

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

WRIT PETITION NO. 9486 OF 2013

Dilip s/o Prataprao Sonwane
and another

... Petitioners

VERSUS

The State of Maharashtra
and others

... Respondents

.....

Mr. P.R.Katneshwarkar, advocate for petitioners
Mr. M.M.Nerlikar, A.G.P for respondent no.1
Mr. Manoj Shinde with Mr. M.K.Goyanka,
advocate for respondent nos. 2 and 3

.....

CORAM : T.V.NALAWADE

AND

K.L.WADANE, JJ.

DATED : 6th March, 2018

O R D E R (Per : K.L.Wadane, J.)

The petition is filed under Articles 14 and 226 of the Constitution of India to give direction to the Zilla Parishad to consider petitioners for promotion to the post of Cluster Chief as an employee from handicapped category.

2. Heard both the sides.

3. Petitioner no.1 is physically handicapped, as he is deaf person. Petitioner no.2 is visually handicapped person having 40 per cent visual disability.

4. Petitioner no.1 was appointed as Assistant Teacher on 6.6.1989 and petitioner no.2 was appointed as Assistant Teacher on 5.6.1989 in Zilla Parishad, Jalgaon. Both of them were having qualification of D.Ed. Subsequently, they acquired qualification of B.A. D.Ed. in the year 1996 and 1995, respectively.

5. Petitioners are shown in the seniority list as per their date of appointment. The benefits of handicapped persons were not extended to them while considering the seniority list as per the public policy as well as under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

6. Present petition is filed by the petitioners with following prayer : -

" (A) By issuing writ of mandamus or any other writ, order or direction, this Hon'ble Court may be pleased to direct the respondents that they shall consider and give promotion to the petitioners in the light of Government Resolution dated 5.3.2002, Government Resolution dated 21.2.1994 and Government Resolution dated 23.12.2002 and they shall include the name of the petitioners in the work shop wherein the process of promotion to the post of Cluster Chief is under consideration. "

7. Petitioners have contended that earlier there was confusion in categorization in respect of disabled persons. That has been clarified by the Government Resolution, dated 5.3.2002. As per this Government Resolution, there should be opportunity to the promotion to the handicapped persons to the extent of 3 per cent, out of which, one per cent is reserved for visually handicapped persons, one per cent is reserved for hearing impaired/deaf persons and one per cent is reserved for orthopedically impaired persons.

8. Petitioners are serving as Assistant Teachers and respondent nos. 2 and 3 have not maintained separate seniority list for handicapped persons showing three categorization of different handicapped persons as contemplated by the Government Resolution. Every year, several posts of Cluster Chief become vacant and several Assistant Teachers are given promotion, however, handicapped persons like the petitioners were not considered for promotion and were not given promotion.

9. The persons who are junior to petitioners, such as appointed in the year 1990, 2007 are given promotion. Thus, those promotions were also irrespective of seniority amongst the handicapped persons.

10. Learned counsel for the respondents have invited our attention to the Circular, dated 4/9.10.2006. By referring to this Circular, learned counsel for the respondents argued that

the seniority of the persons appointed in reserved category i.e. disabled persons is to be considered from the date of production of disability certificate.

11. We have considered the submissions of both sides.

12. From the record, it appears that both the petitioners have been appointed in the year 1989 from open category. Basically, they have not been appointed from reserved category for disabled persons. Therefore, now they cannot claim their seniority from the reserved category as on the date of their appointment i.e. on 6.6.1989 and 5.6.1989, respectively.

13. On perusal of the affidavit-in-reply filed by respondent nos. 2 and 3, it appears that the seniority list is prepared by considering date of appointment of the disabled teachers who were appointed in the category of handicapped/disabled

persons and the date of seniority of teachers, who were not disabled/handicapped on the date of appointment or those who are not appointed under the category of disabled/handicapped, is considered from the date of certificate of disability/handicapped issued by the Medical Board and this is based upon the Circular, dated 4.10.2006 and the order dated 24.2.2009. Further it reveals from the record that, petitioner no.1 is disabled as he is deaf and petitioner no.2 is visually handicapped and they have produced their medical certificates dated 30.10.2009 and 20.8.2010, respectively, and therefore, their names have been included in the seniority list from the date of medical certificate i.e. 30.10.2009 and 20.8.2010, respectively. Further it reveals from the record that, petitioners were not appointed in the reserved category of the handicapped/disabled persons. The appointments of petitioners were from the open category. Petitioners have produced on record their disability certificate in the year 2009 and 2010.

On the basis of said document, they cannot claim their seniority in the reserved category from the year 1989 when they were appointed on the post of Assistant Teacher.

14. In view of above, there is no substance in the Writ Petition. Therefore, same is liable to be dismissed and it is dismissed accordingly with no order as to costs.

(K.L.WADANE, J.)

(T.V.NALAWADE, J.)

dbm