

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9357 OF 2022

Sahil Mahadev More,
Age: 20 years, Occu: Service,
R/o A/p. Charan, Loharwadi,
Tal. Shahuwadi, Dist.- Kolhapur

... Petitioner

Versus

1. The State of Maharashtra,
School Education Department,
Mantralaya, Mumbai 400032,
Through the Secretary.
2. The Director of Education,
(Secondary & Higher Secondary)
Maharashtra State, Central Bldg.
Dr. Annie Bsant Marg, Pune.
3. The Education Officer (Secondary)
Zilla Parishad, Kolhapur
4. Holy Cross Convent High School,
Office at – Tarabai Park,
District : Kolhapur Through its Headmistress
5. Deepak Society, C/o. Holy
Cross Convent High School,
Office at – Tarabai Park,
District: Kolhapur Through
its Secretary/Chairman

...Respondents

Mr. Rahul Kasbekar for the Petitioner.
Mr. S. B. Kalel, AGP for the State.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

RESERVED ON : 11th DECEMBER, 2024

PRONOUNCED ON : 18th DECEMBER, 2024

ORAL ORDER (PER ASHWIN D. BHOBE, J):

1. This petition narrates the tale of woe of the Petitioner a young boy, who seeks appointment on compassionate ground to the post of Peon in the Respondent No. 4 School, position that was earlier occupied by his father during his lifetime. Despite the decisions of this Court in similar / identical cases of compassionate appointment and Instructions dated 14.09.2022, issued by the State of Maharashtra in matters of compassionate appointments, the lackadaisical approach of the Respondent No.3 in such matters, is apparent. Petitioner is thus before this Court seeking the following substantial reliefs:

“(b) This Hon’ble Court be pleased to issue the writ of mandamus or certiorari or any other appropriate writ/direction/order in the nature of writ of mandamus or certiorari under Article 226 of the Constitution of India, 1950 thereby-

(i) Be pleased to quash and set aside the impugned communication/order bearing outward No. Ko. Ji. Pa./ Secondary Education/Va. Shi-09/2466/657/2022 dated 21.03.2022 issued by the Respondent No. 3 Education Officer (Secondary), Kolhapur;

(ii) Be pleased to direct the Respondent Nos. 1 to 3 to grant the approval to the appointment of the Petitioner as a Peon (non-teaching staff) in the aided Secondary School

namely Holy Cross Convent School, Kolhapur run by the Respondent No. 5 Society w.e.f. 01.02.2022;

(iii) Be pleased to direct the Respondent No. 3 to grant the approval/sanction on the proposal dated 04.03.2022 submitted by the Respondent No. 4 School for the approval of the appointment of the Petitioner as a Peon (non-teaching staff) on the sanctioned vacant post in the Respondent No. 4 aided School;”

2. ***Factual matrix:-***

(a) On 23.03.1987, Mr. Mahadev Yashwant More, father of the Petitioner was appointed as a full time permanent Peon working in the Respondent No.4 School. Mr. Mahadev Yashwant More expired on 20.05.2006 at the age of 45 years, leaving behind his widow Ms. Suvarna Mahadev More, the Petitioner (son) and his sister. Petitioner was a minor at the time of the death of his father.

(a) Petitioner upon attaining the age of majority, vide application dated 06.02.2021, addressed to the Respondent No.3 sought for compassionate appointment in the Respondent No.4 School. Respondent No.3 upon receipt of the Petitioner's said application, vide letter dated 25.01.2022 called upon the Respondent No.4 school to take appropriate action in the matter. Petitioner filed application dated 28.11.2022 along with

all requisite documents and the consent / no objection affidavit from his mother and his sister, before the Respondent No.4.

(b) Since the year 2021-2022, amongst other posts, the post of Peon was vacant and available in the Respondent No.4-School.

(c) Respondent No.4 vide Resolution no. 74/2021-2022 and Resolution no. 39/2021-2022 both dated 31.01.2022 resolved to accept the Petitioner's application and appointed the Petitioner on compassionate ground, to the post of Peon w.e.f. 01.02.2022, with a consolidated pay of Rs.1,700/-. Upon issuance of the appointment order dated 31.01.2022, the Petitioner resumed duty.

(d) Respondent No.4 submitted proposal dated 04.03.2022 to the Respondent No.3, seeking approval of the Petitioner's appointment as Peon, on compassionate ground.

(e) The Respondent No.3 vide communication/order bearing outward No. Ko. Ji. Pa./ Secondary Education/Va. Shi-09/2466/657/2022 dated 21.03.2022 directed the Respondent No.4 to submit a fresh proposal as per Government Resolution dated 11.12.2020, consequently declined to consider the

proposal dated 04.03.2022 (“impugned order”).

3. This Court issued notice to the Respondents on 10.08.2022. Respondent Nos. 1 to 3 appeared through learned AGP. Roznama dated 09.12.2022 records service on Respondent Nos. 4 and 5 to be complete, as per the bailiff’s report.

4. This Court in the case of **Yogita Vs. State of Maharashtra and Ors.** Reported in (2021) SCC OnLine Bom 2288, to which one of us (Ravindra V. Ghuge J.) was a member, has dealt with an identical situation as involved in the present case. Paragraphs Nos.22, 23, 24, 25 , 26, 27, 28, 29 and 30 would be relevant for the instant case:-

“22. We have perused the Writ Petition paper book of this case (Bharati Bhausaheb Thakare) to appraise ourselves as regards the reasons assigned by the Education officer for refusing approval to the compassionate appointment of Bharati (supra). Having perused the impugned order dated 13.09.2019, Annexure-G to the said petition, we find that the refusal is based on two grounds. Firstly, that there was a ban on recruitment and secondly, as the staffing pattern was not yet formalized, the approval could not have been granted. By judgment dated 10.03.2021, this Court allowed the Writ Petition filed by Smt. Bharati Bhausaheb Thakare and granted her all the service benefits attached to her post from the date of her joining duties.

23. Having discussed the legal position, rather the crystallized position of law with regard to compassionate appointment, compassionate appointment is an exception to the rule of recruitment.

24. In the two cases before us, the impugned orders lead to the denial of approval for the compassionate appointment of the

petitioners by placing reliance upon an inapplicable Government Resolution dated 12.02.2015 which introduced a ban on recruitment of teaching and non teaching posts. So also, the other reason for denial of approval is that the staffing pattern for the non teaching posts is yet to be sanctioned for the academic year 2014-2015 and hence, the approval cannot be granted.

25. In the second petition, the reason for refusal of approval is based on yet another Government Resolution of Government dated 23.10.2013 by which a committee was formed by the State Government for preparing the staffing pattern for several categories of employees and the said committee had directed status-quo to be maintained with regard to recruitment and filling up of vacant posts. The other reason for refusing approval was that the State Government has introduced a Government Resolution dated 28.01.2019 by which staffing pattern for the non teaching posts falling in the Class-III category had been formalized, but, such a staffing pattern for the Class-IV category was still pending. In this petition filed by Sachin, in the second impugned order dated 09.08.2021 refusing approval, the Education Officer concludes that the Maharashtra Government has decided to abolish Class-IV non teaching employees' posts immediately after the employee retired. The Education Officer, therefore, advised that if the case of Sachin Suryawanshi is forwarded along with other candidates, who have been appointed by following the regular recruitment process, the Education Officer would consider his case for approval.

26. We find this reason to be astonishing. An employee who is already appointed on compassionate grounds is unjustifiably refused approval and the Management is advised to send a proposal indicating that the said employee has been subsequently selected on a permanent vacant post so as to consider his case for approval.

27. Despite the legal position discussed in the foregoing paragraphs, Mr. Yawalkar, the learned AGP, on instructions from the State, has canvassed as under:

(a) If there is a ban on recruitment, as per Government Resolution dated 12.02.2015, it would apply also to

compassionate appointment.

(b) If there is a status-quo on recruitment ordered by the State Government, such status-quo would apply even to compassionate appointments.

(c) If the staffing pattern is not yet formalized, a compassionate appointment cannot be approved because the death of a permanent employee leads to the creation of a vacancy and it is only on the basis of the staffing pattern that a decision will have to be taken that such a vacant post will amount to a sanctioned permanent post.

28. *Considering the settled position of law, we called upon Mr. Yawalkar to respond as to whether his above recorded submissions would stand the test of law laid down in the judgments delivered in Yogesh (supra), Samita Sameer Desai (supra) and Bharati Bhausahab Thakare (supra). He submits that since the death of an employee occupying a permanent post would amount to creation of a vacancy, the ban on recruitment, the status-quo with regard to recruitment and the appointment pending formalization of the staffing pattern, would be suitable grounds for refusing approval to the appointment on compassionate grounds.*

29. *To say the least, we are shocked by the stand taken by the State Government, which is not only against logic and reason, but is in complete contradiction to the law crystallized by this Court in numerous judgments. It is unconscionable for the State to canvass such grounds virtually rendering the bereaved family to starvation. We find that the State has consistently ensured that not a single Government Resolution, pertaining to ban on recruitment, stay on filling in vacant posts and prohibition on appointments until the staffing pattern of the non teaching posts is formalized, would apply to appointments made on compassionate grounds. This Court has also consistently taken a view that compassionate appointment would be an exception to the mandatory rule of following specific selection procedure for recruitment on vacant posts or on newly created posts.*

30. *We have noticed the agony caused to litigants in such cases.*

We, therefore, find it appropriate at this stage to record that after the delivery of this judgment, if any case refusing approval to a compassionate appointment which is otherwise legally sustainable satisfying the eligibility criteria, comes to this Court, we would be issuing directions recommending strict disciplinary action against the Education officer and we would not hesitate to initiate contempt of Court proceedings against persons responsible, since they are interpreting the Government Resolutions in the most inappropriate manner, despite the crystallized position of law. Because of such acts of the Education Officers, widows and eligible candidates are compelled to rush to this Court after having suffered mental and physical agony of a personal loss of a sole bread earner and also spend on litigation which is costly these days. We would also impose heavy costs to be recovered from the salaries of such Education officers for the pain caused to such petitioners. We find it appropriate to record that if the Education Officer notices that a particular Management is attempting to defeat the rights of an eligible candidate for compassionate appointment, the Education officer would be at liberty to initiate appropriate action against such Management.”

5. Taking cognizance of the decision of this Court in the case of **Yogita** (*supra*), the School Education and Sports Department, State of Maharashtra has issued Instructions dated 14.09.2022 addressed to the Education Officers and others. Said instructions dated 14.09.2022 is at page Nos. 106 of the petition paper book. Perusal of the said instructions, reveal that the State of Maharashtra has taken note of the decision of this Court in the case of **Yogita Vs. State and Maharashtra and Ors.** (*supra*) and has sensitized its Officers in the context of the appointments to be made on compassionate grounds.

6. The records of the present case bear out that father of the

Petitioner was occupying a full time permanent post of a Peon in the Respondent No.4. Petitioner's father Mr. Mahadev Yashwant More expired while in service. Entitlement of the Petitioner to seek appointment on compassionate grounds is not in dispute. Petitioner being qualified / eligible to occupy the post of Peon in the Respondent No.4 is also not in dispute. Petitioner having complied with all the formalities in the context of documents is not in dispute. Thus, the reasons given by the Respondent No.4 in the impugned order for declining to grant approval to the Petitioner's appointment on compassionate ground and calling for a fresh proposal are arbitrary and illegal.

7. This Court in the case of **Yogita** (supra) has summed up the law on the subject of compassionate appointment / grant of approval to appointments on compassionate grounds. This Court in the said decision was at pains to note the agony caused to the litigants in such cases. This Court, therefore, had cautioned the Authorities, that refusal of approval to a compassionate appointment which is otherwise legally sustainable and satisfying the eligibility criteria, if brought to the notice of this Court, then this Court would contemplate issuing directions to initiate disciplinary action against Education Officer and further this Court would not hesitate to initiate contempt of Court proceedings against persons responsible.

8. The State of Maharashtra after having taking cognizance of the decision in **Yogita** (supra) has issued the instructions dated 14.09.2022.

9. Despite all the above, what we have before us is the impugned order which mechanically and for reasons untenable in law has declined / refused to grant approval to a compassionate appointment which appointment is otherwise legally sustainable and satisfying the eligibility criteria. The so called ground on which the impugned order is passed is patently illegal and unsustainable in law. Learned AGP appearing on behalf of the Respondent No. 3 was unable to show the relevance and / or applicability of the Government Resolution dated 11.12.2020 referred to in the impugned order, to the facts of the present case.

10. The impugned order apart from being unsustainable, indicates the mechanical and perfunctory manner in which the Respondent No.3 has dealt with a matter which, otherwise is required to be considered with compassion. The decision in the case of **Yogita** (supra), is squarely applicable to the facts of the present case. We hereby hold the Petitioner to be entitled to be appointed to the post of Peon on compassionate ground.

11. **The Writ Petition is allowed.** The impugned order stands quashed and set aside. Approval stands granted to the Petitioner, from

the date of his joining of duties on compassionate basis with all monetary benefits accruing to the post. Formal approval order shall be issued by the concerned Education Officer on or before 31st December 2024.

12. The Respondent No.3 has acted arbitrarily and illegally in denying the approval. Petitioner has suffered prejudice. Respondent No. 3 shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only), as cost, from his salary bank account in this Court on or before 31st December 2024. The Petitioner shall be entitled to withdraw the said amount subject to proper identification, without conditions.

13. We direct the Respondent No.2 to verify whether the Respondent No. 3 has dealt and or denied approval/s in matters pertaining to compassionate appointments, contrary to the decision of this Court in the case of **Yogita** (supra) and if found, to initiate disciplinary action against the Respondent No.3. Compliance report be submitted in this Court, within a period of 60 days. However, for this time, we refrain ourselves from issuing a notice of contempt to the Respondent No.3.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)