



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4257 OF 2023

PETITIONER : Mangesh S/o Ramdas Mohankar
Aged about 32 yrs, Occ. Service, R/o
At-Post-Kodamendhi, Tah. Mauda,
Distt. Nagpur.

..VERSUS..

RESPONDENTS : 1 Education Officer (Secondary), Zilla
Parishad, Nagpur, Tah. & Distt.
Nagpur.
2 The Deputy Director of Education,
Civil Lines, Nagpur, Tah. & Distt.
Nagpur.
3 The State of Maharashtra,
Through its Secretary, Education &
Sports Department, Mantralaya,
Mumbai

Mr V. A. Dhabe, Advocate for Petitioner.
Ms D. V. Sapkal, AGP for Respondent Nos.1 to 3.

CORAM : VINAY JOSHI AND M. W. CHANDWANI, JJ.

DATE : 26th JULY, 2024.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

. Rule. Rule made returnable forthwith. Heard finally
with consent of both the learned counsels.

2. The petitioner's father Ramdas Daddu Mohankar was appointed as a Peon by following regular recruitment process in the category of N.T. Candidate with Samarth Ramdas High School, Aroli, Tahasil Mauda, District Nagpur. The petitioner's father died while in employment on 30.10.2014. In consequence, the post of peon has fallen vacant. The petitioner has applied on 22.01.2015 for grant of appointment on compassionate ground. In turn, on 07.05.2015, the petitioner was appointed as a peon on compassionate ground and working on said post till date.

3. The School through its Headmistress on 18.05.2015 has forwarded the proposal for approval to the petitioner's appointment on compassionate ground. Respondent No.2 i.e. the Deputy Director of Education has instructed respondent No.1 - Education Officer (Secondary), Zilla Parishad, Nagpur, to take appropriate decision in the matter of approval of the petitioner's appointment. Respondent No.2 also issued a reminder to respondent No.1 on 18.12.2015, however, no decision was taken. In the result, petitioner has approached to

this Court in Writ Petition No.6555 of 2017. This Court, *vide* its order dated 22.01.2018, has directed the Education Officer (Secondary) to decide the proposal within eight weeks. The Headmistress of the School made a communication to the Education Officer (Secondary) for taking necessary steps. The Education Officer (Secondary) did not take any decision within stipulated period, however, *vide* impugned communication dated 08.03.2022 rejected the proposal on two grounds i.e. ban on recruitment and staffing pattern was not finalized.

4. Learned counsel appearing for petitioner by relying on the decision of this Court dated 11.08.2021 passed in Writ Petition No.4219 of 2018 and others in the case of *Smt. Yogita W/o Shivsing Nikam vs. The State of Maharashtra and Ors.*, contended that this Court while dealing with the same issue has clarified that in the case of appointment on compassionate ground, a ban on recruitment and non finalization of staffing pattern, would not be ground for rejection of approval. The relevant observation made by this Court in para 6 and para 28 reads as below :

“6. Time and again and without an exception, this Court has ruled that appointment of a candidate on compassionate grounds would not be affected by (a) a ban on recruitment or (b) staffing pattern having been undertaken by the Government. Not a single order passed by this Court is placed before us which would indicate that this Court has concluded that the moment a permanent employee dies in harness, the permanent post occupied by him will either extinguish or stand abolished or that it can be treated as being a vacancy to be affected by a ban on recruitment.

28. 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.”

5. In the circumstances, the reasons canvassed by the Education Officer (Secondary) for rejection of approval would no longer survive. The learned Assistant Government Pleader upon instructions would submit that in view of above position of law, the approval would be granted subject to petitioner complying two conditions that submission of last pay certificate and heirship certificate. The petitioner would submit that the

said compliance was neither asked nor communicated to the petitioner or School during several years. The learned AGP would submit that it was communicated to the School, but the said reason was not canvassed in the impugned communication dated 08.03.2022. We see no logic in requiring petitioner to obtain succession certificate after lapse of ten years. The petitioner has made categorical statement that he is the only son of deceased Ramdas, whose application was allowed long back and he is in service for ten years.

6. In view of above discussion, the writ petition is **allowed**. The impugned communication dated 08.03.2022 is hereby quashed and set aside. The petitioner shall furnish his last pay certificate and an affidavit that legal heirs have consented for petitioner's compassionate appointment alongwith affidavit of consenting legal heirs.

7. The above compliance shall be made within two weeks on which, the Education Officer (Secondary), Zilla Parishad, Nagpur, shall issue formal approval order from the

date of the petitioner joining duties on compassionate basis with all monetary benefits accrued to his post within four weeks from thereafter.

8. Rule is made absolute in above terms.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)

TAMBE