

(2021) 07 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No.4673 Of 2019

Sunil Gundu Desai

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 30-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 07 BOM CK 0014

Hon'ble Judges : R.D. Dhanuka, J;R.I. Chagla, J

Bench : Division Bench

Advocate : Chetan G. Patil, Mandar G. Bagkar, P.J. Gavhane

Final Decision : Disposed Of

Judgement

R.I. Chagla, J

1. The petitioner seeks leave to amend to delete the respondent nos.3 & 4. Leave to amend is granted. Amendment to be carried out within one week

from today.

2. Rule. Learned AGP waives service for the respondents. Heard finally by consent of parties.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner is seeking a writ of certiorari for quashing and setting aside the

impugned order dated 31st March 2018 passed by the respondent no.2 refusing to grant approval to the appointment of the petitioner on the post of a

peon in the Sahyadri Vidyalaya School (for short "the said School") from 1st October 2014 with all consequential benefits.

4. The father of the petitioner who was working in the said school died on 30th July 2014. The petitioner had approached the respondent nos.3 & 4 on

26th August 2014 requesting that he should be appointed on the post of peon on compassionate basis. The said school appointed the petitioner on the post of a peon w.e.f. 1st October 2014 vide order dated 25th September 2014. The respondent nos.3 & 4 submitted a proposal for approval to the respondent no.2 Education Officer (Secondary). However, no decision has been taken for approval. The management and the said school again submitted the proposal for approval to the appointment of the petitioner. The respondent no.2 returned the said proposal for approval of the petitioner's appointment by placing reliance on the Government Resolution dated 12th February 2015. Being aggrieved by the impugned order, the present petition has been filed.

5. Learned counsel appearing for the petitioner invited our attention to the impugned order and submitted that the sole basis for not approving the appointment of the petitioner on the post of peon in the said school is on the basis of Government Resolution dated 12th February 2015 by which such appointments were banned. He submits that the said Government Resolution dated 12th February 2015 applies with prospective effect. In support of this submission, he placed reliance on judgment of Division Bench of this Court (Coram : S.C. Dharmadhikari & M.S. Karnik, JJ.) of this Court dated 13th February 2019 in the case of Suraj Uttam Kamble Vs. State of Maharashtra & Ors. He submits that this Court has considered the similar Government Resolution and particularly, the one imposing ban dated 2nd May 2012. This Court has decided the issue of applicability of the said Government Resolution to the appointments made on compassionate basis and referred to prior decision in Writ Petition No.7507 of 2016 dated 11th December 2018 in paragraph 10 of the said judgment :-

“10. The question of applicability of GR dated 2/5/2012 to appointments on compassionate basis was subject matter of consideration in Writ

Petition No.7507/2016 decided by this Court on 11th December, 2018 to which one of us (S.C. Dharmadhikari, J.) was a party. We may refer to the

relevant portion of paragraph 12 of the decision of this Court which reads thus :-

“12. However, in the Writ petition as also in the affidavit-in-rejoinder, it is reiterated that it is impossible to sustain this ground of refusal. The

appointment on compassionate basis is made in terms of a Government circular dated 31st December 2002. That has not been superseded by this

subsequent Government Resolution and particularly, the one imposing ban dated 2nd May 2012. In fact, such appointments were kept out of the purview of the general ban imposed on recruitment. The very object in all such appointments enables the State Government to carry forward its earlier policy despite the overall ban on recruitment and appointment.â??

6. It has thus been held that the prior decision dated 11th December, 2018 squarely applies to the facts of the case granting approval to the appointment of the petitioner on the post of a Shikshan Sevak since the date of his appointment with all consequential benefits. Such appointments were kept outside the purview of the general ban imposed on recruitment. He has accordingly submitted that the said decision applies to the facts of this case.

7. We have considered the facts of the present case as well as the judgment of the Division Bench of this Court in the case of Suraj Uttam Kamble

(supra) which has relied upon the Benchâ??s earlier decision in Writ Petition No.7507 of 2016 dated 11th December 2018. It is made clear from the

said decision that appointment on compassionate basis were kept outside of the purview of the general ban imposed on recruitment by Government

Resolution dated 2nd May 2012. This would apply also to the subsequent Government Resolution dated 12th February 2015 which is the sole basis of

the impugned order in the present case. Thus, the said Government Resolution imposing ban on fresh recruitment will not apply to the appointments

made on compassionate basis. The very object in all such appointments is to enable the State Government to carry forward its earlier policy despite

the overall ban on recruitment and appointment. We are of the view that this petition is covered by the judgment in the case of Suraj Uttam Kamble

(supra). Although the learned AGP appearing for the respondent nos.1 & 2 tried to defend the impugned order, there is no merit in the submission

made by the learned AGP.

8. We therefore pass the following order :-

(i) The impugned order dated 31st March 2018 is quashed and set aside.

(ii) The respondent no.2 Education Officer is directed to grant approval to the appointment of the petitioner on compassionate basis on the post of

peon in the said school w.e.f. 1st October 2014 with all consequential benefits within a period of four weeks from the date of this order.

(iii) Writ petition is disposed of in the above terms. Rule is made absolute. There shall be no order as to costs.