

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

WRIT PETITION NO.2954 OF 2018

Mohsin Baig Abbas Baig
Aged about 47 years,
R/o At Post Khetri Tahsil Patur,
Dist. Akola

... Petitioner

-vs-

1. Zilla Parishad, Akola
Through its Chief Executive Officer,
Akola
2. The Caste Scrutiny Committee,
Through its Deputy Director,
Aurangabad
3. Block Development Officer,
Panchayat Samiti, Akot
4. Education Officer, Primary,
Zilla Parishad, Akola

... Respondents.

Shri R. D. Karode, Advocate for petitioner.
Smt K. R. Deshpande, Assistant Government Pleader for respondent No.2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : July 15, 2022

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

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

The challenge raised in this writ petition is to the order dated 16/10/2017 issued by the Chief Executive Officer, Zilla Parishad Akola terminating the services of the petitioner from the post of Assistant Teacher. A challenge is also raised to the consequential relieving order

dated 25/10/2017 issued by the Block Development Officer, Panchayat Samiti, Akot.

2. It is the case of the petitioner that he was appointed as an Assistant Teacher with Zilla Parishad, Akola on 11/10/2000 on a reserved post. The caste-claim of the petitioner was forwarded to the Scrutiny Committee for verification. The petitioner's claim was not decided presumably for the reason that he was following Muslim religion. The petitioner therefore on 10/01/2006 made a request to the Chief Executive Officer to place him in the Open category as per Government Resolution dated 07/12/2001. This request of the petitioner was accepted and in the seniority list dated 01/09/2007 he was placed at Serial No.337 in the Open category. The petitioner was given benefit of higher pay-scale on 26/12/2008 and therein it was mentioned that he was from the Open category as well as Handicap. On 02/05/2017 the Chief Executive Officer issued a notice to the petitioner stating therein that since he had not submitted a validity certificate, his services would be liable to be terminated for want of validity certificate. Thereafter on 16/10/2017 the petitioner's services were terminated. Being aggrieved the petitioner has challenged the aforesaid action.

3. The learned counsel for the petitioner submitted that it was

not possible for him to obtain validity certificate for the reason that he was professing Muslim religion. The petitioner's request for being placed in the Open category had been accepted by the Chief Executive Officer. The petitioner's name figured in the seniority list published on 01/09/2007. Moreover, as per Government Resolution dated 07/12/2001 his services were not liable to be terminated and he was entitled to have been continued in the Open category. He invited attention to the judgment passed by in Writ Petition No.2593/2002 (*Abdul Majeed S/o Sheikh Abdullah vs. The State of Maharashtra, Thr. Its Secretary, Education Dept. Mantralaya, Mumbai and ors. with connected writ petition*) decided on 21/09/2017 to urge that cases of similarly situated Assistant Teachers apprehending termination had been considered by protecting their services against existing vacancies. Pursuant to the judgment dated 11/12/2019 passed in Writ Petition No.7079/2019 (*Abdul Khalique Sk. Hasan and ors. vs. The Zilla Parishad, Akola*), another Assistant Teacher had been given such benefit and was placed in the Open category. Since the termination of the petitioner's services were only on account of absence of validity certificate, he was entitled to be reinstated in service. It was thus submitted that the prayers made in the writ petition be granted.

4. There has been no appearance on behalf of respondent Nos.1

and 4 despite service. Hearing of the writ petition was adjourned on various occasions to enable reply to be filed on behalf of the said respondents. However, no reply has been filed till date. The averments as made are untraversed.

It is seen from the record that though the petitioner was initially appointed in the Schedule Caste category, his request as made on 10/01/2006 to place him in the Open category as per Government Resolution dated 07/12/2001 was accepted by the Zilla Parishad. The petitioner's name figured in the seniority list at Sr. No.337 against the Open category. The order granting higher pay-scale to the petitioner also indicates that there is a reference to the word 'Open' which has been subsequently scored out along with word 'Handicap'. As per Government Resolution dated 07/12/2001, Assistant Teachers professing Muslim religion were permitted to be treated as a separate Unit and were to be treated as candidates from the 'Open' category. This Government Resolution has been followed by the Zilla Parishad and the petitioner has been shown in such seniority list prepared by the Zilla Parishad. In this background there was no reason for the Chief Executive Officer to have terminated the petitioner's services for want of validity certificate.

5. We also find that similar issues were considered in the writ

petitions referred to herein above. Though it was a case of apprehended termination therein, this Court permitted the Zilla Parishad to consider the case of said petitioners against the vacancies for Open candidates in terms of Government Resolution dated 07/12/2001. Such benefit has been granted to petitioner No.1 in Writ Petition No.7079/2019 in the light of the order dated 19/01/2021 passed by the Chief Executive Officer. In that view of the matter, we do not find any reason to deny relief to the petitioner. Hence the following order is passed.

- (i) The order of termination issued to the petitioner on 16/10/2017 is set aside.
 - (ii) It is directed that the petitioner shall be reinstated on the post of Assistant Teacher (Urdu Medium) with Panchayat Samiti, Akot within a period of ten days from receipt of copy of this judgment. Such reinstatement shall be with continuity in service for all purposes.
 - (iv) The petitioner shall be shown in the Open category as he was earlier shown in the seniority list published on 01/09/2007.
 - (v) Since there is no prayer for grant of back-wages, we have not considered the same. The respondent No.1-Zilla Parishad is free to consider such request of the petitioner if made for back-wages in accordance with law.
- Rule is made absolute in aforesaid terms with no order as to costs.