

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1310 OF 2014

Suresh S/o Pahadsingh Hakumdar,
Age- 53 years, Occu.: Service,
R/o. Nandanvan Colony, Hivarkheda Road,
Kannad, Tq. Kannad, Dist. Aurangabad.

... PETITIONER.

VERSUS

1. The State of Maharashtra
Through the Secretary,
State Transport Department,
Mantralaya, Mumbai – 32.
2. The Vice Chairman
Maharashtra State Road,
Transport Corporation
“Wahtuk Bhavan”
Mumbai Central, Mumbai.
3. The Divisional Controller,
Maharashtra State Road,
Transport Corporation,
Aurangabad Division,
Aurangabad.

... RESPONDENTS.

Mr. M.R. Andhale, Advocate for Petitioner;
Mr. D.V. Tele, A.G.P. For Respondent No.1/State
Mrs. Ranjana D. Reddy, Advocate for Respondents No.2 and 3

CORAM : S.S. Shinde and P.R. Bora, JJ.

RESERVED ON : 24th March, 2015

PRONOUNCED ON : 30th March, 2015

JUDGMENT: (Per : P.R. Bora, J.)

- 1) Heard. Rule. Rule made returnable forthwith, with the consent of the parties.
- 2) The Petitioner has filed the present petition, seeking directions against the Respondents to consider his case for promotion to the post of Traffic Controller from the open category, even though he belongs to the reserved class.
- 3) Most of the facts are undisputed. It is not in dispute that the Petitioner entered into the services of the Respondent Corporation, after completing the required formalities in the year 1981, as a Conductor. There is further no dispute that, the Petitioner belongs to 'Rajput Bhamta' Scheduled Tribe and the said caste is recorded in the service book of the Petitioner. There is further no dispute that, the caste certificate of the Petitioner has not yet been validated by the concerned Caste/Tribe Scrutiny Committee.
- 4) In the year 2011, the Respondent Corporation advertised the promotional post of Traffic Controller vide notice

published on 30.06.2011. The Petitioner appeared for the departmental examination to be selected for the said post from the open category, as per the permission given to him by the Respondent No.2. The Petitioner was selected and his name was incorporated in the select list in order of merit at Sr. No.57. It is the contention of the Petitioner that, while preparing the select list, against the name of the Petitioner he has been shown belonging to the reserved category. It is the further contention of the Petitioner that, the Petitioner has never claimed any benefit on the basis of his caste and always competed from the open category. It is the further contention of the Petitioner that, when the Respondent Corporation permitted him to produce the caste validity certificate, he made it clear that, he is not claiming any benefit of reservation and wants to be considered as a candidate from open category. He further made it clear that, since he is not claiming any reservation, he need not be asked or compelled to produce on record the caste validity certificate.

5) In spite of the facts as noted above, the Respondents denied the promotion to the Petitioner to the post of Traffic Controller on the ground that, he did not submit the caste validity certificate. The said communication dated 27.11.2013 is impugned in the present Petition.

6) Perusal of the impugned order dated 25/27.11.2013 reveals that though the Petitioner has passed the Departmental Examination for the promotional post of Traffic Controller from the open class the Petitioner has been denied the said promotion for the sole reason that, he did not submit the caste validity certificate. One Shri Sanjay Wamanrao Supekar, Divisional Controller M.S.R.T.C., Aurangabad has filed the affidavit in reply on behalf of Respondents No.2 and 3. The Respondents have not disputed that the initial appointment of the Petitioner is as an open class candidate. The Respondents No.2 and 3 have not responded to the contention raised by the Petitioner in his Petition that, he has submitted representations on 24.11.2011, 03.07.2011 and lastly on 12.03.2012 contending therein that he does not want to claim any benefit on the basis of his caste which has been recorded in his service book as 'Rajput-Bhamta' (Scheduled Tribe). The respondents have, however, not disputed the fact stated on oath by the Petitioner that, in the examination held for the promotion to the post of Traffic Controller, the Petitioner has competed as an open category candidate and has succeeded in getting through the said examination. It has also not been disputed that, the name of the Petitioner is included in the list of the candidates who have successfully passed the examination for the departmental promotion to the post of Traffic Controller.

7) The respondents No.2 and 3 have, however, opposed the Petition contending that since, on insistence of the petitioner, his caste has been recorded as 'Rajput- Bhamta' (Scheduled Tribe) in the service book, the petitioner is duty bound to produce on record the caste validity certificate and unless the same is produced, he cannot be extended benefits of promotion. It has also been mentioned that in the advertisement itself, published in respect of the promotion, it has been clearly mentioned that the candidates belonging to any of the reserved classes, aspiring for promotion, shall have to submit the caste validity certificate and unless the caste validity certificate is produced, no promotion would be granted to such candidates.

8) The ground on which the petitioner has been denied the promotion by the respondents Nos. 2 and 3 is apparently unsustainable. In view of the fact that, petitioner has not entered into the employment of the respondents Nos. 2 and 3, through the channel of reservation and he is willing to be governed as open category candidate, there seems no logic or rational on the part of respondent Nos.2 and 3 in asking from the petitioner the caste validity certificate. No case law needs to be cited to canvass the proposition that, a candidate falling in the category of the reserved class can always compete as an open category candidate. If a candidate belonging to backward class contests

for any promotional post from an open category candidate and also succeeds in the same, he cannot be denied promotion to the said post on the ground that he did not produce the caste validity certificate for the simple reason that he did not claim any relaxation or benefit of his backward class for acquiring such promotion.

9) The petitioner has filed on record the copies of the representations submitted by him to the respondents, referred to herein above, wherein the petitioner has in clear terms communicated to Divisional Controller, Aurangabad that he has given an option for being considered as an open category candidate for the examination to be held for the promotional post of Traffic Controller and that he shall be considered as an open category candidate. The record reveals that the petitioner had earlier also filed Writ Petition No.5489 of 2012 and while disposing of the said petition, the division bench of this Court had categorically observed that:

“3. If a candidate has not entered employment through the channel of reservation and if he is willing to be governed, as if an open category candidate, ordinarily, the employer would not have an objection.”

10) Whether any act or Rule can curtail and put an embargo on the right of a person from the reserved class to contest or a compete any promotional post from the open category? The answer is empathetically no. There can never be any Constitutional or legal objection, if more members from weaker section get promoted on their own merit from the seats meant for unreserved category. As has been held by the Hon'ble Apex Court in the Case of Kasambhai F. Ghanchi V. Chandubhai D. Raput reported in (1998) 1 SCC 285 and also in the case of Bihari Lal Rada [2009 ALL SCR 528]. The unreserved seat, euphemistically described as general category seat or open seat is available for all candidates irrespective of their caste who are otherwise qualified to contest to that office.

11) Both the aforesaid Judgments though were pertaining to elections, the principle laid down therein can be applied in the present case also. As has been held by the Honourable Apex Court, there is no separate category like general category. The 'expression belonging to the general category' wherever employed, means the seats or office earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. It is thus evident that the candidate belonging to a reserved class cannot be disqualified and deprived from competing any promotional post

from the open category.

12) In the aforesaid circumstances, the communication dated 25/27.11.2013 under the signature of Respondent No.2 herein is liable to be quashed. We reiterate that the stand taken by Respondents No.2 and 3 is not only illogical, unreasonable and irrational, but also against the constitutional mandate. We are therefore inclined to allow the present Petition. Because of the unreasonableness shown by the Respondents and wrong interpretation of the relevant legal provisions, they compelled the Petitioner to approach this Court. Petitioner is, therefore, entitled for costs from the Respondents. Hence, the following Order:-

ORDER

(i) The Communication dated 25/27.11.2013 is hereby quashed and set aside.

(ii) Respondents are directed to consider the candidature of the Petitioner to the promotional post of Traffic Controller as an open category candidate.

(iii) The Respondents shall pay costs of Rs.10,000/- to the Petitioner.

. Rule made absolute in the above terms.

**P.R. Bora,
Judge**

**S.S. Shinde,
Judge**

S P Rane