

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7265 OF 2020

Pandurang Ramkishan Darewar,
Age : 56 years, Occ. Service
as Deputy Engineer, MJP,
Presently posted to work under
Z.P. Rural Water Supply Scheme,
Shahada, Dist. Nandurbar

..PETITIONER

VERSUS

Maharashtra Jeevan Pradhikaran,
CIDCO Bhavan, South Block,
Belapur, New Bombay 400 614,
Through its Chief Administrative Officer

..RESPONDENT

Mr Ajay S. Deshpande, Advocate for the petitioner;
Mr D.P. Bakshi, AGP for respondent

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

DATE : 5th August, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. On 23.10.2020, while issuing notice, we have passed the following order:-

“1. The learned counsel for the petitioner submits that the petitioner was never appointed from the reserved category. The said fact is also communicated by the petitioner to respondent No.1 on 06.08.2012 and thereafter, the matter was closed.

2. The petitioner was placed on the supernumerary post under the impugned communication. The petitioner shall place on record the original appointment order so also the promotional order before the next date.

3. Issue notice to respondent, returnable on 15.01.2021.

4. Till then, the impugned communication shall not be acted upon.”

3. The petitioner has put-forth prayer clause (B) as under:-

“The impugned order dated 30.9.2020 at Exh. ‘E’ may kindly be quashed and set aside, by directing the respondent to continue the petitioner in service as before.”

4. We have considered the extensive submissions of the learned Advocates for the respective sides. A short issue is raised before us. The respondent mandates the petitioner to submit his Scheduled Tribe validity certificate and as the petitioner has not produced such a

certificate, his appointment is placed on a supernumerary post vide the impugned communication.

5. We have perused the appointment order of the petitioner. The respondent is unable to point out from the record that the post which was sought to be filled in, was reserved for a Backward Scheduled Tribe category. The advertisement does not indicate that the post was subjected to such reservation. The petitioner never applied for the said post on the basis of his Scheduled Tribe or that he was selected to join the post which was reserved for a Scheduled Tribe category. On all these issues, the respondent, on the basis of the record, concedes that the petitioner had never applied for such a post and that he was treated as an open candidate and was selected and appointed from the open category. The learned Counsel, however, adds that in the service-book, the name of the tribe of the petitioner has been mentioned and, therefore, the respondent demands that he should submit his Scheduled Tribe validity certificate.

6. We find that the stand taken by the respondent is misconceived. It is well settled that, in cases of employees and students who have secured employment or admission, as the case may be, on the basis

of a Backward caste or tribe to which they belong, the employer or the educational institution forwards their claims to the Caste/Tribe Validity Committee in order to enable a proper inquiry under the 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, 2001. Such employee or such admission is continued, provided such candidate succeeds in obtaining the validity certificate from the competent committee. It is equally settled that in cases wherein a candidate has been appointed in employment or admitted in an educational institution from the open category, notwithstanding that he belongs to any backward caste or tribe, neither is his proposal forwarded for validation, nor his such validation mandated.

7. The learned Advocate for the petitioner makes a categorical statement on instructions that the petitioner has not availed of any service benefit which could be available to him based on his social status (reserved tribe/category). In the event any such occasion in his service occurs wherein he is able to take advantage of such reservation, he would first tender his tribe validity certificate and only thereafter he would pray for such a benefit.

8. In view of the above, this petition is allowed in terms of prayer clause (B).

9. Rule is made absolute accordingly. No order as to costs.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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