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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15184 OF 2019

Smt. Saroj d/o Bhimraj Shukla,
Age – 57 years, Occ – Head Mistress,
R/o Galli No. 32, New Indira Nagar,
Baijipura, Aurangabad
Taluka and District - Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through Urban Development Department,
Mantralaya, Mumbai – 32
2. The Accountant General,
Pension Branch – II,
Office at 206/5, Samaj Kalyan Office Road,
Civil Lines, Nagpur
Maharashtra 440 001
3. Aurangabad Municipal Corporation,
Through its Municipal Commissioner,
Aurangabad
4. The Chief Accounts Officer,
Aurangabad Municipal Corporation,
Aurangabad
5. The Education Officer,
Aurangabad Municipal Corporation,
Aurangabad

RESPONDENTS

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Mr. Devdatt P. Palodkar, Advocate for the petitioner
Mr. S. S. Dande, AGP for respondent - State
Mr. A. R. Vaidya, Advocate for respondents No. 3 to 5

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[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]

DATE : 24th SEPTEMBER, 2020

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally by consent.

2. A few undisputed facts, relevant in the matter, are – the petitioner had been appointed as assistant teacher in a school run by Aurangabad Municipal Corporation on 9th July, 1986. Her appointment had been from open category. She had not been given concession on merits while making appointment from open category. Service book of the petitioner bears that she was appointed as an open category candidate. Her further career progress had been given treatment accordingly. Petitioner was neither treated as being from *Mannewar* tribe, nor she had taken benefit of her stated tribe at any point of time during her entire service career. Petitioner, as well, had been promoted as head mistress from open category. Seniority list of head masters published under letter dated 31st July, 2018 also refers to the same.

3. It appears that with enforcement of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta

Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, certain developments had taken place and a circular, to be precise dated 18th May 2013, had been issued with a view to insist on employees from reserved categories to produce caste / tribe validity certificates and if those are invalidated, to take further action.

4. While petitioner possessed a certificate to the effect that she belongs to *Munnear* scheduled tribe, with reference to the same, it appears, in seniority lists of employees maintained and published in 2011 and 2013 by respondent corporation, as annexed to the affidavit in reply, she was being shown to be of *Mannear* scheduled tribe.

5. Mr. Vaidya, learned advocate appearing for respondent municipal corporation purports to contend that as there were no clear guidelines and norms at the time of appointment way back in 1986, petitioner and one more employee had been given accommodation in open category and that is why there is insistence to produce tribe validity certificate.

6. On specific question as to whether any concession, based

on her stated tribe is given while appointing the petitioner, there is nothing placed on record to show that any benefit of stated tribe had been given while making appointment of the petitioner. There is also no dispute on that there was no compromise on merits in respect of eligibility and competence of the petitioner when she had been appointed from open category. It is also not disputed that her appointment had been continuously and uninterruptedly being treated as from open category, albeit in seniority lists of 2011 and 2013, petitioner had been shown to be from *Mannewar* tribe. Promotions were being given to her with reference to her appointment as open category employee and no benefit whatsoever had been given to the petitioner based on her stated tribe. Even seniority list of head masters of 2018 as annexed to the petition does show that petitioner has been appointed from open category.

7. The petitioner, on superannuation had been allowed to retire honourably, however, while it came to releasing retirement dues and benefits, it appears, impediment is being created insisting on to produce tribe validity certificate.

8. While the petitioner appears to have served full term of employment as open category employee, now, insistence on for

production of tribe validity certificate and detention of pensionary benefits therefor, appears to be absolutely without application of mind, perfunctory and without any rational or reasonable basis.

9. Having regard to aforesaid, we deem it appropriate to allow the writ petition. Writ petition is allowed in terms prayer clause "B" with variation that respondent No. 2 shall consider proposal as referred to in prayer clause "B" within a period of three months from the date of receipt of writ of this order. Rule is made absolute in aforesaid terms. Writ petition is disposed of.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE