



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

WRIT PETITION NO. 5575 OF 2021

anda wd/o Bandu Jamkar Vs. Project Officer, Integrated Tribal Dev. Project, Akola and others)
WITH

WRIT PETITION NO. 6742 OF 2024

(Rajesh s/o Bhaurao Jadhav Vs. Shri Dnyaneshwar Adiwasi Va Magasvargiya Shikshan Prasarak
Mandal, Kenwad and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.S. Warulkar, Advocate for petitioner in WP No. 5575/2021
and for respondent No. 4 in WP No. 6742/2024.
Mr. H.A. Deshpande, Advocate for petitioner in WP No. 6742/2024,
Mr. Palshikar, AGP for respondent No. 1 in WP 5575/2021 and for
respondent No. 3 in WP No. 6742/2024,
Mr. Mishra, Advocate for respondent Nos. 2 and 3 in WP No. 5575/2021
and for respondent Nos. 1 and 2 in WP No. 6742/2024.
Mr. P.B. Patil, Advocate for respondent No. 4 in WP No. 5575/2021

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATED : 26-11-2024

WRIT PETITION NO. 5575 OF 2021

Heard learned Counsel Mr. Warulkar for the petitioner,
Mr. Patil, the learned Counsel for respondent No. 4, learned
AGP Mr. Palshikar for respondent No.1 and Mr. Mishra, the
learned Counsel for respondent Nos. 2 and 3 .

2. The petition challenges the communications dated
11.8.2020 (page No. 38) and 15.12.2020 (page 46) refusing
appointment of the petitioner as a Madatnis (helper), in place
of the vacancy created due to the demise of the husband of the
petitioner, on compassionate ground. Though learned Counsel
Mr. Warulkar contends that the petitioner ought to have been
appointed as a Helper in the vacancy created on account of the
demise of her husband, the policy regarding compassionate
appointment as is spelt out from the GR 31.12.2002 indicates

that a person claiming compassionate appointment is required to be wait listed against the vacancies which are reserved for considering such a claim and appointments to such reserved vacancies. As and when such a vacancy is created in proportion to the percentage of reservation of vacancies for the purpose of compassionate appointment, the claim of the petitioner would be considered. It is therefore, clear, that the insistence of the petitioner to be appointed in the vacancy created due to the demise of her husband on compassionate basis, is clearly unjustified. We therefore, do not find any reason to interfere in the impugned orders. We however make it clear, that the petitioner would be entitled to be wait listed in the wait list to be prepared by the respondent No.1 considering the reservation policy in respect of seats to be made available on compassionate basis and would be entitled to claim appointment on the basis of the working out of such wait list. The petition is therefore, disposed of in the above terms. Needless to mention, that the wait list will have to be prepared in terms of the date of receipt of the application of a candidate in that regard.

WRIT PETITION NO. 6742 OF 2024

Heard Mr. Deshpande, the learned Counsel for petitioner, Mr. Mishra, the learned Counsel for respondent Nos. 1 and 2, Mr. Palshikar, the learned AGP for respondent No. 3 and Mr. Warulkar, the learned Counsel for respondent No. 4.

2. We have disposed of Writ Petition No. 5575/2021, today, in terms above which holds that all that the present respondent No. 4 is entitled, is to get her name included in the wait list for compassionate appointment as the respondent No.

4 has no legal right whatsoever, to claim appointment in place of a vacancy created on account of demise of her husband. In light of the above observation, the finding of the Learned School Tribunal, that it was mandatory for respondent No. 1 to fill the post of helper by making appointment on compassionate ground is clearly without merit and is in fact, contrary to the policy of State as is indicted in GR dated 21.12.2002, as it is a settled position of law, that for the purpose of compassionate appointment, there cannot be right qua the post which became vacant on account of demise of the person occupying it, on account of which, a claim for compassionate appointment is made.

3. The further finding by the Learned Tribunal based upon the communication dated 14.9.2018 (page No. 37) qua the post of helper that the post was not permitted to be filled, is clearly without any merit as the communication relates to the post of Asst. Teacher and not to the post of helper.

4. In that view of the matter, the impugned judgment of the learned Tribunal cannot be sustained and is hereby quashed and set aside. In case there is no other impediment, the respondent No. 3 shall grant approval to the appointment of the petitioner in terms of law applicable.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)