

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

24 WRIT PETITION NO. 7623 OF 2015

VIJUBAI KASHINATH SWAMI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Gunale V. D.
AGP for Respondents 1 and 2 State: Mr. V. H. Dighe
Advocate for Respondents 3 and 4: Mr. Sandeep C. Swami

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

DATE : 29th August, 2016

ORDER:

1. The petitioner assails the order dated 03.06.2015 directing Respondent No.4 Headmaster that as the Petitioner has not submitted caste validity certificate, disbursement of her salary be stayed until further orders.

2. Mr. Gunale, the learned counsel for petitioner states that, the petitioner is appointed in the year 1991 as Assistant Teacher from open category. She was not appointed from reserved category. According to the learned counsel even from time to time, approval was granted and it was never represented by the Management of the Institution that the petitioner was appointed from reserved category. In view of that impugned

order staying disbursement of the salary of the petitioner is illegal. The learned counsel submits that the petitioner, having been appointed from the open category, is not supposed to submit caste validity certificate.

3. The learned counsel appearing for respondent Nos. 3 and 4 i.e. the Society and Headmaster submits that the petitioner has been appointed from the open category.

4. The learned AGP states that time to time, show cause notices were issued to respondent Nos. 3 and 4, however, they did not respond. It was for respondent Nos. 3 and 4 to clarify that the appointment of the petitioner is not from the reserved category. As respondent Nos. 3 and 4 did not respond, the impugned order was required to be passed.

5. We have considered the submissions.

6. This Court, on 9th August, 2016, had allowed the petitioner to place on record copy of the appointment order so also advertisement. The learned counsel for the petitioner has placed on record the appointment order issued to him on 25.12.1991. The learned counsel

for respondent Nos. 3 and 4 i.e. employer has not disputed the same. The said appointment order does not show that the petitioner was appointed from reserved category. The order of approval for the year 1991-92 shows that the appointment of the petitioner was approved temporarily on the post meant for S.T. category. The said approval was time to time continued. Lastly, the approval seems to have been granted for the year 1995-96. The said approval to the appointment of the petitioner was granted subject to approval of Roster. It is submitted that thereafter no fresh approval was granted as the same was permanent approval to the appointment of the petitioner and the petitioner is continued on the said post and has been working for more than 24 years with the respondent Institution and now the present order is passed, stating that as the validity is not submitted, her salary be stopped.

7. The documents placed on record prima facie do not show that the petitioner was appointed from the reserved category. Even respondent Nos. 3 and 4 state that the petitioner was appointed from the open category. In case the petitioner was appointed from the open category, it is not necessary for the petitioner to submit the caste validity. However, when

earlier show cause notice was issued, it was the duty of respondent Nos. 3 and 4 to bring it to the notice of the Authority that appointment of petitioner is from open category.

8. Considering the above, impugned order is quashed and set aside to the extent of petitioner.

9. Respondents Nos. 3 & 4, within period of 3 weeks from the date of this order, shall place before the Education Officer(Secondary) the factum of appointment of petitioner being from open category. On receipt of the said information, the Education Officer shall take decision afresh in this regard.

10. Salary bills submitted by the Institution with regard to the petitioner shall be processed by the respondents.

11. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC