

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

WRIT PETITION NO.2858 OF 2000

Uttam s/o. Bidesingh Rajput,
Aged 55 years, Occ. Service,
r/o. Govt. College of Education,
Buldana.

.. APPELLANT

//Versus//

1. The Presiding Officer,
The Maharashtra Administrative
Tribunal, Mumbai Bench,
Mumbai.
2. The State of Maharashtra,
Through its Secretary,
Department of Higher and
Technical Education,
Mantralaya, Mumbai.
3. Secretary,
Department of S.W. and C.A.
and Tourism Department,
Mantralaya, Mumbai.
4. The Director of Higher Education,
Central Building, Pune.

.. RESPONDENTS

Mr.P.R.Agrawal, Advocate for Petitioner.

Ms Nivedita Mehta, A.G.P. for Respondent/State.

CORAM : B.R.GAVAI &
N.W.SAMBRE, JJ.

DATED : May 11, 2017.

ORAL JUDGMENT (Per N.W.Sambre, J) :

1. Heard Mr.P.R.Agrawal, learned Counsel for the Petitioner and Ms Nivedita Mehta, learned A.G.P. for Respondent/State.
2. The petitioner appears to have been selected as a Lecturer to work in the Government College of Education pursuant to the selection process carried on 31st December, 1982. As the petitioner was belonging to Rajput Bhamta (Nomadic Tribe), he sought appointment from the said category. However, in view of invalidation of his caste claim on May 7, 1983, he was not granted any appointment.
3. An attempt before this Court by the petitioner has resulted into remand of his claim, which was earlier remanded to the Committee by order dt.16.7.1983. After his claim was again invalidated by the Committee on February 23, 1988., the second petition of the petitioner came to be allowed and this Court has declared that the petitioner belongs to Rajput Bhamta (Nomadic Tribe). While dealing with the said petition, this Court has observed

that the claim of the petitioner be considered for appointment to the post of Lecturer.

4. After the petitioner was appointed in the month of August, 1989, he approached to the Maharashtra Administrative Tribunal through O.A. No.220 of 1995 and amongst others, one of the ground raised was that one Mr.Bute, who was similarly situated, was granted appointment, though his caste claim was invalidated. The petitioner tried to equate his claim with those of the candidates who were found to be placed in the Seniority List at Serial Nos. 27 to 32.

5. Mr.P.R.Agrawal, learned Counsel, in the aforesaid background, while inviting attention of this Court to the factual matrix would urge that, from day one he approached this Court, one post was kept vacant, hence, he should be placed in seniority list at par with that of other candidates who were selected along with him and placed at Sr. Nos.27 to 32. The Tribunal, after hearing the claim of the petitioner, turns down the said request of the petitioner.

6. Mr.P.R.Agrawal, learned Counsel would urge that, considering the fact that the claim of present petitioner was granted by this Court on 23rd February, 1988 validating his caste claim, he is entitled to be placed in the seniority list of Lecturers

who were selected along with him and placed in the Seniority list at Serial Nos. 27 to 32. So as to substantiate his claim, he would rely upon the case of one Mr.Bute, who was similarly placed and was selected along with him and was granted benefit of seniority. Mr.Agrawal, learned Counsel then would urge that since the post was kept vacant during pendency of the petition, the petitioner is entitled for seniority.

7. Per contra, learned A.G.P. would try to differentiate the case of the petitioner with that of one Mr.Bute who was selected along with the petitioner on the ground that the benefit given to said candidate Mr.Bute was by virtue of orders and indulgence shown by this Court. In addition, she would urge that, in none of the orders passed by this Court at the behest of the petitioner, no mandatory orders are passed granting accommodation to the petitioner on the post in question and as such, the case of the petitioner cannot be treated to be at par with that of the case of Mr.Bute. According to her, the order of Tribunal does not call for any interference for want of perversity or illegality and hence, she has sought dismissal of the present petition.

8. It is required to be noted from the available record that the petitioner approached this Court first in point of time when the order dated July 16, 1983 was passed in his favour, remanding the matter to the Scrutiny Committee for decision afresh on the issue

of validation. In the said petition, there was no any mandate from this Court to grant him provisional appointment, though it is claimed that it was policy at relevant time. Perhaps no prayer was made to the effect granting him appointment pending validation claim.

9. In the second round of litigation, at the behest of petitioner, this Court on 23rd February, 1988, while dealing with Writ Petition No.4353 of 1984, has observed that the claim of the petitioner, particularly as regards he belonging to Rajput Bhamta (Nomadic Tribe), is required to be allowed. However, an observation is made that the Authority shall consider the claim of the petitioner for appointment to the post for which he applied for. From the said observations, it is amply clear that from the date of his selection i.e. 31st December, 1982 till 23rd February, 1988 there was no interim order in his favour directing his appointment on the post of Lecturer for which there was selection. The only order that was available to the rescue of the petitioner at the relevant time was to keep the post vacant. If the said claim of the petitioner is considered in the backdrop of claim of Mr.Bute, who was selected along with the petitioner, in the case of Mr.Bute, there was mandatory order passed by this Court directing appointment pursuant to the selection carried out in the year 1982, which does not appear to be in the case of the petitioner.

10. In the aforesaid background, we hardly notice any illegality in denying claim of the present petitioner, particularly as regards placement in the seniority list. No perversity could be noticed with the order passed by the Maharashtra Administrative Tribunal. The petition, as such, lacks merits. Hence, the same is dismissed. No order as to costs.

JUDGE

JUDGE

jaiswal