

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 9068 OF 2022

Raju s/o. Bhagvansingh Chouhan,
Age 57 years, Occupation : Service,
R/o. Pharande Nagar, Nanded,
Tq. & Dist. Nanded.

....Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
2. The Chief Engineer,
M.S.E.D.C. Ltd, Nanded Zone,
Zone Office, Nanded,
Nava Mondha, Vidhyut Bhavan,
Nanded, Tq. & Dist. Nanded.
4. The Superintendent Engineer,
M.S.E.D.C. Ltd, Nanded,
Circle Office, Nanded,
Nava Mondha, Vidhyut Bhavan,
Nanded, Tq. & Dist. Nanded.

....Respondents

Mr. V.B. Dhage, Advocate for the petitioner.

Mr. S.G. Sangle, AGP for the respondent/State.

Mr. A.S. Bajaj, Advocate for respondent Nos. 2 & 3.

**CORAM : RAVINDRA V. GHUGE &
ARUN R. PEDNEKER, JJ.**

DATED : SEPTEMBER 15th, 2022.

JUDGMENT : [PER RAVINDRA V. GHUGE, J.]

- 1) Rule. Rule made returnable forthwith and heard finally, with the consent of the parties.

2) The petitioner has put forth prayer clauses 'B' and 'C' as under :-

B) Issue writ of mandamus, or any other writ, order or direction in the nature writ of mandamus, it may kindly be hold and declare that, the Administrative circular No. 464 Dtd. 11.07.2013 issued by respondent authorities is not applicable in the case of present petitioner and for that purpose issue necessary orders.

C) Issue writ of certiorari, or any other writ, order, the impugned communication dated 08.08.2022 issued by the respondent no. 3 may kindly be quash and set aside, and for that purpose issue necessary orders.

3) In short, the grievance of the petitioner is that, he did not enter service on any reserved post. He is a compassionate appointee who has been inducted in the place of his father, as a Junior Clerk. His father was appointed on 24th January, 1961 as a Junior Clerk with the erstwhile Maharashtra State Electricity Board, Divisional Office at Nanded. His father had applied for the post of Junior Clerk from the open category and the said post was never reserved for any backward class category. His father died in harness on 14.3.1987. His entire gratuity amount has been released. All his retiral benefits, including sanctioned leave payment, have been released. His father never availed of any benefits of reservation available to the Rajput Bhamta Vimukta Jati.

4) The petitioner points out his appointment order which is dated 16.7.1988, as a Lower Division Clerk. He joined on 27.7.1988. He is due for retirement in March 2023. He was never recruited on the

basis of his belonging to Rajput Bhamta Vimukta Jati category. He has never taken any advantage of reservation.

5) Shri Bajaj, the learned advocate representing respondent Nos. 2 and 3 - Company, tenders a copy of the communication received by him dated 15.9.2022 from the respondent company. The same is marked as 'X' for identification. He points out that the record indicates that the petitioner has never drawn any advantage of belonging to the backward category. Shri Bajaj further submits, in the light of the communication 'X', that the details as regards the selection process that was followed while recruiting his father Bhagvansingh Jalansingh Chouhan are not available. Copies of the service book are placed on record by the petitioner. There is nothing to indicate that his father had applied for the post of Junior Clerk, purportedly reserved for a particular backward category.

6) On the basis of the record available, we are of the view that neither the petitioner's father nor the petitioner had enjoyed any benefits available to the reservation for the Rajput Bhamta Vimukta Jati category. In the absence of any record, we are unable to conclude that the petitioner's father was selected against any reservation. Only because he belonged to a reserved category would not render the post reserved for a backward category. The case of the petitioner would, therefore, be covered by the Full Bench judgment delivered by the Bombay High Court on **22nd July 2022 in Writ Petition No. 6750/2022 filed by Om Bhagwanrao Anjanwad Vs. the State of**

Maharashtra and others, more specifically, paragraph No. 40, which reads as under :-

"40. We are of the view, based on *Jagdish Balaram Bahira (supra)*, that good governance would mandate that a compassionate appointee who gains entry in employment only on the basis of his father's appointment to a post reserved for a backward category, has to submit his validity certificate. To make such law effective, it would be imperative that the candidate should not be regularized in compassionate employment until he/she submits the caste/tribe validity certificate within a particular period after being appointed on compassionate basis. We are not of the view that such submission of the validity certificate be made a precondition for appointment, since compassionate appointment has to be granted urgently and keeping the candidate waiting until he/she submits a validity certificate, would defeat the purpose for which the compassionate appointment is to be granted. However, acceptance of the contention of the petitioners that they are not required to submit validity certificates, despite their respective parents having obtained entry in public service on reserved posts for the backward property, would amount to creating a mode of backdoor recruitment which the law does not countenance."

7) In view of the above, this petition is allowed. The impugned notice dated 08.08.2022 stands quashed and set aside.

8) Rule is made absolute in the above terms.

[ARUN R. PEDNEKER J.]

[RAVINDRA V. GHUGE, J.]

SSC/