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

936 WRIT PETITION NO.4877 OF 2020
WITH CA/6888/2021 IN WP/4877/2020

MOHD. ABDUL SALAM MOHD. NOORULLAH
VERSUS
EDUCATION OFFICER (SECONDARY),
ZILLA PARISHAD, NANDED & ORS.

...

Mr S. V. Dixit, Advocate for petitioner;
Mr S. K. Tambe, A.G.P. for respondent Nos.1 & 3;
Mr G. V. Mohekar, Advocate h/f Mr A. B. Shinde, Advocate for
respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 27th July, 2021

PER COURT:

1. This Court (Coram : S.V. Gangapurwala and R. G. Avachat, JJ.) had issued notice on 23/06/2020 after recording the contentions of the petitioner that his salary is stopped on the ground that the caste certificate is not submitted for validation.

2. On 15/01/2021, this Court had passed the following order :

“1. The salary of the petitioner is stopped on the ground that petitioner has failed administratively in submitting the caste certificate/validity certificate.

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2. *The contention of Mr Dixit is that the petitioner is not appointed from the reserved category. The institution where the petitioner is working as Head Master is a minority institution. Roster is not required to be followed.*

3. *Mr Mukhedkar learned Advocate appears for the intervenor and submits that the seniority list shows that the petitioner is appointed from the reserved category. The order of approval also refers to petitioner being promoted from reserved category. However, the learned Counsel is not in a position to show as to how the roster is applied for appointment to the minority institution.*

4. *Learned A.G.P. seeks time.*

5. *Stand over to 22.01.2021 as a last chance.”*

3. On 22/01/2021, this Court had noted in it's order, as under :

“1. The learned Counsel for respondent no. 2 seeks time to file affidavit-in-reply and submits that respondent no. 2 is not a minority institution.

2. We grant four weeks time to respondent no. 2 to file reply. As respondent no. 2 contends that it is not the minority institution, respondent no. 2 should have placed on record the roster and appointments made of various persons vis-a-vis the appointments on the reserved posts.”

4. On 22/02/2021, this Court had recorded in paragraph Nos.2, 3 and 4 of it's order, as under :

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“2. On 22.01.2021, we had observed that respondent no. 2 should have placed on record the documents. Today also, time is sought on behalf of respondent no. 2 on the ground that the Secretary of respondent no. 2 is indisposed due to leg injury.

3. Respondent no. 2 could have deputed responsible officer.

4. In case, the affidavit is not filed by respondent no. 2 by the next date and the order dated 22.01.2021 is not complied, then respondent no. 2 shall deposit costs of Rs.10,000/- (Rs. Ten Thousand only) in the Court.”

5. On 22/03/2021, this Court accommodated the learned Advocate for respondent No.2 due to a personal difficulty. On 05/04/2021, again, this Court accommodated him as a last chance. On 20/04/2021, again he was accommodated.

6. On 14/06/2021, this Court had observed as under :

“. On 05.04.2021 on the assurance of Mr. Mohekar, learned counsel we had adjourned the matter to 19.04.2021. We had observed that, no further time would be granted on behalf of respondent no.2. The matter came up on 20.04.2021. Mr Mohekar, learned counsel on that day did not remain present. We adjourned the matter and kept it on 14.06.2021. Today also, Mr. Mohekar, learned counsel seeks time. The assurance given to the Court

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needs to be abided and honored. As respondent no. 2 should not suffer, we are adjourning the matter to 28.06.2021.”

7. On 28/06/2021, after briefly hearing the parties, this Court had recorded as under :

“1. Mr. Dixit, the learned Advocate appearing on behalf of the petitioner, points out the orders passed by this Court on 15th January 2021, 22nd January 2021, 22nd February 2021, 22nd March 2021, 5th April 2021, 20th April 2021 and 14th June 2021.

2. Today, Mr. Mohekar, the learned Advocate representing respondent No. 2, submits on instructions from Shri Abdul Razzak Abdul Jabbar, Secretary of the Education Trust who is said to be about 70 years of age, that the institution is not able to trace out the documents pertaining to it's minority status, the advertisement published in pursuance of which the petitioner had applied for employment and the appointment order of the petitioner. It is further stated that the said documents may be available in the school and are not available with the Secretary.

3. Having perused the orders of this Court noted above and especially the last two orders, we find that we have given sufficient time to respondent No. 2 to comply with our directions, but in vain. As such, since the learned Advocate for respondent No.2 makes one more request for an adjournment, we are imposing costs of Rs. 10,000/- which respondent No. 2 shall deposit in this Court on or before 9th July 2021, failing which we would be constrained to impose

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heavy costs and secure the presence of respondent No. 2 in the Court by issuance of a bailable warrant.

4. *The second respondent shall now enter an affidavit taking a clear stand as regards the availability of the documents and if it is able to trace out the relevant documents as ordered by us in our earlier orders, the said documents would be produced along with an affidavit. Let such affidavit be filed on or before 9th July 2021.*

5. *The learned Advocate for the petitioner submits that the petitioner's salary has been stopped from March 2020 on the ground that he has not submitted his tribe validity certificate. His wife passed away due to Covid-19 infection. He has incurred huge expenses in her treatment and is without salary.*

6. *As such, we direct respondent No. 2 to submit the salary bill of the petitioner for the month of June 2021 within four days from today and respondent No. 1 shall clear the same expeditiously so as to be payable on the regular salary day in the month of July through online payment to the petitioner.*

7. *List this petition on 14th July 2021 for further consideration."*

8. On 15/07/2021, as Shri Mohekar for respondent No.2 did not stand by his assurance, this Court was compelled to pass the following order :

“1. On 05/04/2021, this Court had recorded the assurance given by Mr Mohekar, learned Advocate that he would work out the matter on the next date. On 20/04/2021, Mr Mohekar failed to stand by his assurance and remained absent and this Court (Coram: S.V. Gangapurwala and Shrikant D. Kulkarni, JJ.) had to record that he remained absent from the Court. On 14/06/2021, Mr Mohekar sought time and this Court (Coram: S. V. Gangapurwala and M. G. Sewlikar, JJ.) observed in the order passed on that day that the assurance given to the Court needs to be abided and honoured, in view of the fact that Mr Mohekar sought an adjournment.

2. On 28/06/2021, we had directed respondent No.2 represented by Mr Mohekar to produce the application for employment filed by the petitioner and his appointment order, as per the earlier order. We granted one more adjournment to respondent No.2 by imposing costs of Rs.10,000/- and we have preempted Mr Mohekar that we would be constrained to impose heavy costs and secure the presence of respondent No.2 by issuance of aailable warrant, if our directions are not complied with.

3. Today, Mr Mohekar is said to have entered a leave note. The documents which were directed to be produced have not been produced before us. The conduct of respondent No.2 as well as the learned Advocate Mr Mohekar, cannot be countenanced.

4. As such, we are granting one more opportunity to respondent No.2 to abide by our orders, on the condition that an amount of Rs.15,000/- shall be deposited in this Court on or before 23/07/2021.

5. *List this petition on 27/07/2021 in the ‘urgent admissions’ category.”*

9. Shri. Mohekar, learned Advocate representing respondent No.2 submits that not a single document pertaining to the selection process of the petitioner dating back to 1989, is available. According to him, though respondent No.2 is the Secretary of the Education Society, the advertisement, if any, the application seeking employment filed by the petitioner, if any, and the minutes of the selection process allegedly held by the competent committee, are not available. He, however, submits that one appointment order of the petitioner, dated 30/11/1992, is available at page No.39 of the petition paper book, which indicates that the petitioner was appointed as an ‘Assistant Teacher’ in the scale of Rs.335-680 w.e.f. 01/09/1989 and the revised scale of Rs.1350-2200 as prescribed by the concerned Government Resolution, along with the increment set out therein, was subsequently granted to him. Arrears of pay fixed under the revised pay-scale from 11/06/1990 on-wards was to be paid in cash @ 50% and w.e.f. 01/03/1992 @ 100%.

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10. The learned A.G.P. has drawn our attention to the affidavit-in-reply filed by the Education Officer. There is no dispute that the approval granted to the appointment of the petitioner for the first time, does not indicate that he was appointed on a post which was reserved for a particular backward category. The approval was granted on the condition that the petitioner should complete his B.Ed. prior to June 1993. The learned A.G.P. fairly points out that the petitioner has completed his B.Ed. in May 1992 i.e. one year prior to the deadline and was therefore, eligible to be continued in employment, with approval.

11. It is apparent from the record that the petitioner worked out as an Assistant Teacher with an approval from 1989. Never in his entire service journey from 1989 to 2018, when he became the Headmaster, was it ever contended by the management or by the Education Department that he was selected and appointed on a post reserved for a backward category. The learned A.G.P. rightly submits that a single stand alone school is being operated by respondent No.2 and as such, there cannot be any reservation.

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12. Be that as it may. The petitioner has consistently stated that he has not been selected and appointed on a post reserved for a backward category, though he submitted his claim for validation of his caste as 'Chhapparband'.

13. Shri. Mohekar submits that the petitioner had tendered his claim for validation of his 'Chhapparband' scheduled caste as set out in paragraph No.6 of the affidavit-in-reply of the Education Officer, dated 21/01/2021. The learned Advocate for the petitioner submits that the petitioner has not forwarded his claim to the Caste Scrutiny Committee, for validation. Even if such a claim may have been put forth, it has nothing to do with his continuance as the Headmaster as he was never selected and appointed on a post reserved for any particular category. The petitioner would be completing 58 years in January 2022 and would be superannuating from service. He has never claimed any benefit of reservation for the scheduled caste while being in service as an Assistant Teacher from 1989 till 2018, which is a period of almost 29 years and thereafter as a Headmaster.

14. In view of the above, we do not find that the Education Officer is justified in believing allegations made by an outsider, namely,

Mohammad Iqbal Mohammad Kasim Patel and stopping the salary of the petitioner when there is no documentary evidence to indicate that the petitioner had been appointed on a post reserved for the backward class or had taken service benefits on the basis of his reservation and, therefore, his continuance in employment would not be subject to the submission of his caste validity certificate. In the absence of any documentary evidence and acting on the allegations of an outsider, the Education Officer (Secondary) has acted highhandedly and has caused a grave loss, manifest inconvenience and serious prejudice to the petitioner.

15. In view of the above, this petition is allowed. The impugned letter dated 02/03/2020, issued by respondent No.1 - Education Officer (Secondary), Zilla Parishad, Nanded, is quashed and set aside. The then Education Officer, who has passed the impugned order, shall suffer costs of Rs.10,000/-, to be deposited from his salary Bank A/c, in this Court, on or before 31/08/2021. After depositing the amount of costs, the said amount be credited to Advocate Association's Bar Library, High Court, Aurangabad and receipt to be produced before the Registrar of this Court.

16. The petitioner, being the Headmaster, shall forward his salary bills to the present Education Officer along with the claim for arrears of salary, if any. The present Education Officer shall forthwith process the papers and ensure that the arrears and the regular salary is paid to the petitioner on or before 31/08/2021.

17. Insofar as Civil Application No.6888/2021, filed by respondent No.2 – Society is concerned, the learned Advocate Shri. Mohekar has filed a personal affidavit and has expressed his apology by saying that he will never deliberately seek an adjournment in a matter and will not indulge in Bench hunting. We appreciate the said statement going by the affidavit that is filed, without going into the details of the circumstances, in which respondent No.2 did not cooperate with us on 15/07/2021 and over a period of almost seven months. We, therefore, accept the apology of Shri. Mohekar and we would appreciate if he stands by his statement that he will never seek an unnecessary adjournment in a matter and would not resort to Bench hunting. However, considering the conduct of respondent No.2, we are not

inclined to recall our order dated 15/07/2021 and the civil application filed by respondent No.2 – Management, stands rejected.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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