

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

WRIT PETITION NO. 5102 OF 2013

Shobha w/o. Sambhaji Kadge .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.Pradeep Deshmukh h/f. Mr.H.A. Joshi, Advocate for the petitioner.

Mr.S.B.Joshi, AGP for respondent/State.

Mr.P.K.Nikam, Advocate for respondent Nos.2 and 3.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 21.08.2018

P.C. :-

1. The petitioner assails the order dated 12.04.2013 issued by respondent No.3 directing the petitioner to produce validity certificate of the petitioner as belonging to Scheduled Caste within 90 days. Mr.Deshmukh, learned Counsel submits that the petitioner was initially appointed on 14.06.1991. Every

year fresh appointment orders were issued till the year 1994-95. Thereafter, the petitioner completed D.Ed. and was granted permanent approval in the year 2004. Learned Counsel submits that none of the appointment orders issued to the petitioner disclose that the petitioner was appointed from the reserved category. The approval order also does not state that the petitioner's services are approved from the reserved category. Now the management as per their convenience is changing their stand and it is contended that the petitioner is appointed from the reserved category. According to the learned Counsel, for the period of 22 years, the respondents never asked for validity certificate and for the first time in the year 2013 sought validity certificate from the petitioner. The roster is prepared by the management as per their convenience. As petitioner has not been appointed from the reserved category. The petitioner having not taken benefit of reserved category, cannot be directed to produce validity certificate.

2. Mr.Nikam, learned Advocate submits that old record with the respondent-institution is not available. The respondent has produced available record. It is stated that in the seniority list and service book the petitioner is from the reserved category (Scheduled Caste).

3. None of the appointment orders state that the petitioner is appointed from the open category. In the roster the petitioner is shown as against the post meant for the Scheduled Caste category.

4. Though respondent No.4 is served, none appears for respondent No.4.

5. There are about three appointment orders issued by the respondent-institution to the petitioner produced on record. None of the appointment orders state that the petitioner is appointed from the reserved category. The approval order is also placed on record. The approval

order nowhere states that the petitioner is appointed from the reserved category. At the time when the petitioner was initially appointed, the reservation was 33% and from 2008 the reservation has been increased to 50%. This Court has directed the management to produce old record from the year 1985 under order dated 21.03.2018, however, according to the management, said record is not available.

6. The learned Counsel further submits that in-case an employee is appointed from the reserved category, he has to submit validity certificate. In absence of the validity certificate, he cannot protect his service.

7. In the present matter, none of the appointment orders placed before us depict that the petitioner is appointed from the reserved category, nor approval order depicts that the petitioner is appointed from reserved category. In-spite of specific directions, the management is not in a position to place on record old documents nor

advertisement is placed on record pursuant to which the petitioner has been appointed. The benefits of not producing these documents in-spite of directions of this Court, cannot be given to the management. In absence of any authentic record to show that the petitioner is appointed from reserved category, it would be improper to ask for validity certificate after 22 years of appointment. It is not disputed that till the issuance of order, the petitioner at no material point of time was directed to produce validity certificate. It is submitted that petitioner has not taken benefit of any reservation.

8. In the light of above, we pass following order :-

(i) The impugned communication is quashed and set aside.

(ii) As and when the vacancy arises, the management shall fill in the post from the Scheduled Caste category.

9. The writ petition is accordingly allowed in
above terms. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]