



IN THE HIGH Court OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10699 OF 2024

Ganesh Navnath Kendre,
Age : 25 years, Occupation : Nil,
R/o; Bhandari Colony, Near Prerna School,
Gangakhed, Tq. Gangakhed, District Parbhani

VERSUS

- 1] **The State of Maharashtra,**
Through Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 32
- 2] **The Education Officer (Secondary)**
Zilla Parishad Parbhani,
Tq. & Dist. Parbhani
- 3] **Yuvak Vikas Shikshan Prasarak Mandal,**
Through its Secretary General,
Pimpaldari, Tq. Gangakhed,
District Parbhani.
- 4] **Sant Tukaram Vidyalaya,**
Through Head Master,
Pimpaldari, Tq. Gangakhed,
District Parbhani.

...

- Mr. Mahesh V. Ghatge, Advocate for the Petitioner
- Mr. V. M. Kagne, AGP for respondent Nos. 1 and 2 - State
- Mr. Anand P. Bhandari, Advocate for respondent Nos. 3 and 4

...

**CORAM : SMT. VIBHA KANKANWADI
AND
HITEN S. VENEGAVKAR, JJ.**

RESERVED ON : OCTOBER 09, 2025

PRONOUNCED ON : OCTOBER 17, 2025

JUDGMENT : [PER HITEN S. VENEGAVKAR, J.]

1. The petitioner *Ganesh Navnath Kendre* has approached this Court invoking the writ jurisdiction under Article 226 of the Constitution of India seeking issuance of writ of *mandamus* directing respondent No. 3, the management of the educational institution run by its society to appoint the petitioner on the post of clerk on compassionate grounds as per the State Government policy and also to forward the necessary proposal to respondent No. 2 that is the Education Officer (Secondary) for approval. The petitioner's father was serving as a clerk in the school run by respondent No. 4, which is managed by respondent No. 3 - Society and he expired on 04.04.2021 while in service.

2. The petitioner who has passed the higher secondary certificate examination and holds valid certificates in Marathi and English typing as well as MS-CIT qualification submitted his application on 07.06.2021, seeking appointment on compassionate grounds. The said application was duly submitted to the society as well as to the Education Officer. However, the management by its order dated 10.03.2025, rejected the petitioner's request for appointment as clerk and instead offered him a post of peon. The petitioner accordingly amended the present petition to challenge the said order as well.

3. The petitioner contends that the action of respondent No. 3 is arbitrary and contrary to the Government Resolution dated 21.09.2017, issued by the General Administration Department, which governs compassionate appointments. It is submitted that there are two sanctioned vacancies for the post of clerk available in the schools run by respondent No. 3 - Society and that the Education Officer has also issued directions to consider and appoint the petitioner on the said post.

4. It is further submitted that the management has rejected the petitioner's claim on untenable grounds such as alleged deficiencies in the application, pendency of a past criminal case in which the petitioner was acquitted and had been a juvenile at the time, and on the premise that the family had received monetary benefits. The petitioner's counsel has relied upon the decisions of this Court in *Prakash Vajinathrao Borade Vs. State of Maharashtra and Others; Writ Petition No. 7388 of 2008* and *Rahul Fulaji Bhotkar Vs. State of Maharashtra and Others, passed in Writ Petition No. 13430 of 2023*. He also relied upon the judgment of the Hon'ble Supreme Court in *Bhawani Prasad Shankar Vs. Union of India; (2011) 4 SCC 209*, to submit that the compassionate appointments cannot be denied on hyper technical grounds such as minor delay or lack of format and

that the purpose of the scheme is to provide immediate successor to the family of a deceased employee.

5. On the other hand, the learned advocate for respondent No. 3 and 4 opposed the petition contending that the petitioner's application was filed beyond the period of one year prescribed under the Government Resolution dated 21.09.2017. He further argued that it was not in the prescribed format and the family had already received sufficient monetary benefits such as gratuity and pension.

6. It was further argued that the 20% ceiling for the compassionate appointments under the Government Resolution dated 15.02.2018 has already been exhausted since three non-teaching staff members have been appointed on compassionate grounds out of the 11 sanctioned posts. It was submitted that the petitioner had also been offered the post of peon, in view of the Clause 16 of the Government Resolution dated 21.09.2017, which allows appointment to a lower post, when the higher post is unavailable. The learned AGP appearing for the Education Department, however, supported the petitioner and stated that there are two clear vacancies for the post of clerk, that the petitioner is qualified for the same and that the Education Officer has already issued directions to the respondent No. 3 to appoint the petitioner on the post of clerk and submit the proposal for approval.

7. Having heard the rival submissions and perused the material on record, this Court finds that the petitioner's claim for appointment on compassionate ground is well-founded. It is undisputed that the petitioner's father died in harness while serving as a clerk and that the petitioner being his dependent applied within reasonable time seeking appointment as per the policy. The petitioner possessed the requisite educational qualifications for the post of clerk. The record produced by the Education Officer indicates that there are two sanctioned vacant posts of clerk in the institution run by respondent No. 3. We are conscious of the fact that the object of compassionate appointment is not to provide employment as a matter of right but to relieve the family of the deceased employee from financial destitution caused by the sudden demise of the breadwinner. Thus, once the scheme is framed and the applicant satisfies the eligibility criteria, the authority is duty-bound to act fairly and cannot deny appointment on arbitrary or extraneous considerations, when the posts are vacant.

8. The delay or procedural lapses cannot defeat the claim for compassionate appointment if the family continues to face hardship and the authorities are expected to adopt a liberal approach to fulfill the object of the scheme. Thus, rejection of a claim on technical grounds when the eligibility is undisputed amounts to arbitrary exercise of power. Further, in the case of ***Prakash Vajjnathrao Borade***,

(*Supra*), this Court categorically held that once directions are issued by the Education Officer to appoint a qualified dependent on compassionate grounds, the management is bound to comply and forward the proposal for approval and failure to do so constitute non-compliance with statutory obligations.

9. The contention of respondent No. 3 that the quota of 20% compassionate appointments has been exhausted is untenable. The Government Resolution dated 15.02.2018, restricts the number of appointments in a given year, not the total sanction strength. The presence of two sanction-vacant posts of Clerk clearly establishes that availability is not an issue. However, Clause 16 of the Government Resolution dated 21.09.2017, itself contemplates that if an eligible dependent is appointed on a lower post for want of a vacancy in the higher post, he shall be given priority for promotion when the higher post falls vacant. In the present case, since two clerk posts are already vacant, the action of offering the post of peon to the petitioner is directly contrary to the intent and language of the resolution. The management's reason of monetary benefits and alleged past prosecutions are equally unsustainable, as the compassionate appointment policy does not disentitle dependents merely because terminal benefits were paid, as held in ***Canara Bank v. M. Mahesh Kumar; (2015) 7 SCC 412***. The petitioner's acquittal

and the fact that he was juvenile at the time of alleged offence remove any shadow of disqualification. The conduct of respondent No. 3 in disregarding the express directions issued by the Education Officer is highly improper. Educational institutions receiving grant-in-aid are bound to follow the directions of the Education Department. Non-compliance amounts to defiance of lawful authority and is impermissible. This Court in *Rahul Fulaji Bhotkar, (Supra)* emphasized that refusal by a private aided school to obey such directions violates Article 14 of the Constitution as it results in arbitrary and discriminatory treatment of eligible dependents.

10. In the totality of circumstances, this Court is of the considered view that petitioner is fully eligible and entitled to be appointed on the post of clerk on compassionate grounds. The impugned order dated 10.03.2025, passed by respondent No. 3 is arbitrary, perverse and unsustainable in law. The rejection based on non-submission of the prescribed format, alleged delay or past prosecution is contrary to the settled principles governing compassionate appointments. The availability of two sanctioned clerk posts removes any administrative obstacles. The management's reliance on the 20% ceiling is misconceived. The object of the compassionate appointment policy is to provide relief and not to frustrate legitimate claims through procedural rigidity.

11. Accordingly, this Court holds that the petitioner has established his entitlement to compassionate appointment on the post of clerk. The writ petition, therefore, deserves to be allowed. The impugned order dated 10.03.2025 issued by respondent No. 3 - Management is quashed and set aside.

ORDER

- A) The Writ Petition is allowed.
- B) Respondent No. 3 is directed to appoint the petitioner *Shri Ganesh Navnath Kendre* on the post of clerk on compassionate grounds in any of the schools run by its society against one of the sanctioned vacant posts within a period of two weeks from the date of this judgment and order.
- C) Respondent No. 2 – the Education Officer (Secondary) shall accord approval to the said appointment immediately upon receipt of the proposal.
- D) There shall be no orders as to costs.

(HITEN S. VENEGAVKAR, J.) (SMT. VIBHA KANKANWADI, J.)

12. Later on, after pronouncement of judgment, learned Advocate for Respondent No. 4 prays for stay to the operation of the order for approaching Hon'ble Supreme Court. Taking into considerations the submissions those were made in the petition, we stay the operation of this order for a period of four weeks from today.

(HITEN S. VENEGAVKAR, J.) (SMT. VIBHA KANKANWADI, J.)