

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

WRIT PETITION NO. 2889 OF 2014

Balasaheb s/o. Shankar Isake .. Petitioner
Age. 47 years, Occ. Service,
R/o. Bhawani Chowk, Sidheshwar Colony,
Sanja Road, Osmanabad.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
2. Education Officer [Secondary]
Zilla Parishad, Osmanabad.
3. Head Master,
Dharashiv Prashala,
Osmanabad, Tq. & Dist. Osmanabad.

Mr. S.S. Jadhavar, Advocate for the petitioner.
Mr. S.N. Morampalle, AGP for respondent/State.
Mr. S.R. Shirsat, Advocate for respondent No.3.

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE,JJ.**

DATED : 18.12.2018

ORAL JUDGMENT [PER : SUNIL P. DESHMUKH, J .] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The petitioner had been initially appointed temporarily in 1991 and 1992 as Assistant Teacher from open category. These appointments were duly approved. The petitioner was being appointed on year to year basis up to 1995-96. Subsequently, the petitioner had been permanently appointed from 1996-97, as open category candidate.

3. It appears that the petitioner had been issued caste certificate as him belonging to "Lingader" in scheduled caste category. He had submitted the same to the management of the school. It appears that in the appointment letter issued to the petitioner for the year 1994-96, category – Scheduled Caste came to be tick marked under inadvertence. It appears that the same had been transmitted to the Education Officer. Accordingly, it appears that it had been considered by the Education Officer that the petitioner is claiming appointment on the basis of his caste from the reserved category and, thus impugned communications dated 15.01.2014 and 03.02.2014 came to be issued by the respondents.

4. Learned Counsel for the petitioner refers to that the petitioner had not been appointed as a reserved category candidate from scheduled caste nor he intends to take benefit of the caste certificate. The same had been submitted since he had received the certificate by following due process. He

further submits that the petitioner would file affidavit/undertaking before this Court that he does not intend to take benefit for himself of caste certificate in his employment.

5. Learned Counsel for the management states that since communication dated 15.01.2014 had been received from the Education Officer, they had issued the communication to the petitioner on 03.02.2014. The management does not particularly dispute that the petitioner has been permanently appointed as an open category candidate.

6. Even the affidavit in reply filed on behalf of the respondent No. 2 would show that approvals to the appointment of the petitioner had not been for a particular caste or category. However, affidavit further refers to that since 1993-95 the petitioner had been appointed as scheduled caste category candidate, his employment is assumed to be from that category. Since it was being considered that petitioner is from scheduled caste category, communications had been issued.

7. It is not claim of the respondents that the petitioner came to be appointed on a post which has been reserved for any particular category. There also does not appear to be any dispute over that the petitioner had been working since 1991-92 continuously on open category post. It has been clearly

emerging that while the appointments had been approved, there had been no mention of caste of the petitioner. It is not in dispute that petitioner's appointment has been made permanent not as a reserved category candidate. Even permanent approval to his appointment appears to be as an open category candidate. He further undertakes not take benefit of caste/certificate in his employment, as such, it would be expedient that the respondent would not insist upon compliance of the impugned orders.

8. In view of aforesaid, writ petition is allowed in terms of prayer clause (B), since the petitioner as referred to above undertakes to file affidavit/undertaking not to ask/take/request benefit of caste/certificate in the employment. The affidavit/undertaking to be filed within a period of four weeks. In case of failure to file concerned affidavit, put up the matter before the court.

9. Rule made absolute accordingly. No costs.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]