

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9110 OF 2021

Savita w/o Ashok Koli
@ Savita d/o Manohar Taral,
Age-45 years, Occu-Service,
R/o Survey No.566/18B,
Vyankatachal Co.op.Housing Society,
Flat No.C/13, Bibbewadi, Pune,
Tq. and Dist. Pune

-- PETITIONER

VERSUS

1. The State of Maharashtra
General Administration
Department, Mantralaya,
Mumbai - 32,
Through its Principal Secretary,

2. The Transport Commissioner,
Maharashtra State,
5th floor, Fountain Doorsanchar
Bhawan-2, M.G.Marg, Fort,
Mumbai - 400 001,

3. The Regional Transport Officer,
Pune, Tq and Dist. Pune

-- RESPONDENTS

Mr.S.C.Yeramwar, Advocate for the petitioner.
Mrs.M.A.Deshpande, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE AND
S.G. DIGE, JJ.)

DATE : APRIL 1, 2022

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

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

2. The petitioner has put forth prayer clause B & C as under :-

"B. To quash and set aside the impugned order dated 28.01.2021 issued by Respondent No.2 placing the petitioner in service on supernumerary post for a temporary period of 11 months or till the date of retirement whichever is earlier for non-submission of the Certificate of Validity (Exhibit E) in view of the fact that she is appointed on compassionate ground and direct the respondent Nos. 2 and 3 to allow the petitioner to work as Senior Clerk by issuing appropriate writ, orders, or directions as the case may be ;

C. To grant stay to the impugned order dated 28.01.2021 issued by the Respondent No.2 placing the petitioner in service on supernumerary post (Exhibit-E) and direct the respondent Nos. 2 and 3 to allow the petitioner to work as Senior Clerk, pending hearing and final disposal of the present writ petition;"

3. Having considered the strenuous submissions of the learned Advocates for the respective sides, we have gone through the petition paper book and the documents tendered by the learned AGP

4. The peculiar facts of this case are as under :-

[a] The father of the petitioner joined the respondents as a Police Constable on 30.12.1964.

[b] On 09.01.1994, the petitioner's father Manohar Taral passed away while in service.

[c] On 01.06.1995, the tribe certificate of the petitioner, as belonging to "Tokare Koli - Scheduled Tribe" was invalidated by the Scrutiny Committee prior to the introduction of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Categories (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

[d] On 09.03.2000, the District Collector, Pune recommended the name of the petitioner for compassionate appointment as per her seniority in the waiting list of the eligible candidates.

[e] By order dated 28.03.2000, bearing No.155/2000, the petitioner was appointed as a Steno Typist on compassionate basis, temporarily.

[f] There are nine conditions mentioned in the appointment order and some of them pertain to production of documents/certificates.

[g] Nowhere it is mentioned in the appointment order that the petitioner will have to tender her caste/tribe certificate and will also

have to submit the validity certificate of the caste/tribe, to which she belongs.

[h] After receiving a Letter/communication from the RTO, Regional Office, Pune dated 23.01.2004, the petitioner produced certain documents alongwith list of documents dated 21.03.2004.

(i) She has produced the certificates pertaining to Special Backward Category as well as the validity certificate from the competent authority validating her claim of belonging to Koli Tribe, which is covered by the Special Backward Category.

[j] On 28/01/2021, the Transport Commissioner, Mumbai passed an order stating that the petitioner was recommended by the Maharashtra Public Service Commission/Selection Board/Selection Committee as being eligible for appointment as a Steno Typist, she was issued with the appointment order dated 09.03.2000 and she joined duties on 28.03.2000.

(k) It is further stated in the notice that the Tribe Claim of the petitioner as belonging to Tokare Koli has been invalidated by the competent committee and the petitioner has produced the caste certificate of KOLI with the validity certificate of belonging to the Special Backward Category and considering the judgment delivered by

the Hon'ble Supreme Court in **Chairman and Managing Director, FCI and others Vs. Jagdish Balaram Bahira and others [(2017) 8 SCC 670]**, the services of the petitioner cannot be protected as her tribe claim of Tokare Koli has been invalidated. Therefore, her appointment is to be treated as being on temporary basis and on a supernumerary post.

(l) It is further stated that she would continue to remain a temporary employee for 11 months or till her service lasts until attaining the age of superannuation.

5. The contention of the petitioner is that when she was issued with the appointment order, it is nowhere stated that she is inducted in place of her father only because she belongs to the Scheduled Tribe Category. We do not find any such condition in the appointment order and as such, we are unable to accept the contention of the respondents that the petitioner entered employment only because the post was reserved for the Scheduled Tribe category and she was inducted in the said post since she belonged to the Tokare Koli.

6. In the case of **Ajinkya s/o Rajiv Khadatkar Vs. Managing Director, Maharashtra State Electricity Distribution Company Limited, WP**

No.2339/2018, the learned Division Bench of this Court [(Coram : B.R.Gavai, (as his Lordship then was) and N.J.Jamadar, JJ.)] delivered a judgment on 17.01.2019 concluding that the appointment of a candidate on compassionate grounds cannot be said to be an appointment on a post that was reserved for a particular category.

7. We are aware that if the deceased father/mother of a candidate entered service solely on the ground of belonging to a particular reserved/tribe and because the post was reserved for such a backward category, there could be an argument that the legal heir of such a deceased employee, in the absence of the deceased employee having produced any validity certificate until his premature death, may require such a candidate to produce a validity certificate. Though we have our doubts with regard to such contention in the absence of any judicial pronouncement, the fact situation in this case remains that there is no mention or statement in the appointment order of the petitioner indicating that she has succeeded in getting a compassionate appointment only because she belongs to a backward category and the post was reserved for such a particular category.

8. The learned AGP has strenuously placed reliance upon an internal communication dated 29.05.1997, addressed by the Regional Transport Officer, Pune to the District Collector, Pune wherein the issue of appointing heirs of the deceased/pre-maturly retired employees and the annexure annexed thereto indicated the vacancy for the Jr.Clerk positions. There were 3 positions reserved for the Scheduled Caste Category. Based on this internal communication, it is the case of the respondents that the petitioner was appointed as a Jr.Clerk because of an available vacant post reserved for the Scheduled Tribe Category.

9. We are unable to accept this contention of the respondents for the reason that if this was the fact situation, the R.T.O. Pune would have initiated steps not in 2021, but at the very stage of appointment of the petitioner. The impugned notice dated 28.01.2021 clearly indicates that the same has been issued in the light of the judgment delivered by the Hon'ble Supreme Court in the FCI case (supra). The RTO has not placed material before us to indicate that they had earlier declared that the petitioner's service would not be protected as her claim of belonging to Tokare Koli, Scheduled Tribe Category was already invalidated. They were aware of such invalidation as long ago as in March 2004 when the

petitioner produced her validity certificate in relation to her caste Koli falling under the SBC category.

10. The learned Advocate for the petitioner has specifically stated that though the petitioner has the validity certificate of SBC, in 2009, there was an occasion when she was in the zone of consideration for promotion to the post of Senior Clerk cum Typist. She was not considered on the ground that she was appointed on a compassionate basis and such appointment was on temporary basis.

11. We are surprised by the manner in which authorities like the respondents create numerous obstacles in the path of a compassionate appointee. It is well settled that no person has a right for compassionate appointment. It is also well settled that those who are eligible to be appointed on compassionate basis, have to compete with those candidates who are also eligible for compassionate appointment. Had the respondents / authorities mentioned in the appointment order itself that the petitioner has been selected from amongst the candidates eligible for compassionate appointments from the category of Scheduled Tribe on the basis of her Tribe Certificate of belonging to

Tokare Koli, the respondents would have had an arguable case.

12. In the absence of these factors, merely on the basis of the judgment delivered by the Hon'ble Supreme Court which is the law of the land, the respondents cannot stretch things to this extent that they contemplate bringing the petitioner's appointment within the ambit of reservation claiming that she was selected from amongst the scheduled tribe category eligible candidates. Since this Court has already concluded in **Ajinkya Khadatkar** (supra) that compassionate appointment would not always be under a particular reservation, unless the rules and the policy of the State Government specifically carve out reservation applicable to compassionate appointments, there cannot be a presumption that a compassionate appointment would be subject to the validation of a caste or a tribe claim only because the candidate belongs to a scheduled caste or tribe.

13. In view of the above, we do not find that the issuance of the impugned notice dated 28.01.2021 could be justified or could be said to be reasonable or proper.

14. This petition is allowed and the impugned order dated 28.01.2021 is quashed and set aside with the following directions :-

[a] The statement of the petitioner that she would not claim any service benefit on the basis of her SBC validity certificate, is recorded. She shall submit an affidavit to the respondent/employer to this effect, within 4 (four) weeks from today.

[b] The respondents shall forthwith delete the name of the petitioner from the category of she being a temporary employee on a supernumerary post and consequentially she would be entitled to all such service benefits, as may be applicable to her being a permanent / regularized employee of the respondent having put in 21 years of employment.

15. Rule is made partly absolute in the above terms.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)