

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No.2986 of 2014

(Laxman Narayan Dhumale .vs. State, through Collector, Yavatmal and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 11.3.2015.

Heard Mr.V.N.Patre, learned Counsel for the petitioner, Mr.T.R.Kankale, learned A.G.P. for respondent nos. 1 and 2 and Mr.S.D.Chopde, learned Counsel for respondent no.3.

Mr.S.D.Chopde, learned Counsel is seeking time to file reply. The request is being opposed by the learned Counsel for the petitioner, who points out that the respondents were given time of two weeks on 25.2.2015 to file their replies. The matter is then adjourned to today for final disposal at the admission stage. In view of orders passed on 25.2.2015, the request of Mr.S.D.Chopde, learned Counsel for adjournment is rejected.

Mr.V.N.Patre, learned Counsel submits that respondent no.3 was selected as a Police Patil because of his caste claim that he is a candidate belonging to the Other Backward Category. The caste claim has been verified and invalidated on 10.10.2012. In spite of that, respondent nos. 1 and 2 have not taken any action against him and thus, the person who is not eligible to occupy the post, is discharging

his duties and receiving remuneration.

Learned A.G.P. on behalf of respondent nos. 1 and 2 submits that though the caste claim has been invalidated, the Government has still not taken any definite decision. The learned A.G.P. submits that the petition, as filed, is not maintainable at the instance of a stranger like petitioner.

Mr.S.D.Chopde, learned Counsel, without prejudice to his request for adjournment (recorded supra), submits that the petition, as filed, is not maintainable because of law as laid down by the Apex Court in the case of **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra, (2013) 4 SCC 465.**

The present petitioner is not challenging the caste claim of respondent no.3 or caste validity given to him. He has pointed out that the caste certificate is already invalidated and hence, the respondent no.3 is not entitled to hold a reserved post. Even respondent nos. 1 and 2 are not disputing these facts. As such, when a person not belonging to a reserved category is working on such post, it is apparent that any citizen can make a grievance and point out that such person is not entitled to continue on such post. Hence, the objection against the petitioner's locus is already invalidated.

As the caste claim is already invalidated, we direct respondent nos. 1 and 2 to issue appropriate orders in the matter to respondent no.3 within a period of four weeks from today. If such decision is not taken within the stipulated period, the concerned Authority shall be held responsible for the loss caused to the public exchequer on account of

remuneration paid to respondent no.3 thereafter. The petition is, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE

jaiswal