

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 683 OF 2019

Ku. Jaishri Hitendra Dalal,
(before marriage Kumari Sushila
Vitthalrao Kurhadkar)
Aged about 55 years,
Occupation : Service,
R/o. L.I.G. Plot No.115-116,
Mhada Colony, Near Hanuman Mandir,
Khat Road, Bhandara – 441904.

– PETITIONER.

-Versus-

1) Maharashtra State Electricity
Distribution Company Limited
through its Chairman & Managing
Director, having its office at Vidyut Bhavan,
Nagpur Road, Bhandara – 441904.

2) Maharashtra State Electricity
Distribution Company Limited
through its Superintending Engineer,
having its office at Vidyut Bhavan,
Nagpur Road, Bhandara – 441904.

– RESPONDENTS

Mr. S. P. Bhandarkar, Advocate for Petitioner.
Mr. A. D. Mohgaonkar, Advocate for Respondents.

**CORAM : NITIN JAMDAR &
ANIL L. PANSARE, JJ.**

DATE : 14 MARCH 2022

ORAL JUDGMENT : (PER NITIN JAMDAR, J.)

Rule. Rule returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2. The Petitioner is working with Respondent – Maharashtra State Electricity Distribution Company. The Petitioner has challenged the show cause notice dated 19 December 2018 issued by the Respondent Company to the Petitioner, seeking to terminate the Petitioner from service. Since the main charge against the Petitioner is that the Petitioner has failed to get her Caste Certificate validated, the issue that is debated before us is whether the Petitioner's appointment was in the 'Open' category or in the 'Reserved' category as against the caste certificate.

3. The Petitioner was appointed as a Lower Division Clerk-cum-Typist on 17 July 1991. The Petitioner was initially appointed in the Office of the Respondent Company at Karad, and thereafter she was transferred to her current posting at Bhandara on 13 March 1992. On 8 October 2002, the Petitioner was appointed as a Lower Division Clerk on a permanent basis. Thereafter on 27 September 2013, the caste certificate showing the Petitioner belongs to “Halba” Scheduled Tribe was sent to the Scheduled Tribe Certificate Scrutiny Committee for validation. The Scrutiny Committee returned the caste certificate to the Respondent Company on 31 January 2014, seeking certain clarifications in the

documents. On 26 October 2017, the Respondent Company wrote to the Petitioner that since the Petitioner's appointment was under the Scheduled Tribe category, the Petitioner has to get the caste certificate validated from the Scrutiny Committee within 30 days, failing which an action would be taken. The Petitioner replied that on 5 December 2017, stating that the Petitioner's appointment was not made under the 'Scheduled Tribe' category but under the 'Open' category. The Respondent Company again wrote on 4 January 2018, calling upon the Petitioner to get the caste certificate validated. The Petitioner replied to the Respondent Company on 17 January 2018, annexing the copy of the Roster for the month of July 1991, stating that the Roster mentions that the Petitioner was appointed in the 'Open' category and, therefore, there is no question of getting the caste certificate validated. Further correspondence took place, the Respondent Company wrote to the Petitioner on 9 February 2018, and the Petitioner responded to the same on 13 March 2018 on similar stands.

4. The Petitioner was served with a charge-sheet on 30 May 2018, wherein the main charges were of indiscipline under Section 86 (3), Schedule-B, Sr. No.9 of MSEDCL Employees Service Regulations, 2005; non-compliance of orders of Senior and/or Senior officers misconduct under Section 86(3), Schedule-B, Sr. No. 13 of MSEDCL Employees Service Regulations, 2005; revisit the official documents of the office under Section 86(3), Schedule-B, Sr. No. 14 of MSEDCL Employees Service Regulations, 2005; the charge of disobeying the Company's Rule and Regulations

under Section 86(3), Schedule-B, Sr. No.22 of MSEDCL Employees Service Regulations, 2005 and the charge of making a false statement (under Section 86(3), Schedule-B, Sr. No. 29 of MSEDCL Employees Service Regulations, 2005.

5. The Petitioner, by letter dated 5 July 2018, denied all the allegations and gave a point-wise reply.

6. On 28 August 2018, the Respondent Company appointed an Enquiry Officer. The enquiry was conducted on 15 October 2018, and Enquiry Report was submitted on 2 November 2018. Thereafter, a show-cause notice was issued to the Petitioner on 19 December 2018 to explain why the Petitioner should not be terminated from service.

7. At this stage, the Petitioner had approached this Court by filing the present Writ Petition challenging the show cause notice.

8. We have heard Mr. S.P. Bhandarkar, learned Counsel for the Petitioner and Mr. A. D. Mohgaonkar, learned Counsel for the Respondents.

9. On 28 January 2019, while issuing notice, the Division Bench stayed the termination of the Petitioner. The Petitioner was initially appointed in July 1991 and is now due to retire by superannuation in April 2022, a couple of weeks from now.

10. In the backdrop of these facts and circumstances, we now turn to the central issue in the Petition. As stated earlier, the main charge pressed against the Petitioner by the Respondent Company before us is that the Petitioner has committed misconduct by not submitting a caste certificate before the Scrutiny Committee for scrutiny despite repeated reminders being given to the Petitioner. According to the Respondent Company, since the Petitioner was occupying a post meant for Scheduled Tribes, the Petitioner had to get her caste certificate validated, which the Petitioner avoided doing so, and this misconduct is proved. The case of the Petitioner is that since the Petitioner was appointed in the 'Open' category, there was no question of getting her caste certificate validated, as the Petitioner never took any benefit of her caste status in the employment of the Petitioner.

11. The Petitioner was appointed in July 1991 in the service of the Respondent Company. On 26 October 2017, that is after 16 years, the Respondent Company wrote to the Petitioner that if the caste certificate of the Petitioner is not validated by the Scrutiny Committee, services of the Petitioner will be terminated. The Petitioner's immediate response was that the Petitioner had not been appointed in the 'Scheduled Tribe' category. It is an admitted position that the Petitioner has not taken any benefit of promotion either as an 'Open' candidate or in the 'Reserved' category.

12. The appointment order issued to the Petitioner does not state that the Petitioner is appointed through the 'Reserved' category. The appointment order is in a stereotype format. Ideally, to avoid a dispute of the present nature, the employer should have a specific document showing the candidate's category. The appointment is made in the 'Reserved' category would generally contain a stipulation that it is mandatory to get the caste certificate verified. The appointment order of the Petitioner is not specific on this aspect.

13. Learned Counsel for the Respondents submitted that the burden is on the Petitioner to show how the Petitioner came to be appointed, whether through advertisement or the employment exchange. It was submitted that the Respondent Company being a Public Authority, the appointment would be through public participation, and the documents preceding to the appointment would be relevant. The Respondents have sought to rely on the undated Office Note stated to be preceding the appointment to be made in the year 1990. This document refers to clear the backlogs regarding appointments to Lower Division Clerk. It states that the Committee is constituted for the appointment. The second document dated 9 July 1991 is a Report of Selection Committee which states that the Petitioner is selected through the Selection Committee. The learned Counsel for the Respondents states that the Petitioner was the only person who got selected from the interview to fill the post by a candidate belonging to 'Scheduled

Tribe', and it is quite clear that the Petitioner's appointment was against the post of Scheduled Tribe candidate.

14. The other documents which the Respondent Company had relied upon are the show cause notices issued by the Office of Respondent Company at Bhandara, where the Petitioner is currently working.

15. However, the documents stated to be preceding the appointment process are from the Office of the Respondent Company (erstwhile Maharashtra State Electricity Board) at Karad. The updated Office Note does not refer to the name of any candidate. The Selection Report, which is stated to be confidential, refers to the Petitioner, but the words "Scheduled Tribe" is typed in between two sentences when there is no such insertion occurring in any other sentence in this document.

16. The Petitioner has relied upon the Roster. The Roster was maintained by the Respondent. It has various columns. There is a specific column as to whether the vacancy is 'Reserved' or 'Open' and if 'Reserved', for what category. As regards the Petitioner, though after the name of the Petitioner, the word "Scheduled Tribe" has been stated as refers to which caste the Petitioner belongs. As regards the appointment as to which vacancy or post, the entry shows the 'Open' category. Based on this document, the Petitioner contends that there is no need to analyse the documents when the

Roster clearly shows that the Petitioner was appointed as an 'Open' category candidate.

17. The Roster is the document of the Respondent Company. The Respondent Company has not disowned the said Roster, nor it has contended that this entry does not exist. If the Respondent employer has asserted, after 16 years of employment at the end of the career of the Petitioner, that the Petitioner was appointed in a post meant for the 'Reserved' category, the Respondent Company ought to explain the specific entry in the Roster.

18. The learned Counsel for the Respondent Company sought to contend that there are erasers in the Roster. To a specific query, as to the stand of the Respondent Company, as to how these erasers can be treated as manipulations or fraud, no elaboration from the record be shown in the charge-sheet placed. A mere reference that there has been correction carried out in the Roster, and this has been treated as misconduct, but it is an admitted position that during the enquiry, the charge as Roster was manipulated has not been proved. Therefore, the Roster will have to be read as, which shows that the Petitioner was appointed on a post of 'Open' category.

19. If the Respondent Company had to disown this document, it ought to have held an enquiry to prove that the Petitioner played a fraud with the assistance of other employees to

create a record and to carry on illegal entries in the Roster. The Respondent Company did not adopt this course of action. The attempt of the Respondent Company is only to rely upon documents to which the Petitioner is not privy to before the Petitioner's appointment. However, since the Roster is also the document of the Respondent Company, the precise entry with the categorical assertion that the Petitioner is appointed in the 'Open' category, it is not permissible for the Respondent Company to omit the Roster point for consideration.

20. In these facts and circumstances, when the Respondent Company is unable to dispel the assertion of the Petitioner that the Petitioner was appointed in the 'Open' category and that being the position, the charge of misconduct against the Petitioner for not producing validity certificate will not arise.

21. We are mindful that the Petitioner has approached this Court for challenging the show cause notice, and ordinarily, the Court will not interfere with the enquiry at the show cause notice stage. However, the entire edifice of Respondents' charge of misconduct is falsified from their documents; the foundational facts upon which the action of proposed termination is based do not exist. The interim order granted in this Petition has continued for almost three years, and now, the Petitioner is due to retire on superannuation within a couple of weeks. In these circumstances, the Petitioner is entitled to succeed.

22. Accordingly, Rule is made absolute in terms of prayer clause (b) and the interim order dated 25 March 2019 is confirmed.

23. The Writ Petition is disposed of in the above terms. No costs.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]

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