

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3405 OF 2021

Mr. Padmakar Janya Vetkoli		Petitioner
Versus		
New India Assurance Co.		Respondent

Dr. Uday Warunjikar for the Petitioner.
Mr. V.Y. Sarglikar for the Respondent.

CORAM : S. V. GANGAPURWALA AND
MADHAV J. JAMDAR, JJ.

DATE : AUGUST 11, 2022

PC. :

1. The Petitioner seeks directions to reinstate the Petitioner with continuity in service and back-wages.

2. The learned counsel for the Petitioner submits that the Petitioner was enrolled with the Employment Exchange. The Petitioner is a physically disabled person and also belongs to Scheduled Tribe Category. The Petitioner was appointed by the Respondent on the post of Peon on 04.10.2005 by following due process of law. On or about 16.09.2008, the Scrutiny Committee invalidated the caste claim of the Petitioner. The Petitioner was terminated on 05.11.2008. The learned counsel for the Petitioner submits that the Petitioner submitted the certificate to the Respondent that he is physically disabled. The Respondent failed to consider the same. Reliance is placed by the learned counsel for the Petitioner on the provisions of Persons with Disabilities Act, 1995 to

contend that reservation is to be provided for the persons with disabilities. The definition of Persons with Disabilities is wide enough. It was incumbent upon the Respondent to consider the cause of the Petitioner from a persons with disabilities category. The status cannot be the same. It is desirable on the part of the Respondent to consider the claim of the Petitioner.

3. The learned counsel for the Petitioner relied upon the Office Memorandum dated 29.12.2005 more particularly Clauses 19 and 20 therein to submit that if the persons with disabilities cannot be considered from the particular vertical reservation, then he has to be adjusted elsewhere. The learned counsel for the Petitioner submits that the association had raised an issue in the year 2009 itself with the respondent regarding the termination of the Petitioner.

4. The learned counsel for the Respondent submits that the recruitment drive was initiated by the Respondent to fill in backlog of the reservation. The Petitioner applied from Scheduled Tribe Category. The Petitioner has failed to produce the validity certificate. Pursuant thereto, the Petitioner cannot be given benefits of social reservation posts and therefore, his services were terminated in 2008. In the year 2015 for the first time, Petitioner raked up the case of being a physically disabled person. Till 2015 the Petitioner never claimed his alleged right of being a person with disability and the Petition is filed in the year 2020. The Petitioner is seeking reinstatement upon being terminated in the year 2008, in the year 2020. The Petition suffers from delays and laches.

5. We have considered the submissions advanced by the learned

counsel for the parties.

6. It appears that pursuant to the recruitment drive initiated by the respondent to fill in the backlog of reservation, the Petitioner had applied. The Petitioner had represented of belonging to Scheduled Tribe Category. The Petitioner was appointed from the Scheduled Tribe Category. As the Petitioner was appointed from Scheduled Tribe Category, it was incumbent upon the Petitioner to produce the validity certificate. Unfortunately, as the Petitioner failed to produce the same, his claim was invalidated by the Scrutiny Committee. Pursuant thereto, the Petitioner was terminated from service w.e.f. 05.11.2008. It also appears that the appointment of the Petitioner was not from physically disabled category. It also appears that after the Petitioner was terminated in the year 2008, for the first time in the year 2015 the Petitioner claimed benefits of being physically disabled.

7. Clause 19 of the Office Memorandum dated 29.11.2005 is relied by the learned counsel for the Petitioner which provides that the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation and the same would cut across vertical reservation known as interlocking reservation. The illustration given in Clause 19 may not enure to the benefit of the Petitioner. In Clause 20 of the Office Memorandum, it states that the persons with disabilities have to be placed in the appropriate category viz.SC/ST/OBC/General in the roaster meant for reservation of SCs/STs/OBCs. The application form for the post should require the candidates applying under the quota reserved for persons with disabilities to indicate whether they belong to SC/ST/OBC or General Category.

8. Perusing the letter dated 15.09.2005 it is abundantly clear that in reference the following words are mentioned:-

“Vacancy for the post of Sub-staff (Peon) ST Category”

9. In the present case, the Petitioner had sought benefits of Scheduled Tribe Category. As his claim of being Scheduled Tribe is rejected cannot be naturally considered. After a slumber of seven years of being discontinued in service, the Petitioner seeks benefits of the persons with disabilities. The same would be too late in the day to be considered.

10. In the light of that, we are not inclined to entertain the Petition. The Writ Petition is disposed of. No costs.

MADHAV J. JAMDAR, J.

S. V. GANGAPURWALA, J.