

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO.87 OF 2020
WITH
WRIT PETITION NO.88 OF 2020**

WRIT PETITION NO.87 OF 2020

Gokul Babarao Kale,
Aged about 48 years,
Occupation – Service as
Assistant Professor Zoology,
Department of Zoology, in G.S. Science,
Arts and Commerce College,
Khamgaon, R/o. Abhang Colony,
Nandura Road, Khamgaon,
District Buldhana

...PETITIONER

VERSUS

1. The Commissioner, (Backward Cell),
Commissionerate,
Amravati Division,
Amravati
2. Vidarbha Shikshan Prasarak Mandal,
Khamgaon, through its Secretary,
Nandura Road,
Khamgaon,
District Buldhana
3. G.S. Science, Arts and Commerce College,
Khamgaon,
through its Principal,
Nandura Road,
Khamgaon, District Buldhana

...RESPONDENTS

WITH

WRIT PETITION NO.88 OF 2020

Nana Babarao Kutemate,
Aged 49 years,
Occupation – Service as
Assistant Professor Botany,
Department of Botany in G.S. Science,
Arts and Commerce College,
R/o. Mali Nagar,
Nandura Road, Khamgaon,
District Buldhana

...PETITIONER

VERSUS

1. The Commissioner, (Backward Cell),
Commissionerate,
Amravati Division,
Amravati
2. Vidarbha Shikshan Prasarak Mandal,
Khamgaon, through its Secretary,
Nandura Road,
Khamgaon,
District Buldhana
3. G.S. Science, Arts and Commerce College,
Khamgaon,
through its Principal,
Nandura Road,
Khamgaon, District Buldhana
4. Sant Gadgebaba Amravati
University through its Registrar,
Near Tapovan Gate,
Amravati - 444602

...RESPONDENTS

Shri R.S. Parsodkar, Advocate for the petitioners.
Shri D.P. Thakre, Additional Government Pleader for
respondent No.1/State.
Shri P.B. Patil, Advocate for the respondent Nos.2 & 3.
Shri J.B. Kasat, Advocate for respondent No.4 in WP No.88/2020

CORAM : A.S. CHANDURKAR AND
SMT. URMILA S. JOSHI-PHALKE, JJ.

DATED : JUNE 24, 2022.

JUDGMENT (Per Smt. Urmila S. Joshi-Phalke, J.)

RULE. Rule is made returnable forthwith.

2. Heard finally with the consent of both the parties.
3. Both the petitioners have challenged the show-cause notice for termination of their services on the ground that they failed to produce the caste validity certificate as belonging to 'Koli Mahadeo' in Scheduled Tribe category.
4. As per the contentions of the petitioners, they both belong to 'Koli Mahadeo' Scheduled Tribes and competent authority issued them caste validity certificate. The petitioner – Shri Gokul

Babarao Kale in Writ Petition No.87/2020 is holding post graduate degree in Zoology whereas the petitioner – Nana Babarao Kutemate in Writ Petition No.88/2020 is holding post graduate degree in Botany. They further contended that respondent Nos.1 and 2 issued an advertisement dated 21/07/1995 for appointment of Lecturers in the subject of Zoology and Botany respectively. As per advertisement, the appointment to be on full time basis and reserved for the Scheduled Tribe category. After following due process, both the petitioners are appointed as a part time Lecturers in Zoology and Botany respectively for the Academic Session 1995-96. After break of some days, again petitioners have received appointment letter dated 12/09/1996 for the year 1996-97. Their appointments came to an end on 30/04/1997. Therefore, the petitioners – Gokul Kale and Nana Kutemate approached to the University and College Tribunal, Nagpur by preferring an Appeal Nos.A-9/1997 and A-10/1997 respectively. Said appeals were allowed by University Tribunal by directing to continue them as Lecturers.

5. In view of said judgment and order, approval was granted to their appointments as full time Lecturers for the subjects

Zoology and Botany respectively with effect from 15/11/1997. Their appointments are from open category. Both the petitioners were serving in G.S. Science, Arts and Commerce College, Khamgaon i.e. respondent No.3 from 15/11/1997. Roster is to be approved initially by the Nagpur University and since 2002 it is to be approved by the Commissioner (Backward Cell). Their appointments were approved by issuing 200 point roster as per the Government Resolution dated 15/09/1995. Initially it was approved by the Nagpur University and since 2002 it was approved by the Commissioner (Backward Cell). In the said roster also the post of the petitioners as a Lecturers for the subjects Zoology and Botany shown from open category. Admittedly, as per the advertisement, the post of the petitioners were shown reserved for Scheduled Tribes category but they were appointed from the Open category. Accordingly, rosters were approved initially by the Nagpur University and thereafter, by the Commissioner (Backward Cell) as well as Amravati University. Thus, post of the petitioners are absorbed and appointed in Open category.

6. The Commissioner (Backward Cell) has approved all the posts in respondent No.3 – College. The post of the Lecturers in

Zoology and Botany are approved to be from Open category. The rosters dated 09/03/2011 and 31/12/2015 shows that the post of the petitioners as Assistant Professor for Zoology and Botany approved by the Commissioner (Backward Cell) from Open category. Suddenly the petitioners have received a communication from respondent No.3 – College for the first time on 10/09/2013 for submission of the documents for caste verification. They have submitted a detailed reply on 30/09/2013. Thereafter, they have received show-cause notice on 30/12/2019 stating that their caste validity certificates are not filed and they are called to submit a caste validity certificate otherwise they have to face the termination. These show-cause notices are challenged by them by way of these writ petitions.

7. The contention of the petitioners are opposed by respondent No.1 by filing reply. As per respondent No.1, the present petitioners have secured employment with the College on the basis of the Caste but they did not produce their case validity certificate well in time. It is statutory principle that the burden of proving that, the person belong to such castes, tribes or class shall be on such claimant/applicant which is not complied by the

petitioners and, therefore, show-cause notices are issued to them. Hence, writ petitions deserve to be dismissed. Respondent Nos.2 and 3 have also resisted the petitions by filing their reply.

8. Respondent Nos.2 and 3 admitted that rosters for the subjects Zoology and Botany dated 31/12/2015 was duly approved by the competent authority i.e. respondent No.1. The roster shows that the appointment of the petitioners is from Open category. It is further contended by the respondents that they have called the petitioners to submit the caste validity certificates and also inform that in the absence of the caste validity certificates their services will be terminated.

9. Heard Shri R.S. Parsodkar, the learned Counsel for the petitioners. He invited our attention towards various documents. The advertisement issued by respondent No.3 is at Annexure-R-2 which shows that that applications are invited for the various posts including one full-time Lecturer in Botany and one full-time Lecturer in Zoology. The advertisement also shows that one full-time Lecturer post in Zoology and Botany is reserved for the S.T. i.e. Scheduled Tribes category. The petitioners have also filed

on record the appointment letters which shows that vide order dated 02/12/1995, petitioners namely Gokul Babarao Kale and Nana Babarao Kutemate are appointed as a part time Lecturers in Zoology and Botany respectively. It also appears that their appointments came to an end on 30/04/1997, therefore, they approached to the University and College Tribunal, Nagpur by preferring an Appeal Nos.A-9/1997 and A-10/1997 respectively. Said appeals were decided in their favour and the University and College Tribunal directed the respondents to continue the services of the petitioners in view of Government Resolution dated 22/12/1995.

10. In view of the directions issued by the University Tribunal the petitioners were continued in the service by issuing a letter dated 15/11/1997 by respondent No.3 – G.S. Science, Arts and Commerce College, Khamgaon. The approval granted by the Amravati University dated 21/01/1998 shows that both the petitioners were appointed as a full time Lecturers with effect from 15/11/1997 for the subjects Zoology and Botany respectively. The communication dated 21/01/1998 also shows that Amravati

University has approved the posts of Lecturer for the subjects Zoology and Botany by which the appointment of Shri Gokul Babarao Kale and Shri Nana Babarao Kutemate was approved for the subjects Zoology and Botany respectively.

11. The petitioners have also placed on record 200 point roster as per G.R. No.BCC-1094/3609/PK-56/94/16-B dated 15/09/1995 which shows that roster was approved by the Nagpur University by which the appointment of the petitioner i.e. Shri Gokul Babarao Kale for the subject Zoology was for open category and converted to full time Lecturer from 15/11/1997 and the appointment of the petitioner i.e. Shri Nana Babarao Kutemate was for open category and converted to full time Lecturer from 15/11/1997. The said roster was approved by the Nagpur University. The roster for the year 1997 issued on 02/07/1997 also shows that the appointments of both the petitioners are approved by the Nagpur University and category Open was approved accordingly. Again the said roster was approved in the year 2002 by the Commissioner (Backward Cell) and the appointment of both the petitioners was approved for the post of a Lecturers from the Open category. The rosters dated 09/03/2011 and 31/12/2015

shows that the post of the petitioners as Assistant Professor for Zoology and Botany approved by the Commissioner (Backward Cell) for Open category. Thus, both the petitioners appear to be appointed, absorbed and approved in Open category.

12. After hearing respective Counsel, we find that roster was approved since 1995-1996 till 2015 wherein the petitioners have been shown as Open category candidates. The petitioners have not sought any benefit of their Caste. Their appointments appear to be from Open category and show-cause notices were issued to them by respondent No.3 calling upon them to submit their caste validity certificates.

13. In fact, when the respondents asserted that the petitioners are appointed from the reserved category then the respondents have to show that their appointments were from the reserved category i.e. Scheduled Tribes. Respondents though submitted that their appointments were from a reserved category but their own documents shows that the appointment is from the Open category. The roster is the document of the respondents and the rosters issued till 2015 show that the appointment of the

petitioners was from Open category. When the respondents are unable to prove the assertion that the appointment of the petitioners was from reserved category then notices issued by the respondents appear to be unjust. The communication made by respondent No.3 dated 19/05/2011 also shows that the appointment of both the petitioners is from Open category and, therefore, their caste certificates are not forwarded to the Caste Scrutiny Committee.

14. In the above facts and circumstances, it was not necessary for the petitioners to submit any validity. The incorrect approval given to the roster cannot be a defence at this stage and, therefore, issuance of show-cause notice to the respondents is liable to be set aside. There is no suppression by the petitioners and they cannot be blamed for the present state of facts.

15. As the appointment of the petitioners is from Open category, the communication on record shows that they were appointed, absorbed and approved in Open category. There is no requirement of sending their claim for verification and, therefore, the show-cause notice dated 30/12/2019 calling upon them to

submit their caste validity certificates is arbitrary, illegal and liable to be set aside. Hence, writ petitions deserve to be allowed.

16. Earlier also this issue was dealt by this Court in the case of **Sharadchandra s/o Krushnarao Hinge Vs. S.T. Certificate Scrutiny Committee, Amravati Division, Amravati** (Writ Petition No.3007/2012) decided on 31/07/2013, wherein this Court has held that when the roster was approved and the petitioners have been shown as open category candidates and the petitioners are not seeking any benefit of their caste, it was not necessary for the petitioners to submit any validity. No reason came forward before us to take a different view.

17. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) The show-cause notices issued to both the petitioners dated 30/12/2019 is hereby quashed and set aside.

(c) Respondent Nos.2 and 3 are hereby directed to continue the petitioners in service as Open category

candidates.

18. Rule is made absolute in the aforesaid terms with no order as to costs.

(SMT. URMILA S. JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*