

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

WRIT PETITION NO. 833 OF 2025

Shailesh s/o Ganesh Swami

Petitioner

Versus

1. The State of Maharashtra
2. Deputy Director of Education,
Latur Region, Latur.
3. The Chief Executive Officer,
Zilla Parishad Nanded.
4. Education Officer (Primary)
Zilla Parishad, Nanded

Respondents

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Mr. R.D. Biradar, Advocate for the petitioner.

Mr. R.K. Ingole, A.G.P. for respondent Nos.1 and 2.

Ms. Yogita Thorat, Advocate for respondent Nos.3 and 4.

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATED : 17 JANUARY 2025

ORDER:-

. We have heard learned Advocate for the petitioner and perused the papers.

2. The petitioner is seeking compassionate appointment with the respondent Zilla Parishad wherein his father was in the employment but died in harness on 06.11.2012. The petitioner's mother submitted an application

dated 07.03.2013 seeking compassionate appointment of the petitioner. However, it was rejected. After attaining majority, the petitioner submitted the application seeking compassionate appointment to himself. By the impugned order dated 24.08.2023, even that has been rejected. The order of rejection is illegal and the petitioner is seeking to challenge it.

3. Learned Advocate for the petitioner would also advert our attention to a compromise decree passed in a suit filed by petitioner's mother wherein he and his sisters were the defendants. He would submit that as per the terms of settlement, the mother and sister have expressly agreed for appointment of the petitioner on compassionate ground and notices be issued, the petitioner having good cause.

4. With all sympathies, one cannot lose sight of the fact that it is a matter of compassionate appointment which scheme is evolved to offer an immediate succor to the bereaved family which is left in lurch due to untimely death of a bread earner. Time and again the Supreme Court and number of High Courts have emphasised this aspect.

5. A bare look at the petition with the annexures makes it evident that the petitioner's father died on

06.11.2012. His mother submitted application dated 07.03.2013 seeking appointment of the petitioner on compassionate ground after he completed 18 years of age. The petition mentions the petitioner's date of birth as 15.06.1996. There was some correspondence soliciting documents/information, by the communication dated 06.12.2015 addressed to the petitioner's mother. Since it was mentioned in the heirship certificate that she was in the employment, information was solicited from her as to where was she employed, so as to consider the request. There is nothing on record to demonstrate that she had complied with this demand / supply of information.

6. Again, after attaining majority, the petitioner applied for appointment on compassionate ground for himself for the first time on 09.05.2019. It is apparent that the petitioner's mother has been in the employment. It appears that as a sheer afterthought, the family got a consent decree passed by filing a suit in the year 2020 and consciously settling the terms in respect of the petitioner's right to seek compassionate appointment.

7. If the petitioner's mother was already in the employment, in our considered view, no fault can be found in

the impugned communication whereby the petitioner's request has been rejected for this very reason. It is for the first time that by filing a suit, it was made to believe that there was some rift in the family, in all probabilities, consciously to come out of the impediment of the family being in harness, which is a precondition for entitlement to seek appointment on compassionate ground.

8. There is one more aspect. It is evident from the papers that the petitioner had filed Writ Petition No. 197 of 2020 exactly with the same pleadings, documents and prayer for appointment on compassionate ground. He withdrew that petition on 09.01.2020, without seeking any leave to file a fresh writ petition on the same cause of action. Though it is not a matter of fraud inasmuch as a reference to such earlier writ petition having been withdrawn can be found in paragraph 11 of the petition memo, nothing has been stated as to how once having unconditionally withdrawn the earlier petition, a second petition would lie on the same cause of action and for the same relief when the earlier one was withdrawn without any leave, as is contemplated under Order XXIII Rule 1 of the Code of Civil Procedure. Therefore, even for this reason the petition is liable to be dismissed.

9. In the light of above, there is no merit in the petition. Hence, the petition is dismissed in *limine*.

(PRAFULLA S. KHUBALKAR)
JUDGE

(MANGESH S. PATIL)
JUDGE