



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

939 WRIT PETITION NO. 15379 OF 2019

BHARAT PANDU RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. V.S. Panpatte Advocate for Petitioner.

Mr. P.S. Patil, Additional G.P. for Resp. No.1.

Mr. S.B. Pulkundwar Advocate for Resp. No.2.

Mr. B.P. Gonare Advocate for Resp. Nos. 3 and 4.

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

DATE : 5th MARCH 2024

ORDER :

1. Present Petition challenges the communication dated 2nd December 2018 by respondent No.2 thereby rejecting the proposal for approval to his appointment on compassionate appointment.

2. The facts which are not in dispute are that father of the petitioner by name Pandu Sakhrath Rathod was serving as peon with Jeevanpeeth Model School, Kalu Tanda (Junna), Taluka-Mukhed, District-Nanded. He expired on 24th September 2017 in

harness. Thereafter the present petitioner, who is his son, came to be appointed on compassionate ground by respondent No.3 on 1st November 2017. Thereafter it appears that proposal was sent on 27th August 2018 for the approval of his appointment, however, it came to be rejected by respondent No.2 on the ground that staffing pattern has not been sanctioned in view of Government Resolutions dated 13th December 2013 and 28th August 2015.

3. Affidavit-in-reply has been filed by Miss. Savita Sindgoda Birge, serving as Education Officer (Primary), Zilla Parishad, Nanded. She has also quoted the Government Resolution dated 18th June 2020, 13th December 2013 and 28th August 2015 which state that since the staffing pattern of the clerk and peon has not been finalized, the approval to the post of peon shall not be granted. However, in Paragraph No.5, she has stated thus:-

"5. I say and submit that, I have gone through the recent orders passed by this Hon'ble Court in several writ petition on similar nature regarding grant of approval to the appointment of clerk/peon on compassionate ground. Since this Hon'ble Court in various writ petitions has constantly taken a view that, the compassionate appointment would be an exception to mandatory rule following specifically selection procedure for recruitment of vacant post or on newly created posts. There is no necessity for

sanction to the new staffing pattern for the appointment of compassionate ground. Pursuant to the directions issued by this Hon'ble Court in various writ petitions regarding grant of compassionate appointment on the post of peon the present deponent Education Officer (Primary) will follow the mandates given by this Hon'ble Court in various judgments. The respondent No.2 is read to give approval to the appointment of petitioner on the post of peon on compassionate ground as per the directions issued by this Hon'ble Court in various writ petitions."

4. In view of Paragraph No.5 of the affidavit-in-reply, the Petition deserves to be allowed. The appointment of the petitioner is on the compassionate ground on the existing post and therefore, there was no question of subjecting it to the staffing pattern by considering it as a new appointment. Hence, the Writ Petition stands allowed in terms of prayer clause (B) and (C).

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR24