

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2365 OF 2014

Amrutlal Manohar Kanjaria ...Petitioner.

Versus

The BEST Undertaking
and others ...Respondents

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Ms. Neeta Karnik for the Petitioner.

Mr. Ravindra Sankpal a/w Ms. Kavita Anchan and Mr. Arsh Mishra
i/b. M.V. Kini & Co. for the Respondents.

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**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

23rd AUGUST, 2017.

P.C.:

1. Rule. Rule is made returnable forthwith.

The petitioner has challenged the order issued by the respondent-employer terminating his services on the ground that the caste certificate of the petitioner is invalidated.

2. The petitioner was appointed as Clerk on 29th July, 1993. In the application submitted by the Petitioner offering his candidature, the petitioner had shown that he belonged to '*Vimukta Jati*'. On 17th February, 2000, the Personal Department of the respondent-employer issued a circular inviting applications from the employees working in the undertaking in Grade A/GV and belonging to Scheduled Caste, Scheduled Tribe, Nomadic Tribes (B)(C)(D),

Vimukta Jati (A) and Special Backward Class, for selection and appointment to the posts of Supervisor in Grade A/GVII in the various departments of the undertaking. The circular was issued to fill-up the posts reserved for backward class candidates. Pursuant to the circular, the petitioner had submitted application and he was selected and promoted on 3rd May, 2001 on the post of the Supervisor. In 2009-2010, the petitioner was again promoted and given the post of Office Assistant, Grade A/ G-VIII.

On 4th May, 2009, the respondent-employer forwarded the caste certificate of the petitioner to the Divisional Caste Scrutiny Committee for verification. The Caste Scrutiny Committee invalidated the caste claim of the petitioner by its decision dated 12th February, 2014. On invalidation of the caste claim of the petitioner, the respondent-employer terminated the services of the Petitioner by the impugned decision.

3. The petitioner claims that the initial appointment of the petitioner as Clerk was not in a post reserved for backward class candidate and therefore his services could not have been terminated on invalidation of the caste certificate of the petitioner. The learned Advocate for the petitioner has pointed out the communications issued by the petitioner to the General Manager / Senior Administrative Manager of the undertaking on 16th July, 2013 (Exhibit E), 2nd April, 2014 (Exhibit F) and 8th May, 2014 (Exhibit H) by which the petitioner requested that as his initial appointment on the post of Clerk was not against reserved post, he may be reverted to the post of Clerk instead of taking the drastic decision of terminating his services.

4. According to the respondent-employer, the application dated 4th December, 1991 which was submitted by the petitioner while seeking appointment to the post of Clerk shows that the petitioner belong to 'Vimukta Jati' and considering that the petitioner belong to 'Vimukta Jati' he was appointed in a reserved post. It is submitted that as per the administrative order issued by the Personnel Department of the undertaking, for the post of Clerk the eligibility criteria was that the age of the applicant should have been between 18 and 28 years and in case of candidates belonging to backward classes, relaxation of 5 years in the age limit was permissible and on 4th December, 1991 when the petitioner submitted his application, he was aged about 28 years and 11 months and as he claimed to be belonging to 'Vimukta Jati', he was considered eligible by granting the relaxation in age. The original roaster is produced at the time of hearing to point out that the appointment of the Petitioner was in the post at point No.78 which according to the 100 point roaster made applicable by Government Resolution dated 1st September, 1992 was reserved for the candidate belonging to 'Vimukta Jati'. From these facts, it is submitted that it has to be inferred that the appointment of the petitioner was in post reserved for 'Vimukta Jati' candidate.

The learned Advocate for the respondent-employer relied on the judgment given by the Hon'ble Supreme Court in ***Civil Appeal No. 8928 of 2015 (Charmian and Managing Director FCI and Ors. Vs. Jagdish Baliram Bahira and Ors.)*** on 6th July, 2017 and has argued that as the caste certificate of the petitioner is invalidated, he has no right to continue in service as he sought

appointment posing himself as a candidate belonging to '*Vimukta Jati*'.

5. Looking to the nature of the controversy, order was passed by this Court on 20th July, 2017 observing that, the appointment order does not mention that the appointment of the Petitioner was against post reserved for '*Vimukta Jati*' candidate and the matter was adjourned on request of the learned Advocate appearing for the respondent-employer to enable him to file additional affidavit to substantiate that the initial appointment of the petitioner was in the post reserved for candidate belonging to '*Vimukta Jati*'. In spite of opportunities given to the respondent-employer, sufficient material has not been produced to show that the initial appointment of the petitioner on the post of Clerk was in a post reserved for candidate belonging to '*Vimukta Jati*'.

6. Though it is argued that the petitioner was appointed on the post available at point No.78 which according to 100 point roaster is reserved for '*Vimukta Jati*' candidate, it is not shown that at the time of the appointment of the petitioner, it was clarified that the post was reserved for '*Vimukta Jati*' candidate and the appointment of the petitioner was in the post reserved for '*Vimukta Jati*' candidate. Even according to the respondent-employer, the post shown at point No.78 was earlier occupied by a candidate from open category who was promoted in 1988. The 100 point roaster is made applicable from 4th August, 1992 as contended by the respondent-employer. The respondent-employer has not been able to show that the post at point No.78 in which a candidate from

open category was working and promoting in 1988 continued to be vacant till the petitioner was appointed in that post.

7. The respondent-employer has heavily relied on the fact that pursuant to the circular issued by the respondent-employer on 17th February, 2000, the petitioner had submitted an application seeking promotion in the post reserved for backward class candidate and as the petitioner was found eligible and was selected, he was given promotion in the post reserved for backward class candidate, by the order dated 24th April, 2001 and therefore now it is not open to the petitioner to contend that his appointment is not on a post reserved for backward class candidate. The circular dated 17th February, 2000 was issued to fill the backlog / posts reserved for backward classes under a special drive. The circular shows that all employees of the undertaking working in the undertaking in Grade A/GV were permitted to apply for the promotional post. The circular does not show that only those backward class employees who were appointed against the posts reserved for backward classes were eligible to apply for the promotional posts.

8. Similarly, the provision in the administrative order prescribing the age limit for the post of Clerk and the relaxation of 5 years to the employees belonging to the backward classes does not show that the candidates belonging to backward class were entitled for the relaxation of 5 years only if their appointment was against post reserved for the backward class candidate.

9. We find that the respondent-employer has not been able to show that the initial appointment of the petitioner on the post of

Clerk was in a post reserved for 'Vimukta Jati' candidate. We further find that though the petitioner repeatedly agitated this point with the respondent-employer, the respondent-employer has not paid any heed to the issue raised by the petitioner and has terminated his services without conducting any enquiry. As even according to the respondent-employer an inference is required to be drawn from the circumstances that initial appointment of the petitioner in the post of Clerk was in a post reserved for 'Vimukta Jati' candidate, in our view, it was more necessary for the respondent-employer to grant hearing to the petitioner enabling him to point out the facts and circumstances in his favour and the respondent-employer, if required, should have conducted an enquiry in the matter.

10. The Judgment given in the case of **Charmian and Managing Director FCI and Ors. in Civil Appeal No.8928 of 2015** (supra) relied upon by the Advocate for the respondent-employer does not assist the respondent-employer as the respondent-employer has failed to show that the initial appointment of the petitioner on the post of Clerk was in a post reserved for 'Vimukta Jati' candidate.

11. In view of our finding that the respondent-employer has not been able to show that the initial appointment of the petitioner in the post of Clerk was in the post reserved for 'Vimukta Jati' candidate and accepting the submission made on behalf of the petitioner that he is giving up the claim for the promotional posts i.e. for the post of Supervisor in Grade A/GVII and for the post of Office Assistant Grade A/GVIII, the following order would subserve the interests of justice:

ORDER

(A) The impugned order terminating the services of the petitioner is quashed.

(B) The respondent-employer is directed to reinstate the petitioner in the post of Clerk.

The Petitioner shall be reinstated with continuity of service .

(C) The Petitioner will be treated to be in service as Clerk with effect from the date of his initial appointment i.e. 29th July, 1993 for all purposes, however, the petitioner will not be entitled for the backwages for the period for which he has not worked i.e. from 6th May, 2014 till today i.e. 23rd August, 2017.

12. Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

13. At this stage the learned Advocate for the respondents has prayed that the effect, operation and execution of this Judgment be kept in abeyance for six weeks to enable the respondents to take appropriate steps in the matter. Considering the facts and circumstances of the case, the prayer is granted and it is directed that the effect, operation and execution of this judgment shall be kept in abeyance for a period of six weeks.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)