

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

WRIT PETITION NO.7077 OF 2013
WITH
CIVIL APPLICATION NO.12936/2014

Sow.Vimal Prabhakar Bansode

- PETITIONER

VERSUS

1) The State of Maharashtra & Ors. - RESPONDENTS

Mr.Abhay R.Rathod, Advocate for Petitioner;
Mr.NB Patil, AGP for Respondent-State;
Mr.ST Shelke, Advocate for Resp.Nos. 2 and 3;
Mr.MG Kolse-Patil, Advocate for Resp.No.4.

**CORAM : S.S.SHINDE &
 P.R.BORA, JJ.**

DATE : 31st March, 2015.

PER COURT:

1) By way of filing this petition, under Article 226 of Constitution of India, the petitioner seeks directions to Respondent No.1 to consider her claim for appointment to the post of Anganwadi Sevika. The petitioner has also prayed for quashing and setting aside the impugned order dated 4.2.2013, passed by the Project Development

Officer.

2) The learned Counsel appearing for petitioner submits that, the petitioner has passed Xth Std. examination, securing first Division, from the Board of Higher Secondary Education, Delhi (for short, Delhi Board), and to that effect the Delhi Board has issued a Certificate dated 19th June, 2012. She has completed Anganwadi Teacher Course of six months duration, commencing from 10th June, 2007 to 9th December, 2007. It is further submitted that Sub Divisional officer, Sangamner has issued Caste Certificate in favour of the petitioner, certifying that she belongs to Hindu Mahar, (Scheduled Caste).

. The counsel for the petitioner also invited our attention to the fact that, even the other record, in respect of the petitioner, would unequivocally indicate that the petitioner belongs to Mahar, (SC) caste.

. It is submitted that, the caste

certificate was submitted to the Caste Scrutiny Committee for verification of the caste claim of the petitioner, and decision of the committee about verification of the caste claim is awaited.

. It is further submitted that Respondent No.3 – Integrated Child Development Project Officer, issued an advertisement dated 20th March, 2013, inviting for applications for filling up posts of Anganwadi Sevika at village Sakuri, Gaothan 2, where the petitioner is employed as Anganwadi Madatnis. Pursuant to the said advertisement, the petitioner has applied for the post of Anganwadi Sevika. According to the learned counsel appearing for petitioner, since the petitioner fulfills all the requisite criterion, she is eligible for appointment to the post of Anganwadi Sevika.

. It is further submitted that, in the year 2012 itself, when other Anganwadi Madatnis were promoted to the post of Anganwadi Sevika on available four posts, at that time, even the candidates, who studied only up to 8th Std. were

considered and given appointments. It is further submitted that even at that time, the petitioner submitted SSC Certificate of Delhi Board, however, the Respondent No.3 did not accept the same on the ground that the said certificate is inadmissible. It is further submitted that the stand taken by Respondent No.3 is contrary to the stand/policy of the Government, as is evident from the letter dated 3rd March, 2009 issued by Deputy Director of Employment and Self-employment, Divisional office, Aurangabad. It is further submitted that by issuing letter dated 4.2.2013, Respondent No.3 stopped monthly salary of the petitioner on the ground that the petitioner did not produce Caste Validity Certificate that she belongs to "Mahar", Scheduled Caste. It is further submitted that in pursuance of the advertisement, referred herein above, the petitioner did apply for the post of Anganwadi Sevika. However, to the utter shock and surprise of the petitioner, she was given zero mark in the interview, though she was not at

all called for interview. It is further submitted that the petitioner, who is qualified and also worked to the satisfaction of the authority, is being denied promotional post of Anganwadi Sevika, however, Respondent No.4 has been appointed on the said post. Therefore, relying upon the pleadings, grounds taken in the petition and annexures thereof, the counsel for petitioner submits that the petition deserves to be allowed.

3) On the other hand, learned Counsel appearing for Respondent Nos. 2 and 3, submits that since Respondent No.3 has withdrawn the order dated 4.2.2013 and started paying salary to the petitioner, the grievance of the petitioner to the extent of prayer clause (B) stands redressed. It is submitted that so far aspect of petitioner's passing SSC Examination is concerned, in that regard, respondent Nos. 2 and 3 sought clarification from Delhi Board and communication was received from said Board which

is at Exhibit-R-1 along with reply, and submits that, the contents of communication received from the Delhi Board, unequivocally indicates that the Certificate, which is placed on record by the petitioner, is not genuine and it is a fake certificate. It is further submitted that in view of Government Resolution dated 5th August, 2010, providing appellate forum, the petitioner can resort to remedy of appeal before said appellate forum. Therefore, he submits that in view of alternate remedy available to the petitioner, the petition may be dismissed. It is further submitted that, the Respondent Nos. 2 and 3 have received several complaints about genuineness of the caste certificate of the petitioner, and, therefore, Respondent No.2 was constrained to issue notice to the petitioner, asking him to produce Caste Validity Certificate. It is submitted that close relative of the petitioner has also made complainant, complaining that the petitioner does not belong to Scheduled Caste, but he is practically Christianity and so

also grand-father, father, uncle, husband, father-in-law and grand-father in law of the petitioner are Christians. According to Respondent Nos. 2 and 3, the petitioner has suppressed these material facts and therefore, the petition deserves to be dismissed on the ground of suppression of material facts.

4) We have given careful consideration to the submissions advanced by learned counsel for the respective parties. It is the contention of the counsel of the petitioner that the respondents/authorities have assigned zero marks to the petitioner in interview. However, no material is placed on record to appreciate the said contention. The fact that, the petitioner did not place on record Caste Validity Certificate is not in dispute. The caste claim of the petitioner is pending for consideration before the Caste Scrutiny Committee.

5) It is the contention of the counsel for

respondent Nos. 2 and 3 that since the petitioner was not eligible to be called for the interview, she was not called for the interview. Though counsel for the petitioner vehemently argued that, the Delhi Board has issued clarification stating that, the SSC Certificate issued by it in favour of the petitioner, is genuine one, in our opinion, the contents of such communication/clarification and contents of Exhibit-R-1 at page 61 will have to be reconciled which is not possible for this court to adjudicate such disputed questions of fact or to appreciate evidentiary value of the documents placed on record while exercising writ jurisdiction. In our opinion, since the petition raises disputed questions of fact, it will not be possible for us to accede to the prayer of the petitioner to direct the respondents to grant her promotion on the post of Anganwadi Sevika. However, as rightly contended by the counsel for respondent Nos. 2 and 3 that, appellate forum is available to the petitioner, if the petitioner is

so advised, she can avail said remedy. We have not expressed any opinion on merits of the claim of the petitioner. The petition sans merit and stands rejected. Pending civil application stands disposed of. However, we clarify that, dismissal of this petition would not be an impediment to avail remedy of appeal.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/