

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

919 WRIT PETITION NO.1433 OF 2020

PANDURANG SAMBHAJI TOTEWAD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner: Mr. Thorat Chandrakant R.

AGP for Respondent No. 1: Mr. A. S. Shinde

Advocate for Respondent No. 2: Mr. A. S. Bajaj

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 04th JANUARY, 2022

PER COURT:

1. The Petitioner is appointed as Lower Division Clerk with Respondent No. 2 on compassionate ground on or about 23.04.1997. On or about 31.12.2019, the Petitioner was placed on supernumerary post on the ground that the Petitioner belongs to reserved category and that the Petitioner has not submitted the Validity Certificate.

2. Mr. Thorat, learned Counsel for the Petitioner submits that the Petitioner was not given the benefit of reservation at any point of time. Even, in the Seniority List prepared in the

year-2021, his name was shown from General category. The Petitioner had also represented that he will not take benefit of reservation. The order placing the Petitioner on supernumerary post is erroneous. The learned Counsel relies on the Judgment of the division Bench of this Court in case of **Ajinkya s/o. Rajiv Khadatkhar Vs. Managing Director, Maharashtra State Electricity Distribution Co. Ltd. and others** reported in 2019 (6) ALL M R 187.

3. Mr. Bajaj, learned Counsel for Respondent No. 2 submits that all along in the Service Book the Petitioner is shown from the Scheduled Tribe category. In the Seniority List published of Nanded Circle on 17.07.2007 the Petitioner is shown at Serial No. 106 and his tribe is reflected as belonging to Scheduled Tribe. The Petitioner was in the zone of consideration for the promotional post as the Petitioner belonged to Scheduled Tribe category and the relaxation was also provided to him. The Policy has been prepared under the Board Resolution dated 29.09.2010 for

appointing the persons on compassionate ground. If the person does not desire to get the benefit of reservation he has to submit the certificate regarding not availing the benefits. In the Roster Register also the Petitioner is shown to belong to Scheduled Tribe. The Petitioner failed to submit the Validity Certificate, as such is rightly placed on supernumerary post as per the Administrative Order No. 592 dated 31.12.2019.

4. We have considered the submissions canvassed by the learned Counsel for the parties.

5. It is not disputed that the Petitioner was appointed on compassionate ground. It is submitted that the Petitioner was considered in zone of promotion from the reserved category, however, the Petitioner was not promoted. If a person is appointed on compassionate ground then it is not as against the reserved post. The Judgment of the Division Bench of this Court in case of **Ajinkya s/o. Rajiv Khadatkhar Vs. Managing Director, Maharashtra State Electricity Distribution Co.**

Ltd. and others (*Supra*) would squarely apply. No separate Rules are pointed out. On the contrary, in the affidavit of Respondent No. 2 it has been clarified that if the person appointed on compassionate ground does not want to avail the benefit of reservation he should give such certificate. The Petitioner does not dispute that he has never claimed the benefit of reservation and would never claim the benefit of reservation in the employment with Respondent No. 2.

6. In light of that, the order placing the Petitioner on supernumerary post is quashed and set aside. It is made clear that the Petitioner is not entitled for the benefit of reservation in the employment with Respondent No. 2 from the initial date of appointment till he attains the age of superannuation.

7. The Writ Petition accordingly allowed in above terms and stands disposed of. No costs.