

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

12 WRIT PETITION NO. 2174 OF 2015

GAJANAN BALAJI DAMKONDWAR
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Shinde Chandrakant K.
AGP for Respondents State: Mrs. M. A. Deshpande

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 19th September, 2016

ORDER:

1. The petitioner was appointed on 15.06.2008 as full-time Teacher (M.L.T.) in M.C.V.C. Section of respondent No. 5- Junior College as against the seat meant for S.T. category, by following due selection process. The approval was granted to the petitioner for one year on the ground that the petitioner was appointed as against the reserved seat. In 2009-2010 and subsequent years same procedure was followed. For the academic years 2012-2013 also, advertisement was published for filling in the said post from S. T. category but the candidate was not available. The Management forwarded the proposal seeking permanent approval to the appointment of the petitioner. However, the approval is not granted and the same is rejected on the ground that the said post is meant for reserved

category.

2. According to learned counsel for the petitioner, prior to appointment of the petitioner, steps were taken by the Management, however, candidate from S. T. Category is not available. For almost eight years, the petitioner is working in the said Institution. There is no impediment to grant permanent approval to the appointment of the petitioner.

3. Learned AGP states that if the Management is not getting candidate from reserved category, then the Management has to move the Government seeking de-reservation of the said post. The said procedure has not been followed. In absence of it, the order of rejecting approval has been rightly passed. No error has been committed by the concerned authority.

4. We have considered the submissions advanced by the learned counsel for the respective parties.

5. The fact that the petitioner was initially appointed in the year 2008 by following proper procedure is not disputed. The only lacuna is that the petitioner was appointed as against the seat reserved for S. T. category. The petitioner was appointed pursuant to the advertisements. The Management has issued

advertisements every year for appointment of the teacher from S. T. Category, however, no such candidate was available and every year the petitioner was selected and appointed on the said post. Consistently at least for five times, the Management had issued advertisements for filling in the post of teacher from the candidate belonging to S.T. Category but the Management could not get any eligible candidate from the S.T. Category. The petitioner is continuously officiating the said post from the year 2008.

6. It is also not disputed that backlog of one ST category candidate exists. It is not the case that, Institution has not taken steps to appoint a candidate from ST category. Since the year 2008, Institution is giving advertisement seeking appointment of a candidate from S.T. category, however, Institution could not get a qualified candidate for the said post of teacher (MLT). The petitioner was appointed in the year 2008 on temporary basis. The post is a sanctioned post. Only flaw is, the post was meant for a candidate from ST category. Since the petitioner is working continuously for 8 years, it would be inappropriate at this stage to nonsuit the petitioner. We would have not entertained the petition had the respondent Institution appointed a

qualified person from ST category as Teacher (MLT) during the interregnum. The respondent Institution has made efforts to get the candidate from ST category. Equities can be adjusted by passing following order.

ORDER

a] The Respondent No.2 shall consider the aspect about grant of approval to the appointment of petitioner as Teacher (M.L.T.) on permanent basis. The petitioner is eligible and the proposal for approval to his appointment shall not be rejected only on the ground that there is a backlog of ST category candidate. The respondent Institution shall, whenever vacancy arises, fill in the backlog of ST category candidate.

b] Needless to state if the approval is granted, the petitioner would be entitled to all other consequential benefits.

7. Writ petition accordingly disposed of with the aforesaid observations and directions. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC