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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2947/2015

Anjankumar s/o Laxmikant Sahaya,
Age : 48 years Occu : Nil,
R/o 38, Pawanputra, Walmiki Nagar,
Barshi Road, Latur, Dist. Latur.
...Petitioner...

Versus

- 1 The State of Maharashtra
Through Principal Secretary,
Education Department,
Mantralaya, Mumbai.
- 2 The Joint Director,
Higher Education, Nanded
Region, Dist. Nanded.
- 3 The Swami Ramananda Teertha
Marathwada University,
"Dnyanteertha", Gautami Nagar,
Vishnupari, Nanded (M.S)
Through its Registrar.
- 4 The Secretary,
Dayanand Shikshan Sanstha,
Latur.
- 5 The Principal,
Dayanand Arts College,
Latur.
...Respondents...

.....

Shri. A. B. Dhongade, Advocate. for petitioner.
Shri. V. S. Badakh, AGP for respondent No.1 & 2.
Shri. V. P. Latange, Advocate for respondent No.3.
Mrs.Anjali(Bajpai)Dube, Advocate for respondent Nos.4 &
5.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 08.02.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2] The petitioner seeks to challenge the judgment and order dated 30.3.2007 delivered by the University and College Tribunal by which Appeal No.SRTMU-09/2006 filed by the petitioner was dismissed with costs.

3] The petitioner submits that an advertisement was published by the respondent no.4 - institution in a newspaper. The three posts advertised were for Lecturers in History, Sociology and English. Grievance of the petitioner is that though the posts were reserved for scheduled caste / scheduled tribe, he had applied for the post of Lecturer in English from the open category. He, however, concedes that he had written in his application form that he belongs to the scheduled tribe.

4] Further contention is that the appointment order dated 15.1.1993 appointing the petitioner as a Senior Lecturer in English did not mention that he was appointed against a reserved category. He was also granted

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approval by the Dr.Babasaheb Ambedkar Marathwada University on 14.9.1994. Subsequently, the college management demanded production of the tribe validity certificate, which the petitioner could not produce and hence he was terminated on 26.6.2006. By the impugned judgment, the University Tribunal has dismissed the appeal and imposed costs of Rs.3,000/-.

5] Shri Dhongade, learned Advocate for the petitioner submits that the petitioner was not made aware by the college authorities that he was being appointed against a reserved category. Nowhere was it mentioned in the appointment order that he is appointed on the basis of reservation. The approval granted by the University also does not mention that his appointment was being approved on the basis of the reservation. He further submits that he was also granted an approval by the University on 19.12.1998 thereby recognizing him as a Research Guide for the English subject under the faculty of Humanities.

6] He submits that he had stated in his appeal memo before the University Tribunal that the show cause notice dated 8.3.2006 issued to him was baseless. He had not misrepresented the college authorities while seeking

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appointment. He relied on the Government resolutions dated 22.2.1985 and 30.6.2004 by which he ought to be treated as being appointed from the open category since he does not belong to Maharashtra State and the reservation available to him under the State of Bihar need not be considered within the State of Maharashtra. He had not played any fraud upon the college authorities and hence the dismissal of the petitioner for having failed to produce a proper validity certificate is unsustainable.

7] Mrs.Anjali Bajpai-Dube, learned Advocate appearing on behalf of the respondent - college authorities submits that the post was apparently reserved for the scheduled caste and scheduled tribe categories. The petitioner had stated in his application that he belongs to the scheduled tribe. He was, therefore, appointed and the verification of documents was to be undertaken lateron.

8] She submits that the petitioner had produced a tribe certificate, which was eventually held to be unsustainable by the learned Apex Court. The petitioner was before the Apex Court in Civil Appeal No.6445/2000. By its judgment and order dated 14.2.2006, the learned

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Apex Court dismissed the appeal preferred by the petitioner and concluded that the tribal certificate dated 7.8.1992 was procured by the petitioner by misrepresentation of facts. Same was, therefore, quashed and set aside.

9] I have considered the submissions of the learned Advocates for the respective sides.

10] There is no dispute that the advertisement indicates that the post of a Lecturer in English subject was reserved for the scheduled caste / scheduled tribe category.

11] Learned Advocate for the petitioner has conceded that his father belongs to the open category and his mother belongs to the scheduled tribe category. He had mentioned in the application form that he belongs to the scheduled tribe category. It is also conceded that a copy of the scheduled tribe certificate was produced before the respondent - college authorities.

12] Apparently, this conduct of the petitioner was aimed at representing before the college authorities that he belonged to a particular tribe. It is only after the Hon'ble Supreme Court dismissed the Special Leave

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Petition filed by the petitioner and concluded that his tribe certificate dated 7.8.1992 was procured by misrepresentation of facts, that the college realized that the petitioner had acquired the said certificate by misrepresentation.

13] I am unable to accept the submissions of the petitioner that he had applied to the respondent - college for the post of Lecturer in English from the open category and that he was appointed from the open category and, therefore, his appointment ought to be from the open category.

14] If the respondent - college did not find a proper candidate for a post reserved for the schedule tribe / scheduled caste, it could have made an appointment of a candidate from the open category or any other category only for one year. The Government resolution in this regard mandates that the post needs to be re-advertised for selecting a candidate from the reserved category. If such selection exercised over a period of five years is unfruitful, then the college could apply to the University for conversion of the post to a particular category as per the reservation / Roster. The B.C. Cell

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of the University is, therefore, in-charge of this procedure. Needless to state, therefore, the contention of the petitioner that he was appointed against an open category, cannot be accepted.

15] The petitioner has approached the University Tribunal with tainted hands. The judgment of the Apex Court dismissing his appeal and concluding that his tribal certificate dated 7.8.1992 was procured by an act of mis-representation of facts itself disentitles the petitioner from any relief. More over, the advertisement would speak for itself that the post of a Lecturer in English was reserved for a particular category.

16] In the light of the above, I am of the view that the petitioner cannot take advantage of the Government resolutions cited by him. The University Tribunal has rightly dismissed his appeal with costs. The said judgment is neither perverse nor erroneous.

17] This petition is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)