

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6488 OF 2016

Swapnil Mohan Borate & Ors.	]	Petitioners
Vs.		
Prathamik Shikshak Sahakari Bank	]	
Limited & Ors.	]	Respondents

**WITH
WRIT PETITION NO. 6480 OF 2016**

Vrushali Vijay Bhilare & Ors.	]	Petitioner
Vs.		
Prathamik Shikshak Sahakari Bank	]	
Limited & Ors.	]	Respondents

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Mr. Meelan Topkar, for petitioners.
 Mr. Dilip Bodake, for respondent No.1.
 Mr. Mr. Rajaram V. Bansode, for respondent No.2.
 Mr. Mandar Limaye, for respondent No.3.

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CORAM : R.G. KETKAR, J.

DATE : 8TH JUNE, 2017.

P.C.

Heard Mr. Topkar, learned Counsel for petitioners, Mr. Bodake, learned Counsel for respondent No.1, Mr. Bansode, learned Counsel for respondent No.2 and Mr. Limaye, learned

Counsel for respondent No.3 at length.

2. These Writ Petitions take exception to the judgment and order dated 21st April, 2016 passed by learned Member, Industrial Court, Satara below Exhibit U-2 in complaints filed by the petitioners under Section 28 read with Items 9 & 10 of Schedule-IV of The Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 [for short 'Act']. By these orders, Industrial Court rejected application Exhibit U-2 filed by the complainants under Section 30 (2) of the Act. The parties shall hereinafter referred to as per their status before the Industrial Court.

3. It is the case of the complainants that they are continuously working with first respondent/Bank. Work performed by them is of permanent nature and the posts on which they are working are sanctioned posts. Complainants were appointed after following due process of law. It is the case of the complainants that respondent No.1/Bank is registered under the provisions of Maharashtra Co-operative Societies Act, 1960. Reservation policy of the State Government is not applicable to the first

respondent/Bank. Complainants were under bona fide belief that respondent No.1/Bank will make them permanent after completion of 240 days service. Complainants are not yet confirmed in service. In fact, meeting of Board of Directors was held on 16th November, 2013 for considering this subject. However, no decision of confirming the complainants in service was taken. Complainants apprehended that their services may be terminated or their service conditions are likely to be changed causing prejudice to them. Complainants, therefore, filed complaint as aforesaid and pending that complaint, took out application for interim relief at Exhibit-U-2. Complainants prayed that respondent No.1/Bank may be restrained from terminating their services during pendency of the complaint and/or altering complainants' service conditions to their prejudice.

4. Respondents No.1 and 2 filed say at Exhibit C-9 and denied material allegations. The principal ground on which respondents No.1 and 2 contested the application was that appointment of complainants was made against the posts earmarked for reserved category. Appointments were made on temporary basis for 11 months and said appointments came to an

end automatically after expiry of 11 months. Appointment letters specifically mentioned that as the candidates from reserved category are not available, complainants are appointed. Respondent No.3, one of the Directors also filed reply at Exhibit C-36 and submitted that respondent No.1/Bank violated Government rules, backlog rules and recruited their relatives.

5. After considering material on record, by the impugned order Industrial Court rejected application. It is against this order, complainants have instituted present Petitions.

6. In support of these Petitions, Mr. Topkar invited my attention to the provisions of Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes, Special Backward Category and other Backward Classes) Act, 2001 [for short 'Said Act'] and in particular section 2(c) which defines the expression “establishment” to mean any office of the Government or of a local authority or statutory authority constituted under any Act of the State Legislature for the time being in force, or a University or a Company, a Corporation or a **Co-operative Society in which share capital is held by the**

Government' or any Government aided Institutions [emphasis supplied].

7. Mr. Topkar submitted that Government of Maharashtra does not have share capital in the first respondent/Bank and, therefore, provisions of the said Act are not applicable to the first respondent. He submitted that Industrial Court, however, dealt with this aspect in the impugned order in great detail as is evident from paragraphs 32 onwards. He relied upon decision of this Court in **Writ Petition No. 12053 of 2016** decided on 19th April, 2017 [Coram: Anoop V. Mohta & Ravindra V. Ghuge, JJ.] in the case of **Bank Karmachari Sangh Vs. The State of Maharashtra & Anr.** Division Bench considered provisions of the said Act, and in particular, Section 2(c) and held that the said Act is not applicable to private co-operative Bank as it does not fall within the ambit of the expression 'establishment' as defined under Section 2(c) of the said Act.

8. On the other hand, learned Counsel for respondents supported the impugned order. They invited my attention to the findings recorded by Industrial Court. They have invited my

attention to the discussion from paragraphs 35 onwards to contend that though qualified candidates from reserved category were available, appointments of the complainants were made on the premise that candidates from reserved category were not available. It was, therefore, submitted that no case is made out for interfering with impugned orders.

9. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused material on record.

10. Mr. Topkar submitted that provisions of the said Act are not applicable as State Government has no share capital in the first respondent/Bank and consequently is not establishment as per Section 2(c) of the said Act. I do not find any merit in this submission. A perusal of appointment letters issued to the complainants clearly shows that their appointments were made purely on temporary basis for a period of 11 months as suitable candidates from reserved category were not available. Clause 4 of the appointment letters recites that as the candidates from reserved category were not available, appointments were made against

reserved posts for a temporary period. If the eligible candidates are available, appointments of complainants will stand terminated. A perusal of clause 5 also shows that the appointments of complainants were made against reserved posts and that even if the eligible candidates from reserved category are not available and the complainants are continued, their services will come to an end after expiry of 11 months. It is, therefore, not open to the complainants to contend that posts can't be reserved and that reservation policy of the Government is not applicable to the first respondent. Entry of complainants in the service of first respondent is on the basis of appointment letters. Complainants have accepted terms and conditions of appointment letters. Instead of participating in the selection process, complainant should have challenged that process on the ground that posts cannot be reserved. Admittedly, complainants did not challenge the selection process and in fact, participated therein. It is, therefore, not open now to complainants to turn around and contend that the posts can't be reserved and that provisions of the said Act are not applicable as the first respondent is not an establishment as per Section 2 (c) of the said Act as the State Government has no share capital therein.

11. A perusal of impugned order and more particularly from paragraph 35 onwards shows that respondent No.1 had issued advertisement and selection process was entrusted to Tapasya Management and Training Institute. Industrial Court after considering material on record held that as per the advertisement, only one post is notified for open category. As per list at Exhibit C-69, 29 candidates belonging to the reserved category secured more than 62 marks. Some of the candidates amongst scheduled caste secured around 75% marks. A perusal of list at Exhibit C-69 shows that SC, ST, OBC and VJ candidates secured marks more than 60%. Industrial Court observed that one Rutuja Mane was appointed illegally against SC quota by respondent No.1/Bank. Industrial Court thereafter considered position qua ST candidates and observed that 8 candidates were illegally appointed against ST quota. Likewise, in respect of VJNT-A, 5 posts of Clerk were reserved against that category. 10 candidates secured more than 61% marks. Considering ratio for oral 1:3 only 9 candidates were required to be called for interview. Even though candidates were available, respondent No.1/Bank appointed Anil Rajaram Shegade who is open category candidate against VJNT-A quota. Industrial Court also considered position of VJNT-B and observed that 2

posts were reserved for VJNT-B category. 16 candidates secured more than 61% marks. Considering ratio for calling interview 1:3, six candidates were required to be called for interview as six candidates have secured more than 61%. Despite that, respondent No.1/Bank illegally appointed Vidyaman Uttamrao Waghmode from open category against VJNT-B quota. Likewise, it has also considered position qua OBC candidates. It was observed that 28 candidates secured more than 65% marks. Considering ratio 1:3, total 24 candidates were required to be called for 8 posts reserved for OBC. Though candidates from OBC category secured more than 65% marks, respondent No.1/Bank appointed 7 candidates from open category. The Industrial Court recorded a categorical finding that giving advertisement and taking written examination through Tapashya Management was a farce to deprive the rights of candidates belonging to reserved category.

12. Mr. Topkar relied on order dated 19th April, 2017 passed by Division Bench of this Court. Division Bench reproduced clarification dated 9th March, 2017 as regards applicability of the said Act to the Co-operative Societies or District Central Co-operative Banks. In paragraph 10, Division Bench recorded

statement made by learned A.G.P on instructions of Desk Officer, Co-operative Textile & Marketing Department, Mantralaya that respondent No.2/Bank is not funded by the State Government. In paragraph 11, Division Bench observed thus:

“It is made clear that in the present petition we are dealing with the facts and circumstances of the existing position of the State Act and the declared State promotion policy, so reflected above. It is also made clear that we are not dealing with the general proposition of law of extension of reservation policy to such bank by such other specific provision and the rules. There is no other contrary provisions to support such extension of reservation policy in such reservation matters”.

13. In view thereof, reliance placed by Mr. Topkar on the order dated 19th April, 2017 does not advance case of complainants. For the reasons recorded from paragraphs 35 onwards, I do not find that Industrial Court committed any error in passing the impugned order. Hence, Petitions fail and the same are dismissed.

14. At this stage, Mr. Topkar orally applies for continuation of ad-interim order dated 29th September, 2016 for a period of six weeks from today. He submits that by order dated 29th September, 2016, this Court directed both the parties to maintain status-quo as

of that date. He further assures that he will not seek further extension of interim order. Since interim order is operating from 29th September, 2016 and the complainants wish to challenge this order before Higher Court, I am of the opinion that the request made for continuation of ad-interim order is reasonable. Hence, notwithstanding dismissal of Writ Petitions, ad-interim order dated 29th September, 2016 directing parties to maintain status-quo as of that date shall remain in force for a period of six weeks from today. It is expressly made clear that no application for extension of status-quo order shall be entertained.

[R.G. KETKAR, J.]