



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

WRIT PETITION No.5975 OF 2024

Sachin s/o. Bhikaji Bilewar,
Aged 39 years,
Occupation : Unemployed,
R/o. Naik Nagar, Barshi Takali,
Akola.

: PETITIONER

...VERSUS...

1. Shivaji Shikshan Sanstha, Amravati,
through its Secretary.
Having office at Shri Shivaji Education Society,
Shivaji Nagar, Amravati 444 603.
2. Education Officer (Secondary),
Akola, having his office at DIECPD Campus,
Behind Santoshi Mata Mandir,
Akola.

: RESPONDENTS

Mr. N.B. Rathod, Advocate for Petitioner.

Mr. K.P. Mahalle, Advocate for Respondent No.1.

Mr. A.S. Fulzele, Additional Government Pleader for Respondent
No.2.

CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.

RESERVED ON : **10th FEBRUARY, 2026.**

PRONOUNCED ON : **17th FEBRUARY, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

2. The present petition filed under Article 226 of the Constitution of India seeks a direction in the nature of mandamus thereby directing the respondent No.1 to appoint the petitioner on compassionate ground on the post of Laboratory Assistant.

3. The facts emerging from the petition, which are more or less undisputed are as under :

On 26.11.2013 the father of the petitioner who was permanently employed on the post of Laboratory Assistant in the School run by the respondent No.1 died in harness. Thereafter, on 15.5.2014 the petitioner applied for appointment on compassionate ground, the said application was accepted by the respondent No.1. He was accordingly placed on the wait-list drawn for the purpose of giving compassionate appointment.

4. Since the repeated requests and representations of the petitioner made to the respondent No.1 did not yield any result, he was constrained to approach this Court vide Writ Petition bearing No.7426/2022, wherein a direction was prayed for considering the claim of the petitioner for grant of employment on compassionate ground.

5. In response to the said petition, the respondent No.1 filed reply that there were no vacant seats available and there are 16 more candidates who are senior to the petitioner, in the wait-

list. By way of said reply the respondent No.1 undertook that the petitioner's case for appointment on compassionate ground will be considered in accordance with the waiting list. In view of the said undertaking and the reply filed by the respondent No.1, the petitioner on 23.8.2023 chose to withdraw the petition. Thereafter, the present petition is filed seeking identical reliefs.

6. We have heard Mr. N.B. Rathod, learned counsel for the petitioner, Mr. K.P. Mahalle, learned counsel for respondent No.1 and Mr. A.S. Fulzele, learned Additional Public Prosecutor for respondent No.2.

7. Mr. N.B. Rathod, learned counsel for the petitioner by taking us through the record of the matter submits that even though identical prayer has been made in the earlier writ petition, the documents obtained by him subsequently under the Right to Information Act shows that the reply filed by the respondent No.1 in the earlier petition was totally incorrect. He invites our attention to the roster of the respondent No.1 stating therein that there are vacant posts in the category in which petitioner seeks appointment. He further states that vide communication dated 14.9.2022, the State of Maharashtra has directed all the Education Officers of the State regarding methodology to be adopted while granting compassionate appointment. He, therefore, prays that even though

the earlier petition was withdrawn, that would not preclude him from filing the present petition.

8. Per contra, Mr. K.P. Mahalle, learned counsel for the respondent No.1 raises preliminary objection regarding maintainability of the petition. He points out the prayer clauses in the earlier petition as also the present petition and states that the present petition is barred by the provisions of constructive *res judicata*. He places reliance on a judgment in the case of **M.J. Exporters Private Limited Vs. Union of India and others**, reported in **(2021) 13 SCC 543** in which the Hon'ble Apex Court has held that the issue which was raised and abandoned in the first writ Petition which was withdrawn, cannot be agitated later and the principles of constructive *res judicata* embodied in Civil Procedure Code and are extendable to writ proceedings would be applicable in the matter.

9. We have considered the rival contentions and also gone through the record. Filing of earlier Writ Petition bearing No.7486/2022 and its subsequent withdrawal on 23.8.2023 is an admitted fact. Therefore, the only contention which is canvassed by the learned counsel for the petitioner is regarding the correctness or otherwise of the stand taken in the earlier writ petition by the respondent No.1 regarding availability of vacant posts. The counsel for the petitioner has submitted that the roster of the respondent

No.1 is obtained by him under the Right to Information Act. However, after perusal of the record we could not find exact date on which the said document is obtained by the petitioner. The date of the document is 30th May, 2023 while earlier writ petition was withdrawn on 23.8.2023. Thus, it can be said that the document i.e. roster of the respondent No.1 was very much available when the writ petition was withdrawn on 23.8.2023. The same analogy would apply to the guidelines issued by the State Government on 14.9.2022 which spells out the methodology while deciding and dealing with the application for compassionate appointment. All these facts could have been brought before the Court but were not done. We are afraid that while exercising jurisdiction under Article 226 of the Constitution of India we would be able to adjudicate upon such documents, which were very well available when the earlier writ petition was withdrawn. Thus, the challenge in the petition is misconceived and is meritless.

10. The petition is, therefore, dismissed with no order as to costs.

11. Rule is discharged.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)