

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

4 WRIT PETITION NO. 10485 OF 2012

RAJESH SHANKARRAO RAPTE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND ORS

...

Ms. P. S. Talekar h/f Mr. S. B. Talekar and Mr. U. R. Awate, Advocates for the Petitioner.

Mr. S. P. Sonapawale, AGP for Respondent Nos.1, 2, 5 and 6.

Mr. R. N. Dhorde, Senior Advocate i/b Mr. Vikram R. Dhorde, Advocate for the Respondent Nos.3 and 4.

Mr. Abhijit C. Darandale, Advocate for Respondent No.7.

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

DATED : 20th AUGUST, 2018.

PER COURT:-

1. The present writ petition is filed seeking direction to decide the application for issuance of a fresh caste certificate, so also challenges the order of termination dated 12.06.2012 terminating the service of the petitioner. By way of an amendment the petitioner also challenges the advertisement dated 18.06.2013 to the extent of one post of Instructor in MCVC Course Inland Fisheries.

2. Ms. Talekar, learned counsel for the petitioner strenuously contends that the petitioner

was appointed pursuant to the advertisement issued on 26.05.1995. The approval was also granted to the appointment of the petitioner under order dated 07.03.1996. The petitioner was again issued a fresh appointment order on 30.07.1997. Pursuant to the said appointment order, the permanent approval is granted to the appointment of the petitioner as Instructor in MCVC Inland Fisheries under order dated 03.10.1998 by the Deputy Director, Vocational Education and Training. The learned counsel submits that the petitioner was appointed considering the petitioner from Open (General Category). None of the appointment orders nor the approval orders depict that the petitioner has been appointed from reserved S.T. Category. The learned counsel submits that, even, as per the roster appearing, the petitioner was considered as having been appointed from Open Category and the reservation for the S.T. Category was shown to be carried forward.

3. The learned counsel submits that the respondent-Institution as per its fancies was changing the appointment of the persons from either S.T./Open Category. One Mr. Sanghavai was shown to have been appointed from S.T. Category. Subsequently, he has been accommodated from Open Category. Another person namely Mohammad Yousuf, who was appointed alongwith petitioner, as against the seat for S.T. Category was also accommodated from Open Category and the petitioner was shown as

appointed from S.T. Category. For the first time in the year 2007, the petitioner was issued letter to bring the validity certificate. The petitioner has rendered 17 years of service right from 1995 till 2012. The respondent-Institution nor the Education Officer at any material point of time directed petitioner to submit validity certificate, as the petitioner was appointed from Open Category. The learned counsel submits that on the ground that the validity certificate is not submitted, the respondent no.4-institution terminated the service of the petitioner. The petitioner being permanent employee could not have been terminated without conducting a departmental enquiry. According to the learned counsel, the enquiry committee needs to be constituted before a permanent employee is terminated. As none of the procedure has been followed, the order of termination is *per se* illegal.

4. The learned counsel on instructions of the petitioner submits that the petitioner would not press the petition with regard to prayer Clause (A).

5. Mr. Dhorde, learned senior counsel for respondent no.4 submits that the petitioner was appointed from reserved category. The petitioner is trying to take undue advantage of the factum of not mentioning the appointment of the petitioner on reserved category in the appointment order and the

order of approval. The advertisement of the year 1995 specifically shows that all the posts that are to be filled in pursuant to the advertisement are to be filled in from the reserved category candidates. The learned senior counsel further relies on the roster and submits that from time to time the roster is verified and petitioner is shown to have been appointed from the reserved category. The entries in the roster to that effect are consistent.

6. The learned senior counsel submits that in the year 2007, the communication was made by the Authorities directing the institution to seek validity certificates of the candidates appointed from reserved category. The petitioner was also intimated about the said fact and he has signed the communication of the year 2007. The learned senior counsel further submits that, as the petitioner has not submitted the validity certificate, his appointment itself becomes *non-est* and as such is rightly terminated from the service. The learned senior counsel further submits that the petitioner has an alternate efficacious remedy available before the School Tribunal. In view of that, this Court may not entertain the writ petition with regard to the challenge to the order of termination.

7. Mr. Darandale, learned counsel for respondent no.7 submits that the petitioner has

been appointed after following due selection process in the year 2013 and by the passage of time he has also attained the status of a permanent teacher.

8. The learned A.G.P. submits that the petitioner was shown to have been appointed from the reserved category, as such is required to submit the validity certificate. A person who has been appointed from reserved category, in absence of the validity certificate cannot continue in service.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. It is a matter of record that initially the petitioner was appointed in the year 1995 and again subsequently, in the year 1997. The appointment order nor the approval order shows that the appointment of the petitioner was from the reserved category. The roster at some places makes a mention that the petitioner is considered from the reserved category (S.T. Category). As per the roster Mr. Sanghavai, Mr. Mohammad Yousuf and the petitioner are shown from reserved category. It is also not a disputed fact that said Mr. Sanghavai and Mohammad Yousuf have been accommodated as against the post meant for Open Category candidate. They were also shown to have been appointed as

against the post meant for S.T. Category candidate. Why these persons have been accommodated as against the Open post, though according to the respondent nos.3 and 4 they were appointed from S.T. Category remains unanswered on behalf of respondent no.3 and 4. The respondent nos.3 and 4 certainly cannot pick and choose. It is also not a disputed fact that, the petitioner is working since 1995 and permanent approval is also granted to that effect from the year 1997. In the year 2012, the petitioner had completed almost 17 years of service and even as per the provisions of M.E.P.S., the petitioner has become a permanent employee of respondent nos.3 and 4. Rule 35 to 37 of M.E.P.S. Act categorically provides the manner in which an action has to be taken against the permanent employee. The procedure enumerated in these rules has not been adhered to by the respondent nos.3 and 4 while terminating the services of the petitioner.

11. We could have relegated the petitioner to the alternate remedy available before the School Tribunal and normally we adopt the same recourse. However, in the present matter, the termination of the petitioner is on account of the fact that the validity certificate is not submitted. According to the petitioner, the petitioner was possessing the caste certificate, which he had lost somewhere and subsequently had applied for the fresh one. The petitioner had sought direction to issue the caste certificate. Coupled with that, the petitioner has

also challenged the termination order, as the same was without conducting any departmental enquiry nor any show cause notice is issued. Conducting departmental enquiry before taking action of terminating service of permanent employee is necessary. The School Tribunal would not be in a position to give any directions to the Authorities with regard to the grant of caste certificate, as according to the petitioner, at that time when the petitioner has filed the instant petition, application for issuance of caste certificate was pending. Considering the cumulative facts in the present case, we have exercised our writ jurisdiction under Article 226 of Constitution of India.

12. Now an anomalous situation has arisen. The post which was held by the petitioner is occupied by respondent no.7 since 2013. The respondent no.7 is also a deemed permanent employee. Though, the appointment of respondent no.7 is subject to the decision of the writ petition, however, if any orders are passed, it would amount to displacing one.

13. We had asked Ms. Talekar, learned counsel for the petitioner that we may exercise our writ jurisdiction under Article 226 of Constitution of India and declare the petitioner surplus employee to be accommodated in any vacant post available with any institution by the department. Ms.

Talekar, learned counsel upon instructions of the petitioner who is present in the Court makes a statement that the petitioner is agreeable for the said recourse.

14. In light of the above, the impugned order of termination is quashed and set aside. The petitioner shall be treated as a surplus employee. The respondent no.5 shall place the petitioner in the list of surplus candidates to be absorbed in any other institution in the vacant post as per its turn and in case, the vacancy arises with respondent nos.3 and 4, the petitioner would have right of repatriation. The service of the petitioner shall be counted since year 1995 and the service during the period of interregnum that is from the date of termination till his absorption shall be counted for the purpose of continuity and all further benefits.

15. Writ Petition accordingly stands allowed in above terms. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE