

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

WRIT PETITION NO.1751 OF 2021

Sanjay S/o Sadashiv Kharchan
Aged 47 years, Occu. Service,
R/o Sudhir Colony, Akola,
Taluka and District Amravati

... Petitioner

-vs-

1. State of Maharashtra, Thr. Its Secretary,
General Administration Department,
Mantralaya, Mumbai

2. Zilla Parishad Akola,
through its Chief Executive Officer
District-Akola

... Respondents

Shri R. D. Karode, Advocate for petitioner.
Smt S. Jachak, Assistant Government Pleader for respondent No.1.
Ms Roma Bodande, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
DATE : February 08, 2022

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard learned counsel for the parties.

The petitioner claims to belong to “Koli” caste which is included in the Special Backward category. On 18/09/1993 the respondent No.2-Zilla Parishad, Akola and the Regional Selection Board published an advertisement inviting applications for the post of ‘Gramsevak’. It is the case of the petitioner that at the relevant time “Koli” caste was recognized as Other Backward Class and hence he had applied for the post of

Gramsevak in that category. Thereafter caste "Koli" was included in the Special Backward category from 17/12/1994. The petitioner came to be appointed as Gramsevak on 15/05/1996. In the seniority list that was prepared on 01/01/1999 and 01/01/2006 his name was shown in the Special Backward category. In the meanwhile the Zilla Parishad forwarded his caste certificate for verification to the Scrutiny Committee. On 29/06/2011 the Scrutiny Committee issued a validity certificate to the petitioner of belonging to "Koli"-Special Backward Class category. Accordingly an entry was made in his service-book that his caste "Koli"-Special Backward Class category was found to be valid by the Scrutiny Committee. It appears that on 11/11/2011 a show cause notice was issued to the petitioner that though he was appointed on a post that was reserved for Scheduled Tribe candidates, he had obtained a validity certificate indicating his caste to be "Koli Mahadev" which was included in the Special Backward Class category. As the validity certificate of belonging to a Scheduled Tribe was not furnished, the petitioner's services were sought to be terminated. In reply the petitioner on 29/02/2012 stated that he had never applied for appointment on a post reserved for a Scheduled Tribe candidate and that his application for the post of Gramsevak was made in the Other Backward Class category. Since "Koli" was included in Special Backward category, his services were not liable to be terminated. However on 16/03/2012 the Chief Executive Officer proceeded to

terminate the services of the petitioner on that count. A report dated 21/03/2012 was sent by the Chief Executive Officer to the State Government justifying the said action.

2. The petitioner challenged the order of termination as well as the subsequent communication dated 21/03/2012 by filing a complaint under Section 28 of the Maharashtra Recognition Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court. The Zilla Parishad however did not contest those proceedings. The learned Judge of the Labour Court after considering the documents filed by the petitioner held that the petitioner's appointment was from the Special Backward Class category and he had submitted a validity certificate in that regard. Since the petitioner had become permanent in service by virtue of order dated 02/08/2008 his services could not be terminated without following the due process of law. Hence by the order dated 24/07/2017 the Labour Court allowed the complaint preferred by the petitioner and directed the Zilla Parishad not to give effect to the letter dated 21/03/2012 and not to terminate his services without following the due process of law. After being reinstated the petitioner continued discharging duties. In the meanwhile Government Resolution dated 21/12/2019 was issued and acting on that Government Resolution the Chief Executive Officer on 04/01/2021 issued an order placing the petitioner on a supernumerary post. Being aggrieved

this order dated 04/01/2021 is under challenge in this writ petition.

3. Shri R. Karode, learned counsel for the petitioner submits that in view of adjudication of Complaint ULP No.34/2012 and the findings recorded therein, it was not permissible for the Zilla Parishad to have placed the petitioner on a supernumerary post. Inviting attention to various documents on record to indicate that the petitioner's entry in service was on a post reserved for the Other Backward Class category and "Koli" caste having been included in the list of Special Backward Class category, there was no basis for placing the petitioner on a supernumerary post. The Labour Court had recorded a finding that the petitioner had been appointed on a post that was reserved for the Other Backward Class category and thereafter from the Special Backward Class category coupled with the issuance of validity certificate in that regard was also considered by the Labour Court, it was not permissible for the Zilla Parishad to disregard those findings. Even in the service-book the relevant entry indicated the petitioner being placed in the Special Backward Class category. Since the Zilla Parishad did not challenge the order of the Labour Court, it was not permissible now for the Zilla Parishad to take a different stand. It was thus submitted that the impugned order was liable to be set aside.

4. The learned counsel for the respondent No.2 supported the impugned order and referred to the reply filed by the Zilla Parishad in which it was stated that the petitioner's entry in service was by indicating his tribe as "Koli Mahadev" and not "Koli". While "Koli Mahadev" is recognised as a Scheduled Tribe, the caste "Koli" was initially recognized as falling in Other Backward Class category. Since the petitioner did not furnish validity certificate of belonging to "Koli Mahadev", he was rightly placed on a supernumerary post. The action was taken in accordance with the Government Resolution dated 21/12/2019. It was therefore submitted that no interference with the impugned order was called for.

5. We have heard the learned counsel for the parties and we have considered the documents placed on record. The documents on record indicate that after entry in service on the post of Gramsevak, the caste certificate of the petitioner of belonging to "Koli" was sent for verification before the Caste Scrutiny Committee pursuant to the petitioner's application dated 27/04/2011. The Caste Scrutiny Committee accordingly on 29/06/2011 has issued such validity certificate to the petitioner of belonging to "Koli"-Other Backward Class category. Thereafter an entry in the petitioner's service-book of belonging to "Koli" Special Backward Class has been taken. The Zilla Parishad on 11/11/2011 had issued a notice to the petitioner as to why his services should not be terminated as he had not

submitted a validity certificate of belonging to Scheduled Tribe category. In response the petitioner on 29/02/2012 had submitted his explanation that he had applied for employment through the Selection Board from the Other Backward Class category as belonging to "Koli" caste which was subsequently shown in the list of Special Backward Classes. The subsequent communication made by the Chief Executive Officer with the State Government on 21/03/2012 specifically indicates that insofar as the petitioner is concerned, despite searching for old records pertaining to the petitioner's appointment, the original file could not be traced and therefore it was not possible to gather from which category the petitioner came to be appointed. That communication further states that the petitioner failed to submit a validity certificate of belonging to Other Backward Class category and instead a validity certificate of belonging to Special Backward Class category was submitted. On that premise it was stated that the petitioner's services had been terminated.

6. It is not in dispute that this communication dated 21/03/2012 had been challenged by the petitioner by filing Complaint ULP No.34/2012. The Zilla Parishad did not choose to contest these proceedings. The judgment dated 24/07/2017 indicates that at Exhibit-U-35 was a certificate issued by the Zilla Parishad dated 28/11/2016 that complainant was made permanent in service. Another finding recorded by the Labour Court in

paragraph 11 of its judgment was that the petitioner was appointed from the Special Backward Class category and he had submitted a validity certificate of belonging to that category. After referring to an earlier order dated 02/08/2008 treating the services of the petitioner to be permanent, the Labour Court proceeded to record a finding that as the petitioner was a permanent employee his services could be terminated after following the due process of law. On this premise the complaint came to be allowed. As stated above this adjudication has attained finality and therefore the same would be binding on the petitioner as well as the Zilla Parishad.

7. As per Government Resolution dated 21/12/2019 the State Government proceeded to take steps to implement the judgment of the Honourable Supreme Court dated 06/07/2017 in Civil Appeal No.8928/2015 (*Chairman and Managing Director, FCI and ors. vs. Jagdish Balaram Bahira and ors.*). In effect, posts reserved for Scheduled Tribe category were intended to be filled in and those occupying such posts that were reserved but were not entitled to do so were to be placed on supernumerary posts. For making this Government Resolution applicable to the case of the petitioner, it was necessary for the Zilla Parishad to have come with a clear stand that the petitioner was infact holding a post that was reserved for a candidate from the Scheduled Tribe category. On the contrary, the petitioner's service-book does not indicate so and an entry has

been taken that the petitioner's caste "Koli" is shown in the Special Backward Class category. The communication dated 21/03/2012 issued by the Zilla Parishad itself states that the old records pertaining to the petitioner's initial appointment could not be traced and therefore it was not possible to come to a definite conclusion as to from which category of reserved posts was the petitioner appointed. Coupled with the aforesaid is the adjudication by the Labour Court in favour of the petitioner. The documents issued by the Zilla Parishad dated 02/08/2008 Exhibit-U-28 and 28/11/2016 Exhibit-U-35 showing the petitioner to be permanent in service have not been controverted. The Labour Court has further concluded that the petitioner is a permanent employee of the Zilla Parishad. In these circumstances therefore when there is no material even with the Zilla Parishad to hold that the petitioner's entry was on a post reserved for the Schedule Tribe category, the provisions of Government Resolution dated 21/12/2019 cannot be made applicable to the case of the petitioner. Though it was urged on behalf of the Zilla Parishad that in the seniority lists dated 01/01/2006 and 01/04/2011 the caste of the petitioner was shown as "Koli Mahadev"-Special Backward Class, the entry in the service-book has been made subsequent thereto on 10/10/2011 followed by the communication of the Zilla Parishad dated 21/03/2012 indicating absence of the original record pertaining to the petitioner's appointment. The stand taken by the Zilla Parishad indicates that it itself is not sure as to whether

the petitioner's initial entry in service was from the Scheduled Tribe category. In that view of the matter we find that the petitioner could not have been placed on a supernumerary post as per order dated 04/01/2021 by relying upon Government Resolution dated 21/12/2019. At the same time it is always open for the Zilla Parishad to proceed against the petitioner if it is able to gather relevant material and take appropriate action against the petitioner in terms of direction [04] of the order passed by the Labour Court dated 24/07/2017. Accordingly the following order is passed :

- (i) The order dated 04/01/2021 issued by the Chief Executive Officer, Zilla Parishad, Akola is quashed and set aside.
 - (ii) The petitioner shall continue in employment of the Zilla Parishad in terms of the adjudication by the Labour Court, Akola in Complaint ULP No.34/2012.
 - (iii) As per the liberty granted therein it is open for respondent No.2 to follow the due process of law in case it intends to take any action against the petitioner and/or the Zilla Parishad obtains necessary material to indicate the petitioner's appointment on a post reserved for the Scheduled Tribe category.
 - (iv) Rule is made absolute in aforesaid terms.
- No order as to costs.

(Pushpa V. Ganediwala, J.)

(A. S. Chandurkar, J.)