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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO. 9438 OF 2024

SWAPNIL RAM GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Mr.D.R.Irale Patil, Advocate for the Petitioner.

Mr.S.R.Wakale, AGP for the Respondent/State.

Mr.P.D.Suryawanshi, Advocate for Respondent No.3.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : SEPTEMBER 3, 2024

PER COURT :

1. The Petitioner has already been appointed on compassionate basis as a “Junior Assistant”, on 11.12.2020. His father was working as a Health Assistant, who passed away on 30.04.2017. It was on the basis of the Petitioner’s qualifications on the date of the application, that he was appointed as a “Junior Assistant”.

2. The Petitioner contends in this Petition that now he has acquired further qualification of Diploma in Civil Engineering and because there are posts of Junior Engineers available, he should be

promoted to the post of 'Junior Engineer' on the basis of he having entered service on compassionate basis.

3. We have perused the order of appointment of the Petitioner. Though the issue is not under challenge, we expressed our displeasure for the manner in which the Zilla Parishad has appointed the Petitioner for only one year on temporary basis, though he has been appointed on compassionate basis. The learned Advocate for the Zilla Parishad clarifies that Clause No.2 of the appointment order would indicate that the probation period of the Petitioner can be extended and after satisfactory completion, he would be regularized. Today, the Petitioner has been regularized as a Junior Assistant, having successfully completed the probation.

4. Considering the pleadings before us and the record available, we find that the view taken by the Hon'ble Supreme Court in **Delhi Jal Board Vs. Nirmala Devi [2022 AIR SC 5167]**, would be applicable to the Petitioner. The compassionate appointment has to be made on the basis of the qualifications held by the candidate on the date of his application. It was concluded by the Hon'ble Supreme

Court that the Delhi High Court had committed an error in directing the employer to consider the higher qualifications acquired by the candidate on the day, when the application was considered by the employee. It was ruled that it is immaterial as to when the employer considers the application and that, the application has to be dealt with by taking into account the qualifications held by the candidate, on the date the application has been made.

5. In view of the above judicial pronouncement in Delhi Jal Board (supra), we do not find that the Zilla Parishad or the Office of the Divisional Commissioner has committed any error in not entertaining the representation of the Petitioner to give him an appointment as a Junior Engineer on the basis of he having entered service as a compassionate appointee.

5. **This Writ Petition is, therefore, dismissed.**

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)