filed the Petition for issuance of writ to direct respondent No.5 Management to consider the claim of petitioner No.1 on compassionate basis and to issue appointment order on either Class-III or Class-IV post. Now, by amending the Petition one more petitioner i.e. petitioner No.2 has been added. However, there is no amendment in the body of the Petition and the prayer clauses. In such situation, if two petitioners are claiming the same post, then it cannot be so allowed. But taking into consideration liberal interpretation and the relationship between the petitioners i.e. petitioner No.2 is the mother of petitioner No.1, it appears that now petitioner

No. 2 wants to state that in her place petitioner No.1 should be considered for the appointment on compassionate ground.

3. Petitioner No.1's father Sandip Patil, who was the husband of petitioner No.2 was in service of respondent No.5 Management as peon since 1st August 1997. Father of petitioner No.1 died on 22nd February 2013 while on duty. Petitioner No.2 had applied for appointment in place of her husband on the compassionate ground on 2/6.05.2013. Copy of the said letter was also given to the Education Officer. It appears that thereafter no follow up has been taken by petitioner No.2. Thereafter, petitioner No.1 has made an application on 22nd November 2021 for his appointment in place of his father. When there is no response, present Petition has been filed.

4. Affidavit-in-reply has been filed by respondent No.5 i.e. Secretary of the institution, Mr. Jitendra Khemchandra Patil. Initially, he denies the contents of the Writ Petition and prays that the Petition should be dismissed, but then he also says that respondent No.5 is ready and willing to appoint petitioner No.1 if respondent Nos.2 to 4 gives permission as there is no vacancy in respondent No.5. He states that he has given application seeking

guidance from the Education Officer, on 20th November 2021 and the reply is still awaited.

5. From the said affidavit-in-reply, we could get that at present there is no vacant post available with respondent No.5 for class-IV i.e. peon.

6. Learned Advocate for the petitioner is pointing out the decision of this Court in ***Writ Petition No.12728 of 2023 (Vaibhav Lakichand Chaudhari vs. the State of Maharashtra)***, decided on 16th October 2023. He submits that the father of the petitioner therein was serving as Laboratory Attendant with respondent No.5 (respondent No.5 is the same who is respondent No.5 in the present Petition). Father of the said petitioner expired on 9th April 2021 and since the petitioner therein was also qualified to be appointed as Laboratory Attendant, the said Petition came to be disposed of by asking respondent No.4 Education Officer to advice the Management by considering the qualification of the petitioner whether he would be eligible to be appointed as Laboratory Attendant. It is also stated that if the petitioner therein is not eligible and could be accommodated on any other available post in Class-4 category, the same may be considered.

According to the petitioners, it is the only one post available with respondent No.5 and already an order of this Court is passed. But according to the learned Advocate for the petitioners, present petitioner No.2 would stand senior to the petitioner in ***Writ Petition No.12728 of 2023***. We do not agree with the submission made on behalf of the learned Advocate for the petitioners, for the simple reason that he was representing the petitioner in that Petition also and the said petitioner is not a party in the present Petition.

7. On its own merits if it is to be seen then though petitioner No.2 appears to have given application for compassionate appointment on 2/6.05.2013, she never persuaded the authorities. If respondent No.5 was not taking any steps, she could have approached this Court or any other Court having jurisdiction, to compel respondent No.5 to take a decision on her application. She has allowed the time to run against her. Further, petitioner No.1 was aged 22 years on the date of filing of application. He had the knowledge that his mother had already filed application for appointment on compassionate ground in the year 2013, but still immediately after he became major i.e. upon the completion of his 18 years of age, he had not filed any

application. There is no acknowledgment of respondent No.5 on the application of the petitioner No.1 dated 22nd November 2021. The said application is also silent on the point that his mother had already applied in the past but her application has not been considered.

8. As aforesaid, two persons cannot claim a compassionate appointment on the same post from the same family. If we consider the application of petitioner No.2, then she approaching this Court by way of writ petition in 2022, suffers from delay and laches. Even as regards petitioner No.1 is concerned, he has not approached immediately after completion of 18 years of age. Therefore, we do not find this is to be a fit case where we should exercise our constitutional powers and the Petition deserves to be dismissed.

9. The Writ Petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE