

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 9419 OF 2013**

Kaduba Bhagirath Wahatule,
age 51 years, occu. Assistant Teacher,
r/o at H.No.686 MHADA (Murtijapur),
N-2, CIDCO, Dist. Aurangabad.

..PETITIONER.**VERSUS**

1. The State of Maharashtra,
School and Education Department,
Mantralaya, Mumbai – 400032.

2. The Education Officer,
(Secondary),
Zilla Parishad,
Tq. & Dist. Aurangabad.

3. Pandit Dindayal Shikshan Sanstha,
at Warud,
Tq. and Dist. Aurangabad,
having its registered office at
Dharamveer Sambhaji Vidyalyaya,
At N-5 (South) CIDCO,
Tq. & Dist. Aurangabad
through its Secretary.

4. Swami Vivekanand Vidyalyaya,
at Chitepimpalgaon,
Tq. and Dist. Aurangabad,
through its Head Master.

..RESPONDENTS.

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Advocate for Petitioner : Mr.Kolhare S.R.
AGP for Respondents/State: Mr.S.K. Kadam.
Advocate for Respondents 3 & 4 : Mr.Kakde Yuvraj V.

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CORAM : S.S. SHINDE & A.M. BADAR,, JJ.

Dated: 30th SEPTEMBER, 2015.

ORAL JUDGMNET: (Per Shinde, J)

1. Rule, returnable forthwith. By consent of the parties, taken up for final hearing at the admission stage itself.

2. The petitioner is aggrieved by the refusal of respondents 1 to 4 to disburse payment towards salary from the month of September, 2013 onwards, on the ground that the petitioner has not submitted caste validity certificate showing that he belongs to OBC.

3. The learned Counsel for the petitioner invited our attention to the copy of the advertisement and also the appointment letter and submits that the post was neither advertised for a candidate from OBC category nor the petitioner's appointment letter mentions that

the petitioner was appointed from OBC category. It is submitted that the petitioner did not apply from OBC category, the post was not reserved for OBC category, it was not even shown that the post on which the petitioner was appointed was earmarked for OBC category and therefore, the respondents cannot insist the petitioner to submit caste validity certificate showing he belongs to OBC category.

4. The learned Counsel for the respondents No.3 and 4 has tendered across the Bar an affidavit-in-reply along with annexures and submits that when the approval was granted by the Education Officer in the year, 2000 to the services of the petitioner, it was granted treating the petitioner from OBC category. It is submitted that the petitioner did file an undertaking in the year, 2010 that the petitioner will file validity certificate showing that he belongs to OBC category.

5. Heard learned Counsel for the petitioner, learned

AGP for the respondents No.1 and 2 and the learned Counsel for respondents No.3 and 4. With their able assistance, perused the pleadings in the petition, grounds taken therein, affidavit-in-reply filed on behalf of respondents 2, 3 and 4. Upon perusal of the advertisement, it appears that it is not mentioned therein that, the post of Assistant Teacher which was advertised, was earmarked for the candidate belonging to OBC or any other reserved category. Upon perusal of copy of the appointment letter placed on record at Exh. "E" (page 26 of the compilation of the petition), it appears that it is not mentioned therein that the appointment of the petitioner was from OBC category. It is not in dispute that, no post was earmarked for the candidate from OBC category in the advertisement and there is no mention in the appointment letter that, petitioner's appointment was from OBC category.

6. In that view of the matter, in our considered view, the stand taken by the respondents that the petitioner

should submit caste validity certificate showing that he belongs to OBC is misplaced in the facts of the present case and cannot be countenanced.

7. In that view of the matter, petition is allowed in terms of prayer clause (B) and stands disposed of. The respondents shall sanction and release salary of the petitioner from the month of September, 2013 onwards, as expeditiously as possible and preferably, within eight weeks from today, if not already paid and shall continue to pay the same regularly, Rule is made absolute in above terms with no order as to costs.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)