

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

WRIT PETITION NO. 5768 OF 2011

Samsherkhan Jamalkhan Pathan,
Age : 42 Years, Occu. : Service,
R/o Naggaon, Tq. Paithan,
Dist. Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai - 32.
2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
3. Trimbakeshwar Vidyalaya,
Navgaon, Tq. Paithan,
Dist. Aurangabad,
Through its Head Master. .. Respondents

Ms. Surekha Mahajan, Advocate for the Petitioner.
Shri P. N. Mule, A. G. P. for Respondent Nos. 1 and 2.
Shri Abhijit D. Chaudhari, Advocate h/f Shri D. J. Chaudhari,
Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

DATE : 06TH JANUARY, 2015.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of

parties taken up for final hearing.

2. Ms. Mahajan, the learned counsel for the petitioner submits that, the petitioner possess qualification of B. A. B. Ed and is appointed as an Assistant Teacher with the respondent No. 3/School on 07.10.1996 initially on probation for two years and thereafter is working as permanent teacher. According to the learned counsel the petitioner belongs to physically handicapped category. According to the learned counsel, the petitioner is also receiving vehicle allowance of Rs. 1,000/- with effect from 01.07.2006, as the petitioner is from disabled category. The petitioner at no material point of time was appointed from S. T. category, but the petitioner was appointed from open and physically disabled person's category. According to the learned counsel, the petitioner has completed almost 18 years of service. The petitioner for the first time in the year 2010 was directed to produce the validity certificate of the tribe claim and it was stated that in case the validity certificate is not submitted, the petitioner would not get the salary. According to the learned counsel, the same is illegal. The petitioner is appointed on 07.10.1996 and on that date various other teachers were appointed and they are appointed from open category. The case of the management is that advertisement was issued for filling in various posts of assistant teachers from reserved category as a special drive is incorrect.

3. Mr. Choudhari, the learned counsel for the respondent No. 3/school submits that, the petitioner is appointed from S.T. category. The advertisement was issued wherein it was specifically contended that, the post of Hindi subject was meant for S.T. category. Pursuant to said advertisement petitioner had applied and the petitioner had mentioned his caste as Tadvī which comes in scheduled tribe category. It is incumbent upon the petitioner to produce validity certificate. The petitioner is not appointed from open category and physically disabled persons category. Only because special vehicle allowance is paid that does not mean that the petitioner is appointed from physically disabled category. The allowance is paid to the person who is physically disabled. Even B. C. Cell has approved the roster and as per the said approved roster, the appointment of the petitioner is made from S. T. category. As such, the petitioner cannot claim any protection in service, unless the petitioner gets the validity of his tribe claim.

4. We have also heard the learned Assistant Government Pleader for the respondent No. 2.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The appointment of the petitioner is approved. The

approval order does not state that the petitioner is appointed as against a reserved post. However, there are some other documents stating that the petitioner is appointed from the reserved category. The order of approval has been perused by us. The order of approval is not accompanied with any rider. It is not disputed that, the petitioner is appointed with effect from 07.10.1996 after following due selection process. The appointment is approved by the appropriate authority. The roster that is approved by the B. C. cell is approved on 05th June 2010. The reservation as per the M. E. P. S. Act and Rules was 34% upto June 2008. By virtue of amendment in July 2008, the reservation has been increased to 52%. Naturally the reservation as was prevailing when the petitioner is appointed will have to be considered that is 34% and not 52% as existing in the year 2010, when the roster has been approved.

7. It would not be worthwhile now to go into the dispute as to whether the petitioner was appointed from the reserved category or from open category and more particularly when the approval has been granted to the appointment of the petitioner without any rider. Even otherwise the petitioner is continued in service since last 18 years. It would be too late in the day now to ask the petitioner to produce validity certificate. It is not the case of fraud being played. To maintain the reservation, the management can appoint a person from the reserved category, if

any vacancy arises in the future.

8. Considering the aforesaid factual matrix, we pass the following order.

9. The impugned letter is quashed and set aside. Rule is made absolute in terms of prayer clause "C". As per roster, if post is meant for reserved category, the management shall fill in the post from the reserved category in case the vacancy arises in future. No costs.

Sd/-

[V. L ACHLIYA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]