

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No. 40 of 2021

Sunita Jagannath Chive	...	Petitioner
v/s.		
The State of Maharashtra & ors.	...	Respondents

Mr. Dilip Bodake a/w. Sharad Bhosle for the Petitioner.

Mr. N.K. Rajpurohit, AGP for the State.

Mr. Pankaj P. Deokar for Respondent Nos.2 & 3.

CORAM : A.S.Chandurkar & G.A. Sanap, JJ.

21st April 2022

P.C.

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The challenge raised by the Petitioner is to the order dated 5th March 2020 passed by the Chief Executive Officer, Zilla Parishad, Pune thereby placing the Petitioner on a supernumerary post in view of G.R. dated 21st December 2019.

3. The Petitioner was appointed as a Primary Teacher on 29th May 1992 by the Chief Executive Officer, Zilla Parishad, Pune. On completion of the probation period, her services were confirmed. It is the specific case of the Petitioner that she was appointed on open post and not on the basis of her caste. Without issuing any notice to the Petitioner, the order dated 5th March 2020 was passed placing her services on supernumerary post on the ground that the Petitioner's caste certificate was not verified.

4. Being aggrieved the Petitioner has challenged the said order.

5. Learned Counsel for the Petitioner by referring to the averments in Paragraph-6 of the writ petition submits that the Petitioner renders services as a candidate from the open category and not by securing such benefit as belonging to the Schedule Tribe category. Since the Petitioner did not secure any benefit on the basis of her tribe status, there was no reason for the Zilla Parishad to place the Petitioner's services on a supernumerary basis. The same has been done without granting any opportunity to the Petitioner. It is, therefore, prayed that the impugned order is liable to be set aside.

6. The learned Counsel for the Respondent Nos.2 and 3 – Zilla Parishad has opposed the writ petition by referring to the affidavit-in-

reply. It has been stated that the Zilla Parishad has merely sought to implement Government Resolutions dated 27th November 2020 and 28th October 2021. Since the Petitioner belongs to Schedule Tribe category and she failed to produce a validity certificate, her services have been placed on supernumerary post.

7. On perusing the documents on record, we find that there is no specific denial to the averments in Paragraph-6 of the writ petition. Herein it has been specifically pleaded that the Petitioner was appointed on an open post and not from the Schedule Tribe category. The GRs on which reliance has been placed by the Zilla Parishad pertain to employees who have taken benefit of the reservation policy but have failed to submit a validity certificate in support of their claim.

8. It is also to be noted that the impugned order has been passed without granting any opportunity to the Petitioner or by giving her any advance notice.

9. In view of the aforesaid facts, the following order is passed:

(i) The order dated 5th March 2020 passed by the Chief Executive officer, Zilla Parishad, Pune is set aside since it has been passed without granting any opportunity to the Petitioner.

If the Zilla Parishad is of the view that the Petitioner has been appointed on a post reserved for any particular category, it is free to give notice to the Petitioner and act thereafter in accordance with the Government Resolutions dated 27th November 2020 and 28th October 2021.

10. Needless to state that until any such adverse action is proposed, the Petitioner shall continue in service as before.

11. Rule is made absolute in the aforesaid terms.

(G.A.Sanap, J)

(A.S. Chandurkar, J)

Lata Panjwani, P.S.