

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2025 OF 2023

Yogesh s/o Laxmanrao Kalyankar,
Age-32 years, Occupation - Service,
R/o Kinwat,
Tq. Kinwat, Dist. Nanded

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
General Administration Department,
Mantralaya, Mumbai-32,

2. The Superintending Engineer,
M.S.E.D.C. Ltd., Nanded Zone,
Circle Office, Nanded,
Nava Mondha, Vidhyut Bhavan,
Nanded, Tq. and Dist.Nanded,

3. The Executive Engineer,
M.S.E.D.C.Ltd., (Bhokar Division),
Vidhyut Bhavan, Nanded Road,
Bhokar, Tq. Bhokar, Dist.Nanded

-- RESPONDENTS

Mr.VB.Dhage, Advocate for the petitioner
Mr.PS.Patil, AGP for respondent No.1.
Mr.A.M.Gaikwad, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : MARCH 9, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clause B, C and D as under :-

"B. Issue writ of mandamus, or any other writ, order or direction in the nature writ of mandamus, it may kindly be hold and declare that, the Administrative circular No.464 Dtd.11.07.2013 issued by respondent authorities is not applicable in the case of present petitioner and for that purpose issue necessary orders.

C. Issue writ of certiorari, or any other writ, order, the impugned communication dated 02.02.2023 issued by the respondent No.3 may kindly be quash and set aside, and for that purpose issue necessary orders.

D. Pending hearing and final disposal of the present writ petition, the effect, operation and implementation of the impugned communication dated 02.02.2023 issued by the respondent No.3 may kindly be stayed and for that purpose issue necessary orders."

3. Having considered the strenuous submissions of the learned Advocates for the respective sides and in view of the record available, we find that the issue that needs to be considered is as to whether the Petitioner's father had applied for a post reserved for a

Backward Category or was he selected and appointed on such a reserved category post. If this is established and if the father has not tendered a validity certificate, the Petitioner, who has been granted compassionate appointment in his place, would be duty bound to tender a validity certificate in view of the judgment delivered by the Full Bench of this Court in the matter of **Om Bhagwanrao Anjanwad Vs. State of Maharashtra and another [2022(4) Mh.L.J. 723]**.

4. Considering the issue involved in this case, we have perused the compilation of documents (10 pages), tendered by the learned Advocate for the Company, marked as “X” collectively for identification. On written instructions vide communication dated 03.03.2023, the learned Advocate for the Company submits that there is no record available to indicate that the Petitioner’s father had applied for a post by virtue of his claim of belonging to “*Lingder*” caste, which is known as a Scheduled Caste or that he was selected and appointed as a Technician, which post was reserved for the Scheduled Caste Backward Category. It is also conveyed that the Petitioner’s father never acquired any service benefits or advantage of belonging to the Scheduled Caste category. Since he suffered an accident and lost his left hand,

sometime in 2002, that he opted for the “*early retirement scheme for line staff*”. Thereafter the Petitioner was considered and vide order dated 03.06.2009, he was appointed as “विज सेवक”. Vide order dated 03.06.2014, he was posted as a “विज सेवक” to the Junior Technician. Subsequently, he was permanently absorbed as a Junior Technician. By the impugned communication dated 02.02.2023, he is directed to produce his Scheduled Caste Validity Certificate, failing which, his service would be brought to an end.

5. The appointment order of the Petitioner’s father dated 23.03.1995, is a common order issued in favour of 48 persons as अधिसंख्य वाहिनी मदतनीस. The word अधिसंख्य means supernumerary. As such, these 48 candidates, who are all daily wage employees, were appointed as Line Helpers. Their PF Account Numbers as well as their social status is mentioned below their names. The father of the Petitioner is shown to be a member of the Scheduled Caste Category.

6. The learned Advocate for the Company has strenuously canvassed that though the record does not reveal the selection of the Petitioner’s father on a post reserved for the Backward category, the

Petitioner could not have been accommodated as the post was supernumerary in nature. Though this ground has not been raised by the Company, he needs to tender a caste validity certificate.

7. The learned Advocate for the Petitioner submits on instructions that as the father was not appointed on a reserved category post and did not avail of any benefits available to the reserved category, he would also not claim or seek or receive any benefits, which are available to a person from such reserved category as he has not been selected from the said category.

8. He further points out Clause 6 in Annexure “B” to the Administrative Circular dated 06.08.2008 issued by the Respondent Company, by which the “*early retirement scheme for Line Staff*” was introduced, by the Administrative Circular dated 04.08.2008 as under :-

६. तारमार्ग कर्मचारी वर्गासाठी पर्याय / विकल्प —

उर्वरित सेवाकालावधीसाठी भरपाई घेणे किंवा त्याच्या मुलास कंपनीच्या सेवेत कंत्राटी तत्वावर रोजगारासाठी नामनिर्देश करणे असे पर्याय या योजनेनुसार नियत कालावधीपूर्व सेवानिवृत्ती घेणा—या तारमार्ग कर्मचारी वर्गातील कर्मचा—यास उपलब्ध असतील.

As such, the Petitioner is inducted in employment in the light of

Clause 6.

9. In view of the above, it is apparent before us that the Petitioner's father had neither applied for, nor was he selected on a reserved category post. We, therefore, conclude that he was not selected on a post reserved for a backward category and, hence, the circular dated 11.07.2013 mandating the submission of a caste validity certificate, would not apply to the case of the Petitioner.

10. Consequentially, this petition is allowed. The impugned order dated 02.02.2023 is quashed and set aside and it is declared that the father of the Petitioner was a candidate selected on a post which was not reserved for a Scheduled Caste category. Naturally, the Petitioner would not be entitled for any service benefits on the basis of his social status.

11. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)