

Dusane

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

WRIT PETITION NO.9403 OF 2015

Mr. Dilip Ramrao Deokar ...Petitioner

V/s.

Navi Mumbai Municipal Transport ...Respondent
Corporation

Dr. Uday P. Warunjikar for petitioner

Mr. Sandesh Deshpande a/w Anaga Sriram for
respondent - NMMT.

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**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 16, 2022

P.C.:

1. The petitioner was appointed as a 'driver' by the respondent-Corporation sometime in the year 1997. The petitioner's date of retirement on superannuation was 31st October 2016. However, the Corporation terminated his service on 1st October 2016 on the ground that the petitioner had failed to produce the validity certificate of his caste status from the relevant Caste Scrutiny Committee.

2. The contention of the petitioner, as espoused by Dr. Warunjikar, learned advocate, is that the petitioner was not appointed on any reserved post and, therefore, the question of his production of a validity certificate could not and did not

arise.

3. We have been shown page 12 of the writ petition which is the appointment letter issued to the petitioner. Dr. Warunjikar submits that there is no condition therein which would even remotely suggest that the petitioner was appointed on a reserved post.

4. Mr. Deshpande, learned advocate appearing for the Corporation has, however, invited our attention to page 15, which is the application that the petitioner had submitted while offering his candidature for the post of 'driver'. From such application, it is shown that the petitioner mentioned 'Vimukta Jamati' (V.J.) as his caste. It is also shown to us that on the date of the application, i.e., 3rd January, 1997, the petitioner was 38+ years of age.

5. Referring to the advertisement at page 11 of the writ petition, it is the contention of Mr. Deshpande that if at all the petitioner had applied as a general candidate, he ought to have been within the age limit of 30 years. However, the very fact that the petitioner was 38+ years of age on the date of making the application for appointment would go a long way to suggest that the relaxation envisaged in the Government circulars for offering of appointment to reserved candidates was applied in his case.

6. We have heard learned advocate for the parties and perused the materials on record. The application form dated 3rd January 1997 has been filled up by the petitioner in his own handwriting. Not only does it show that the petitioner was 38+ years of age, insertion that the petitioner belongs to

V.J. is clearly evident therefrom.

7. Having regard to the terms of the advertisement which restricted general candidates above the age of 30 years from making an application for appointment, the inference that can reasonably be drawn is that, the petitioner was considered as a candidate belonging to the reserved category and in view of the decisions of the Supreme Court in **Kumari Madhuri Patil Vs. Additional Commissioner Tribal Development & Ors.**, (1994) 6 SCC 241), and **Food Corporation of India Vs. Jagdish Balaram Bahira**, (2017) 8 SCC 670, it was the duty of the petitioner to produce the validity certificate, while he was in service. Since the petitioner's appointment appears to be *non est*, the law laid down by the Supreme Court in the decision in **R. Vishwanatha Pillai vs. State of Kerala & Ors.**, (2004) 2 SCC 105, would squarely apply and the petitioner cannot legitimately claim retiral benefits.

8. The writ petition is misconceived and, accordingly stands dismissed. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)