

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

WRIT PETITION NO. 1358 OF 2015.

Ganpat Namdeo Dalal ..vs.. The State of Mah. 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.S.P.Bhandarkar, Advocate for the petitioner.
Mrs.H.N.Prabhu, AGP for respondent nos.1,4 and 5.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : MARCH 16, 2016.

1. Heard Shri S.P.Bhandarkar, learned counsel for the petitioner and learned AGP for the respondents.

2. Considering the nature of controversy, we heard matter finally.

3. Petitioner, who joined the employment with the Employees State Insurance Corporation of State Government on 12th of March, 1993 claims that he had supplied original documents like School Leaving and Caste Certificate along with its photo copies while joining the service. It is claimed that petitioner has been promoted as Anesthetics (Grade – I) against vacancy in Schedule Tribe category on 12th of July, 2004. Thereafter, his employer started demanding the documents for submitting the same to the Caste Scrutiny Committee for verification of caste claim. Petitioner on number of occasions has communicated that the original as also photo copies were already supplied and therefore the originals were not available with him.

It is in this backdrop that by impugned

communication dated 7th of March, 2015 his promotion has been suspended till receipt of caste validity and he is ordered to be reverted to his original post of Medical Officer.

This Court has on 16th of March, 2015 while issuing notice granted *status quo*. That order of *status quo* has been continued on 13th of October, 2015. Perusal of order dated 13th of October, 2015 passed by this Court shows an arrangement by which petitioner was expected to supply duplicate documents to his employer so that verification can be carried out on the basis of those duplicates.

In this background, Advocate Shri Bhandarkar submits that perusal of service book of the petitioner reveals that date of birth mentioned therein has been verified on the strength of original records. He further points out that though petitioner has on various occasions pointed out that he has supplied original to his employer, those representations have never been replied to. He has also invited our attention to the application dated 10th of August, 1992 with which he provided original documents as also photo copies thereof before joining employment for the purposes of verification.

We find that the service book entry shows that date of birth recorded therein has been verified on the strength of original record i.e. School Leaving Certificate. The application dated 10th of August, 1992 submitted by petitioner along with originals and photo copies of the documents also bears acknowledgement dated 10th of August, 1992 itself. These documents are not in dispute.

For the first time before this Court in reply-affidavit, respondents have made grievance that the original documents are not available.

The petitioner has also pointed out that though this Court granted *status quo*, for period of two months thereafter

petitioner has worked on promotional post but then as his salary was not released and he was constantly asked to join original post, he was constrained to work on lower post.

Advocate Bhandarkar points out that though this development has been placed on record before this Court by filing an affidavit on 17th of June, 2015 and though thereafter respondents have filed two affidavits, this fact has not been rebutted.

Learned Assistant Government Pleader is seeking time to find out the correct position in this respect.

We find that petitioner has specifically in affidavit dated 15th of June, 2015 tendered on 17th of June, 2015 pointed out that he has worked on promotional post for some time and thereafter a communication dated 27th of April, 2015 has been issued whereby he was paid salary of the post of Medical Officer (Grade-I). It is specifically urged that said communication is in breach of orders passed by this Court and is an act of contempt. This assertion has not been dealt with in affidavit filed by respondent no.2 – Commissioner of ESIC on 24th of August, 2015 and later affidavit filed by respondent no.5 on 29th of September, 2015.

In this situation, we find that interest of justice can be met with by permitting petitioner to supply photo copies of documents available with him to his employer for further process within a period of three weeks from today. After these documents are received, the employer shall forward the same to the competent Scrutiny Committee for its scrutiny in accordance with provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. The Scrutiny Committee shall be free to verify from

concerned Executive Magistrate whether any Caste Certificate of which photo copy is supplied was issued by his office or not. Similarly, correctness or otherwise of School Leaving record and other documents can be verified from original School admission register and other similar records.

The employer shall forward the papers to the Scrutiny Committee within next four weeks and Scrutiny Committee shall attempt to complete verification within next one year.

As the orders of status quo granted by this Court are even today operating, in view of the statement that promotional post of Anesthetics Class-I is still lying vacant, we direct respondents to restore the petitioner to that post immediately. The said promotion shall be on same terms and conditions as his earlier promotion vide order on 12th of July, 2004.

The entitlement and eligibility of petitioner to difference in salary for the period for which he was constrained to work on lower post of Medical Officer shall be considered after the outcome of the exercise of caste verification.

Petition is thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

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