

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

WRIT PETITION NO. 2699 OF 2021

Janata Shikshan Prasarak Mandal & Anr.

...Petitioners

Versus

Anil Gangadharrao Totawad & Anr.

...Respondents

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Shri. V. S. Kadam, Advocate for the petitioners

Shri. P. R. Katneshwarkar, Advocate for respondent no. 1

Shri. P. G. Borade, AGP for respondent no. 2

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CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 17TH, 2022

PER COURT : -

1. Heard the learned Counsel Shri. V. S. Kadam for the petitioner, learned Counsel Shri. P. R. Katneshwarkar for respondent no. 1 and learned AGP for respondent no. 2.

2. The petitioner no. 1 - trust, which run the petitioner no. 2 school, is aggrieved by an order passed by the School Tribunal on 04.02.2020, thereby rejecting an application preferred by the petitioners, who are respondents in an Appeal instituted by one of it's employee i.e. respondent no. 1, vide Appeal No. 35/2015, vide Exh.30. Since the application filed by the petitioners is rejected by the School Tribunal, the present petition is filed.

3. In order to appreciate the arguments revolving around the impugned order, some facts in the background warrant attention.

. The respondent no. 1 came to be appointed as Asst. Teacher in the petitioner no. 2 - school in the year 2007 and the bone of contention between the parties is, whether his appointment was against a post reserved for Scheduled Tribe or not. The respondent-employee came to be appointed as per his educational qualification and started discharging his duties as Asst. Teacher in the School but since his services were orally terminated on 21.12.1999, he preferred an appeal before the School Tribunal at Aurangabad. The contention of the employee is that he is unaware about his services being terminated whereas the management claim that his services came to be terminated since he failed to produce the caste validity certificate of Scheduled Tribe, since his appointment was against the post reserved for Scheduled Tribe.

4. In the appeal, a compromise was arrived at between the parties and the claim of the petitioners is, this compromise was entered by some unauthorized persons and when the execution of the compromise order was sought for, it came to the notice of the petitioners that such a compromise was entered. This constrained

them to approach this Court by filing Writ Petition No. 1430/2010, and on 04.05.2010, the petition was disposed off as withdrawn with the following order being passed.

“2. The petitioner’s counsel seeks withdrawal, under instructions. He, however, submits that requirement the respondent No.1 being member of Scheduled Tribe will have be satisfied by the respondent in view of the terms of compromise and respondent No.1 may submit relevant caste claim certificate before the Education Officer directly. The petitioner is ready and willing to appoint respondent No.1, if approval is granted. The proposal will have to be forwarded by the petitioner. The petition is disposed of as withdrawn accordingly.”

5. The aforesaid order forms the fulcrum on the subsequent litigation between the parties and the subsequent facts have to be construed in the wake of the same.

6. Pursuant to the compromise, the respondent no.1 was reinstated but once again came to be terminated on 22.04.2014, by the management, since the management continued to reiterate, it's stand, that the respondent, though appointed against a reserved post, has failed to submit the caste validity certificate and, therefore, this time the action is justified in terms of order of this Court dated 04.05.2010, since the respondent no. 1 has failed to submit the caste validity certificate and therefore his services were put to an end.

7. This development once again compelled the respondent no. 1 to approach the School Tribunal at Latur, by instituting an Appeal No. 35/2015. The memo of appeal placed on record when perused, challenge the termination order on various grounds and apart from pleading that the termination order is illegal as it is passed without following the due process of law, the crux of the appeal as pleaded is to the effect that on compromise, the respondent no. 1 replaced one Shri. Deshmukh, who belong to open category and, therefore, it cannot be said that he was ever appointed on a post reserved for Scheduled Tribe category.

. It is pertinent to note that neither of the appointment orders of the respondent no.1 are placed on record either by the petitioner in his petition or respondent, which could determine whether the appointment was on a post reserved for a particular category except the respondent no. 1 placed on record a letter from the Education Officer dated 21.03.1997, addressed to the Headmaster of the petitioner no. 2 - School where in terms of the proposal forwarded by the management, approval is granted to the appointment/promotion of the employee, subject to the post being vacant and the teacher/employee not being surplus and that the backlog should be filled in. It was also directed that the appointment should be effected by following 200 point muster for appointment

and 50 point muster for promotion. Barring this communication, *prima facie*, no document is placed on record to show that the respondent no.1 is appointed on a post reserved for Scheduled Tribe category.

. The clue which can only be discerned from the affidavit of the Deputy Education Officer filed before this Court creates more confusion, since in para 5 of the affidavit, the following statement is made : -

“5. I say and submit that, the Respondent no.1 was appointed as Assistant Teacher, in the Janata Shikshan Prasarak Mandal, Umardari Narsingh Vidya Mandir, Nanded from Scheduled Caste category. Therefore, it is necessary for the Respondent no. 1 to submit the caste validity certificate with the Petitioner institution. I say and submit that, the Petitioner institution time to time issued notice to the Respondent no. 1 for submission of caste validity certificate from the competent authority.”

8. When the said statement is carefully read, it lead to more confusion on two counts, firstly, it cannot be accepted as statement to the effect that the appointment of the respondent no. 1 was made on post reserved for Scheduled Tribe category, since the Education Officer state that the respondent no. 1 appointed as Asst. Teacher from Scheduled Caste category. The respondent no. 1 admittedly belong to the Scheduled Tribe category but the question is, whether he is appointed for a post being reserved for that category. Merely because a person belong to a reserved category, would not compel

him to produce a validity certificate unless and until his appointment is on a post reserved for the said category. Secondly, the statement made in the affidavit of the Education Officer is, therefore, not fortified since no appointment order of the respondent no. 1 is coming on record by either of the parties.

. In the aforesaid circumstances, I do not intend to delve into the controversy since this very controversy is pending before the School Tribunal at Latur.

9. In the pending appeal, an application is made by the Management seeking direction to the Education Officer (Zilla Parishad), Nanded to submit the Caste Claim Certificate of the appellant (respondent no.1) or the appellant may be directed to submit the caste claim certificate.

. Though the application is cryptic, equally enigmatic is the order passed on the said application.

. The Presiding Officer of the School Tribunal, Latur in paragraph no. 3 of it's order dated 04.02.2020, record as under : -

“3. The respondent management have admitted that appellant has filed caste claim certificate to the Education Officer. As such, the required document can be collected by management from office of Education Officer. There is nothing on record to show that Education Officer has denied to give the copy of required document to management. Further, Court is not a machinery for collection of evidence of either side. Hence, application

being devoid of merit, I pass the following order.

ORDER

Application is rejected.”

10. The aforesaid order would be read to convey that the Education Officer cannot be compelled to produce the copy of the caste validity certificate on the premise that the management claim that the appellant has filed his caste claim certificate with the Education Officer and, therefore, it is open for them to collect it from the Education Officer.

. What the Tribunal probably intend is that the management can always obtain the validity certificate of the appellant from the Education Officer, if at all it is submitted. In any case, the whole controversy would depend upon the issue to be settled by the Tribunal as to whether the termination of respondent no. 1 by the Management can be justified in the wake of the ground that he has failed to produce the validity certificate within the period stipulated, if his appointment was on a post reserved for Scheduled Tribe.

. The application filed is of no assistance to the management nor has it been determined in right spirit by the learned Tribunal. However, I concur with the Tribunal when it observes that it is always open for the management to approach the Education Officer directly for production of the validity certificate. The learned

Counsel, at this stage, state that he has preferred an application before the Education Officer for the caste validity certificate but no decision has been taken thereon.

11. In any case, the impugned orders do not warrant any interference in the light of the aforesaid facts and circumstances, since the controversy will now be determined by the Tribunal about the necessity of the producing the caste validity certificate by respondent no. 1 on being demonstrated that his appointment was from a reserved category.

. I need not say anything more and leave it to the discretion of the School Tribunal to take an appropriate decision. Though I deem it appropriate to take note of the fact that the appeal filed by the respondent no. 1 is pending since 2015 and it is high time that the Tribunal adjudicate the appeal on its merits, the School Tribunal is, therefore, requested to conclude the proceedings in Appeal No.35/2015, within a period of six months. Needless to state the parties shall render their cooperation to the learned Presiding Officer, School Tribunal, Latur, in expeditious disposal of the proceedings.

. All the contentions of the rival parties are kept open and any observations made in the preceding paragraphs shall not be binding on the Tribunal.

. Writ Petition is disposed off.

[BHARATI H. DANGRE]
JUDGE