

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

WRIT PETITION NO.2786 OF 2015

Nandkishor s/o. Papalal Modi
Age: 53 Yrs., Occu: Service,
R/o Modi Niwas, Peth Galli
Parli-Vaijnath, Tq. Parli,
Dist. Beed.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
School and Education Department
Mantralaya, Mumbai - 32.
- 2) Shri. Vaidyanath Shikshan Sanstha,
Parli, through its Secretary,
Dhokte Galli, Ganeshnagar,
Parli, Tq. Parli,
Dist. Beed.
- 3) The Education Officer (Secondary)
Zilla Parishad, Beed.

- RESPONDENTS

Mr.Pradeep Deshmukh, Advocate h/f Mr. Yogesh P.Deshmukh,
Advocate for Petitioner.
Mr.N.B.Patil, AGP for Resp.Nos.1 and 3;
Mr.G.V.Mohekar, Advocate for Respondent No.2.

WITH

WRIT PETITION NO.1121 OF 2015

Nandkishor s/o. Papalal Modi
Age: 53 Yrs., Occu: Service,
R/o Modi Niwas, Peth Galli
Parli-Vaijnath, Tq. Parli,
Dist. Beed.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
School and Education Department
Mantralaya, Mumbai - 32.
- 2) The Education Officer (Secondary)
Zilla Parishad, Beed, Dist. Beed.
- 3) Shri. Vaidyanath Shikshan Sanstha,
Parli, through its Secretary,
Dhokte Galli, Ganeshnagar, Parli,
Tq. Parli, Dist. Beed.
- 4) Vaidyanath Vidyalaya
through its Headmaster,
Parli-Vaijnath, Tq. Parli,
Dist. Beed.

- RESPONDENTS

Sudha S. Kulthe, Advocate for Petitioner.
Mr. N. B. Patil, AGP for Resp. Nos. 1 and 2;
Mr. G. V. Mohekar, Advocate for Respondent No. 3 and 4.

CORAM : **R.M. BORDE &**
P.R. BORA, JJ.

DATE : 30th September, 2015

JUDGMENT (PER:-P.R. BORA, J.)

- 1) Heard. Rule. Rule made returnable
forthwith with the consent of learned counsel
appearing for the parties.

2) Since the parties in both the petitions are same, we deem it appropriate to decide both these petitions by this common judgment.

3) In Writ Petition No. 2786/2015, the petitioner has questioned order dated 20.02.2015 whereby he has been terminated by Respondent No.2 and sought quashment of the said order; whereas in Writ Petition No. 1121/2015, challenge is raised to order dated 12.01.2015, whereby the petitioner has been suspended by Respondent No.3.

4) The order of suspension dated 12.01.2015 and order dated 20.02.2015 are based on the ground that the petitioner did not submit Caste Validity Certificate to be belonging to "Pardeshi Bhamta" within the stipulated time. Government Resolutions dated 18.05.2013 and 30.07.2013 issued under Maharashtra Scheduled Castes, Scheduled Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Class (Regulation and Issuance verification of) Act, 2000 (hereinafter to

be referred to as the Act of 2000) are referred to and relied upon in both the aforesaid orders. As against the ground raised in the order of suspension as well as order of termination, it is the precise and specific contention of the petitioner that since he did not secure initial appointment on the post of Assistant Teacher claiming any benefit of being belonging to backward class (caste or tribe) and since he was selected and appointed as an open category candidate, he was not required at any point of time to submit any caste certificate to which he belongs to or validity thereof.

5) The aforesaid contention of the petitioner has not been denied or disputed by the Respondent/management or the Head Master of the school, wherein the petitioner was working at the relevant time. The respondents have also not filed on record any document evidencing that the petitioner has availed the benefit of his caste either at the time of his initial appointment or at any point of time thereafter.

6) The respondent/management has opposed both the petitions by filing a common affidavit in reply, restricting to the point of jurisdiction and availability of an alternative efficacious remedy for the petitioner.

7) The petitioner has filed on record the orders pertaining to his initial appointment, subsequent appointments, promotion to the post of Assistant Head Master and thereafter to the post of Head Master. The petitioner has also placed on record the approvals received to his initial appointment and the subsequent appointments from the Education Officer (Secondary) Zilla Parishad, Beed.

8) On perusal of the aforesaid documents, there remains no doubt that the petitioner did not avail any benefit of his belonging to the backward class. The documents on record clearly reveal that the petitioner was selected as a candidate belonging to open category. Even the promotions, which the

petitioner did receive, were also as the candidate belonging to open category. In the circumstances, it was absolutely unwarranted for the respondent/management to call upon the petitioner to submit Caste Certificate or validity thereof and alleging failure on his part in submitting such certificates, first to suspend him and thereafter terminate him.

9) It is apparent that the respondent / management has misinterpreted the Government Circulars dated 18th May, 2013 and 30th July, 2013. None of the aforesaid Circulars require a candidate who has not availed any benefit claiming to be belonging to any of the backward class to submit his caste certificate or its validation.

10) The material on record shows that the petitioner is shown to be belonging to VJNT category in the service record. It is the case of the petitioner that the aforesaid entry has been wrongly made in his service record though he does not belong

to VJNT category. It is his further contention that he belongs to "Kalal" caste which falls in the category of Other Backward Class (OBC). As was submitted by learned Counsel for the petitioner, though the petitioner had never claimed or received any benefit even of belonging to OBC, only with an intention to make his service record straight, an application was filed by the petitioner to correct his caste in the service record. The learned Counsel further brought to our notice that the petitioner has got validated the OBC caste from Caste Scrutiny Committee. The caste validity certificate so issued by the Caste Scrutiny Committee is placed on record. Learned Counsel further pointed out that the proposal for validation of the caste was submitted by the petitioner through the Head Master of his school, vide covering letter dated 3.9.2013, a copy of which is filed on record at Exhibit-K of the petition. In the aforesaid letter addressed to Member-Secretary of the Caste Scrutiny Committee, Aurangabad Region, the Head Master of Respondent No.2 - school, viz. Shri

Baidyanath Vidyalaya, Parli Vaijnath, has clearly mentioned that the petitioner is in their employment as a permanent employee w.e.f. 9.7.1994 and further that he has been appointed from open category. It is further mentioned that the petitioner belongs to "Kalal" caste, which false in OBC and lastly the request has been made to validate the caste certificate of the petitioner. The record shows that accordingly, the Caste Validity Certificate was issued in favour of the petitioner by Caste Scrutiny Committee, Aurangabad Division, on 16.1.2014, certifying the caste of the petitioner to be "Kalal" (OBC). After receiving the Caste Validity Certificate, the petitioner applied to the Respondent management to carry out necessary corrections in the caste as mentioned in his service record and to show him to be belonging to "Kalal" OBC caste instead of "Pardeshi Bhamta" (VJNT). In view of the fact that for validation of the caste of the petitioner as "Kalal" (OBC), when the proposal was forwarded to the Caste Scrutiny Committee through Head Master of the said school on 3.9.2013,

there was no reason for the respondent/management to call upon the petitioner to submit caste validity certificate, certifying the petitioner to be belonging to "Pardeshi Bhamta". From the documents on record there is every reason to believe that the Head Master of the school, where the petitioner was serving as well as the management, which runs the school, were having knowledge of the fact that the proposal for validating the caste of the petitioner as "Kalal" (OBC) was forwarded through the school and accordingly the caste of the petitioner as "Kalal" (OBC) was validated by the Caste Scrutiny Committee, vide Certificate of Validity dated 16.1.2014. Despite having knowledge of the aforesaid fact, the Respondent/management suspended the petitioner, vide order dated 12.1.2015 on the ground that the petitioner did not submit the Certificate of Validity, certifying that the petitioner belongs to "Pardeshi Bhamta" caste. Secondly, as mentioned earlier, when the petitioner has not availed any of the benefits based his caste, even at the time of his initial appointment, there

was no reason for the Respondent/management to call upon the petitioner to submit his caste certificate or Caste Validity Certificate. In the circumstances, the petitioner challenged the order of suspension by filing Writ Petition No.1121/2015 and during pendency of the aforesaid petition, respondent / management passed subsequent order dated 20.2.2015, terminating the services of the petitioner on the same ground that he did not submit caste certificate and caste validity certificate. Both the orders are apparently unsustainable for the reasons recorded hereinbefore and hence are liable to be quashed and set aside.

11) It was vehemently argued by learned Counsel for the Respondent management that alternative and efficacious remedy by way of an appeal before the School Tribunal, was available to the petitioner and in such circumstances, both the petitions are liable to be dismissed on that ground alone. We are however not at all impressed with the arguments so advanced. The existence of an

alternative remedy is not an absolute bar to the relief under Article 226 of Constitution of India. From the material on record, we are fully convinced that the orders impugned in both the writ petitions are palpably wrong, erroneous and issued with the only intention to harass the petitioner. Moreover, the orders are based on erroneous interpretation of the statutory provisions as well as Government Circulars issued in that regard. In such circumstances, the existence of an alternative remedy cannot be a ground for refusing relief to the petitioner.

12) In the result, following order, -

- i) Writ Petition Nos.2786/2015 & 1121/2015 are allowed;
- ii) The order dated 12.01.2015 and the order dated 20.02.2015 impugned in the respective petitions are quashed and set aside;
- iii) The respondents are directed to forthwith reinstate the petitioner with continuity of

service and full back wages with all consequential benefits;

- iv) Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/
fldr 23.11.15