

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

46 WRIT PETITION NO. 5758 OF 2021

SHAIKH SHADUL SHAIKH AHEMAD
VERSUS
STATE OF MAHARASHTRA & OTHERS

...

Advocate for the petitioner : Mr.S.B.Choudhari
AGP for Respondent-State : Mr.P.K.Lakhotiya
Advocate for Respondent no.2 : Mr.A.D.Wange

...

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

DATE : 18.04.2022

P.C. :

1. By this petition, the petitioner has put forth prayer clauses-B and C, which read as under:

(B) **Issue** Writ of Certiorari or other appropriate Writ or order in the like nature thereby quash and set aside Impugned letter/Order Dtd. 05/08/2020 passed/issued by Respondent No.2 and further direct the Respondent No. 02 Authorities to reinstate the petitioner on his post with continuity and other allied benefits.

(C) Pending hearing and final disposal of the Present Writ Petition the Operation &

implementation of impugned letter/order Dtd. 05/08/2020 passed/issued by Respondent No.2 may kindly be stayed and further direct the Respondent Authorities to reinstate the petitioner on his post.

2. The petitioner was appointed as a Driver in the Maharashtra State Road Transport Corporation on 06.08.1996. The said post was reserved for the Scheduled Tribe category. He was granted permanency on 24.10.1997. He had acquired his appointment on the basis of the caste certificate indicating that he belongs to 'Takankar' Tribe. However, his validity claim of belonging to 'Takankar' Tribe was rejected by the Competent Committee for the reason that he did not belong to that category, vide its order dated 12.09.2021. He then applied to the Sub Divisional Magistrate, Nanded, vide application dated 25.05.2020 for seeking a caste certificate of 'Momin' caste, which is recognised under the Other Backward Class at serial No.191. Based on the same, he applied for the validity and by order dated 26.02.2021, the Competent Committee issued him the certificate of validity affirming that he

belongs to 'Momin' caste under OBC.

3. Considering the above, the learned Advocate for the petitioner strenuously submits that the petitioner prays that his removal from service by order dated 05.08.2020 with effect from 06.08.2020, be quashed and set aside and he be reinstated in service. He is around 54 years of age today and has another 4 years for retirement.

4. The learned Advocate for the MSRTC and the learned AGP have vehemently opposed this petition contending that this would laid down a wrong precedent.

5. We find that the very entry of the petitioner in employment of the MSRTC as Driver, was on the post of Driver reserved for the Scheduled Tribe category. Since he had the tribe certificate of 'Takankar', he secured employment. Subsequently, his claim was held to be invalid and as such, he lost the legitimate right to continue in employment.

6. The Hon'ble Apex Court has recently taken a strict view in the matter of **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others**, reported in (2017) 8 SCC 670 concluding that in such case, all the benefits that could have accrued to an employee, need to be taken away.

7. Considering the above and as the petitioner cannot sustain his entry into service on the post reserved for the Scheduled Tribe category, we do not find that we could reinstate him on the basis of his acquiring a new caste certificate for a different caste 'Momin' (191) and for which his claim has been validated, as the same has no nexus with his entry in employment on the post reserved for Scheduled Tribe category.

8. Considering the above, this petition is dismissed.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]