



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

Writ Petition No. 46 / 2023

Dharmendra Rajesh Mahajan (Mali)
Age : 24 years, Occu. Service as Peon.
At Swami Vivekanand High School,
Shivajinagar, Maliwada, Nandurbar,
Tq. and Dist. Nandurbar.

...Petitioner

Versus

1. State of Maharashtra
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Nandurbar.
3. The Superintendent,
Pay & Provident Fund Unit (Secondary),
Nandurbar.
4. Mahatma Phule Shikshan Prasarak
Mandal, Shivajinagar, Maliwada,
Nandurbar, Tq. and Dist. Nandurbar
Through its President/ Secretary.
5. Swami Vivekanand High School,
Shivajinagar, Maliwada,
Nandurbar, Tq. and Dist. Nandurbar
Through its Head Master.

..Respondents

Advocate for the Petitioner : Mr. Panpatte V.S.

A.G.P. for Respondent Nos. 1 to 3 /State : Mr. D.R. Korde

Advocate for Respondent No.4 and 5 : Mr. S. N. Suryawanshi

CORAM : MANGESH S. PATIL &

SHAILESH P. BRAHME, JJ.

DATE : 14 JUNE 2024

ORAL JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard litigating sides finally.

2. Petitioner is challenging a decision taken on 09.05.2022 and consequential communication dated 15.07.2022 issued by the respondent no.2/Education Officer, thereby rejecting the proposal for approval to the appointment of petitioner on the post of Peon on the basis of compassionate appointment.

3. Undisputedly, petitioner's father was rendering services with the respondent no.4 on the post of peon. His services were approved by the respondent no.2/Education Officer. During the course of service he expired on 09.09.2014. After his demise, petitioner was appointed by the respondent no.4/management vide order dated 17.11.2014

for a period of three years on probation. However, proposal for grant of approval was submitted by the management to the Education Officer belatedly on 19.09.2018. This Court had to intervene by issuing directions to the respondent/ Education Officer to decide the proposal.

4. In furtherance of the directions issued by this Court, Education Officer conducted hearing and arrived at a decision on 15.05.2022 holding that the proposal was submitted belatedly, there was dispute in the management and there was ban on recruitment was imposed by the Government Resolution dated 02.05.2012 at the time of appointment of the petitioner. Hence it was rejected by the Education Officer. By consequential letter dated 15.07.2022, decision was communicated to the respondent/ Head Master.

5. Learned Counsel for the petitioner submits that the petitioner was appointed after following due procedure of law on compassionate ground against a vacant permanent posts. He would further submit that the ban imposed by Government Resolution dated 02.05.2012 cannot be made applicable to the appointment on the compassionate ground. It is further submitted that petitioner's father was

appointed as a peon and his services were also approved by the Education Officer.

6. Learned Counsel for the petitioner refers to staffing pattern of 06.08.2012 which was for the year 2013 to show that two posts of peon and one post of Naik were admissible. He relies upon the decision rendered by this Court in the matter of Yogita Shivsing Nikam VS. State of Maharashtra and Others in Writ Petition No.4219/2018; Sayed Asad Syed Yusuf Vs. State of Maharashtra in Writ Petition No.8933/2018 and Samita Sameer Desai Vs. State of Maharashtra in Writ Petition No.7507/2016.

7. Learned Counsel appearing for the respondent/management supports the claim of the petitioner and adopts the submission.

8. Per-contra, learned AGP appearing for the respondent nos. 1 to 3 repels the submission of the learned Counsel for the petitioner. He would refer to affidavit-in-reply. He submits that when the petitioner was appointed, two posts of peon and one post of Naik were admissible and later on post of Naik stood lapsed. Presently both the posts of peon are occupied and for want of vacant post, the Education Officer is justified in rejecting the proposal.

9. We have considered rival submissions of the parties. Petitioner's father expired on 09.09.2014 during the service when he was working as a peon. His services were approved by the respondent/Education Officer as peon. Petitioner was appointed vide order dated 17.11.2014.

10. We have considered impugned order dated 19.05.2022. The respondent no.2/Education Officer was directed to decide the proposal on its own merits and in accordance with law and policy. He has not in candid terms considered the situation which was prevailing, when the petitioner was appointed. The staffing pattern and available vacancies has not been taken into account. Impugned order dated 19.05.2022 even does not indicate that post of peon was not available. It only refers to filing of proposal belatedly, disputes in the management and ban imposed by Government Resolution dated 02.05.2012.

11. We have gone through consequential communication dated 15.07.2022 addressed by the Education Officer to the Head Master. In the said communication, it is mentioned that no post is available. The said communication is a fall-out of hearing conducted by him and concluded vide order dated 19.05.2022. We are of the considered view that the Education Officer has not considered relevant record.

12. Although it is stated in the affidavit-in-reply that post of Naik had lapsed, petitioner's father was working as a peon and immediately after his death petitioner was appointed on that post. In all possibility, the petitioner has been appointed against vacancy created due to demise of his father. We find that no fact finding exercise is conducted by the Education Officer. In this situation we find it appropriate to relegate the parties to the Education Officer for considering the proposal afresh.

13. Though learned Counsel for the petitioner has adverted our attention to the judgments of this Court rendered in the matter of Yogita Shivsing Nikam; Sayed Asad Syed Yusuf and Samita Sameer Desai (supra), as the Education Officer has not taken decision after considering relevant material, it would not be appropriate to grant any absolute relief in favour of the petitioner on the basis of judgment cited by his learned Counsel. The facts and circumstances in the cited judgments are distinguishable. Here the controversy pertains to availability of vacant post.

14. It is clarified that the Education Officer can take into account the judgments upon which reliance is placed by the petitioner as well as the policy of the Government laid

down in communication dated 14.09.2022. It need not be reiterated that the proposal for approval for the appointment of an employee on the compassionate ground cannot be rejected on the ground that there was ban imposed by Government Resolution dated 02.05.2012. For the reasons stated above, following order is passed :

ORDER

- i** Writ Petition is partly allowed.
- ii** Order dated 19.05.2022 and consequential communication dated 15.07.2022 passed by the respondent/ Education Officer are quashed and set aside.
- iii** The respondent no.2/Education Officer shall consider the proposal of the petitioner afresh on its own merits after extending opportunity of hearing to him as well as the management and shall take decision within a period of four week.
- iv** Needless to state that respondent no.2/Education Officer shall take into account the staffing pattern relevant record and law laid down by judgments of High Courts.
- v** Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

Najeel..