

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

WRIT PETITION No.2454 OF 2013

(Suresh Samullu Mallempelli .vs. Z.P., Gadchiroli and Ors.)
 with

WRIT PETITION No.2455 OF 2013

(Manoj s/o. Nilkanthrao Kumbhare and Ors. vs. Z.P., Gadchiroli and Ors.)

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

Court's or Judge's orders

 Mr.Anand Parchure, Adv. for the petitioners.
 Mr.J.S.Mokadam, Adv. for respondent nos. 1 and 2.
 Mr.N.R.Rode & Mr.C.N.Adgokar, A.G.P. for
 respondent no.3.

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

DATE : 2.3.2015.

Heard.

Total six persons are before this Court in the above two petitions. Submission is - they were recruited before delivery of Judgment by the Hon'ble Apex Court in the case of **State of Maharashtra .vs. Milind** reported in **2000 (1) Mh.L.J. 1** and in open category. As such, the impugned order terminating their services on 17.4.2013 is unwarranted. Our attention is also invited to orders passed by this Court in the earlier round of litigation in **Writ Petition Nos. 2590 of 2012 and 5097 of 2012** to urge that, at that time, this Court directed the employer to decide the issue whether the petitioners have been appointed against open category post. That decision has been taken behind the back of the petitioners.

Mr.J.S.Mokadam, learned Counsel appearing on behalf of the employer/Zilla Parishad submits that, only after the year 2004, the system and procedure of mentioning the fact that recruitment is against a reserved category post has started. In the present facts, after earlier orders of this Court, old records of District Selection Committee and other papers have been looked into. Those papers show that appointment of petitioners is in the reserved category. The learned A.G.P. as also Mr.J.S.Mokadam, learned Counsel submit that the caste claims of the petitioners are not verified and hence, the petition is liable to be dismissed. They also rely upon the Full Bench Judgment of this Court reported in **2015 (1) Mh.L.J. 457, Arun Vishwanath Sonone .vs. State of Maharashtra, through its Secretary, Department of Education, Mantralaya, Mumbai-32** to buttress their submissions.

The basic contention of the petitioners is that they are not selected and appointed against any reserved category post. Appointment orders or even advertisement for that purpose do not show any post or vacancy, against which the petitioners have been selected, which was for a particular reserved category. It is in this background that, while disposing of the earlier Writ Petitions, this Court directed the employer to record proper finding on this aspect. That finding has been recorded on 17.4.2013. However, the order does not show that the petitioners were given any opportunity to peruse the records looked into by the Chief Executive Officer at that juncture.

The question will be - if the District Selection Committee had advertised several posts, some of which were for open category, there is bound to be a different lists for

open category and a different list for the reserved category. The cut-off marks to find placement in such list would also be different. If the petitioners have secured more marks than a person who is last selected in open category, a presumption that they have been selected against open category vacancy can be drawn and if their marks are less, presumption otherwise may follow. The impugned order does not show any application of mind on these lines. The petitioners have not been given any opportunity of hearing.

The Full Bench of this Court in the Judgment (mentioned supra) has observed that - to claim protection in employment, caste claim must first be verified by a competent Scrutiny Committee. Here, admittedly, the caste claim of the petitioners are still not verified to the Caste Scrutiny Committee.

While issuing notice in the present matters on 3.5.2013, this Court has directed the petitioners to submit their caste claims to the employer and the employer was called upon to forward the same to the competent Scrutiny Committee. Accordingly, the caste claim of respective petitioners are with the competent Scrutiny Committees. The Scrutiny Committees are not parties before this Court. However, in this situation, we direct the said Committee to decide the caste claim of the petitioners in accordance with law within one year from the date of communication of this order to it. The respective petitioners shall appear before the said Committee on 16.4.2015 and communicate this order to it. Period of one year shall begin to run from the said date.

Such verification shall be without prejudice to the rights and contentions of the petitioners to demonstrate

that they have been recruited and appointed against open category post.

As the petitioners have not been heard while passing the impugned order dt.17.4.2013, we quash and set aside the same. Respondent no.1 shall hear the petitioners and then take a suitable decision on the question of their selection to find out whether they are recruited against the open category post or against the reserved category post. This decision shall be taken within three months after giving the petitioners necessary opportunity to peruse the documents. The petitioners shall appear before respondent no.1 for the said purpose on 23.3.2015 and period of three months shall run from the said date.

The interim order passed by this Court protecting employment of the petitioners shall continue till adjudication of their caste claims by the Scrutiny Committee and shall be subject to it.

The claim of the petitioners for grant of protection in employment in terms of the Full Bench Judgment (mentioned supra) is kept open and can be looked into as and when an occasion arises therefor.

The Writ Petitions are, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE