

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.5906 OF 2020

Suryakant s/o Chandulal Koturkar
Age 55 years, Occ. Service
R/o. Gopalpura, College Road,
Jalna, Tq. and District Jalna

...Petitioner

versus

1. The State of Maharashtra
General Administration Department,
Mantralaya, Mumbai 32
Through its Secretary

2. The Chief Executive Officer
Zilla Parishad, Jalna
Tq. and District Jalna

...Respondents

.....
Mr. S.C. Yeramwar, advocate for the petitioner
Mr. V.M. Kagne, A.G.P. for responded No.1
Mr. B.B. Kulkarni, advocate for respondent No.2
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 7th FEBRUARY, 2023.**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.):

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

2. On 24.8.2020, this Court had passed the following order:-

"1. We have heard the learned Advocate for the petitioner. He was appointed as an "Attendant" through the Freedom Fighters' Quota as a nominee of a Freedom Fighter. He was never selected and appointed against a post which was reserved for the Other Backward Class Caste "Shimpi". He has been now put under notice that his appointment would be treated as being for 11 months on a supernumerary post as he has not submitted his Validity Certificate.

2. Issue notice to the respondents, returnable on 31/08/2020. The learned AGP waives service of respondent No.1.

3. Since we are informed that the Zilla Parishad, Jalna has a panel and as Mr.Tope, learned Advocate available online, submits that he cannot accept notice until the C.E.O. allots the file to him, we have called upon Mr.Tope to waive notice on behalf of respondent No.2 and take appropriate instructions so that respondent No.2 would address us through its Counsel on 31/08/2020.

4. The prayer of the petitioner seeking interim protection will be considered on 31/08/2020. Matter be placed in the Urgent Category."

3. After the above order was passed, this matter was adjourned on various occasions at the behest of the Zilla Parishad. Finally, on 19.1.2023, we had passed the following order:-

“1. Considering the peculiar controversy and on perusing the appointment order issued to the petitioner, dated 13.2.1986, which clearly indicates that he has been appointed temporarily on the post of peon, District Services Class IV, there is no mention that the appointment is on any post reserved for a backward category.

2. We grant a last opportunity to the Zilla Parishad, Jalna to place on record any such document, which will indicate that the petitioner had applied to the post which was reserved for the backward category and he was selected and appointed on the said reserved post.

3. Stand over to 07.02.2023, in the ‘passing orders’ category.”

4. The learned advocate representing the Zilla Parishad has filed an affidavit in reply dated 5.2.2023, through Shri Pradeep Bhimrao Kakde, the Deputy Chief Executive Officer, Zilla Parishad, Jalna. It is submitted that the petitioner belongs to Shimpi caste which falls in O.B.C. The reservation roster has been verified from time to time by the department. The office record i.e. KARMACHARI SARAL SEVA BHARTI PADONNATI 100 BINDU NAMAVALI VAHI, shows at Sr. No. 53 that the post on which the petitioner was appointed is reserved for S.T. category. It is further specifically submitted in paragraph No.2 of the affidavit in reply, as under:-

“2. I say and submit that the petitioner was appointed on 13/02/1986 as a freedom fighters nominee on preferential bass. There is no reservation for getting appointment as a freedom fighters nominees, only preference is available to the

freedom fighter nominee for getting appointment.”

It is, therefore, the stand of the Zilla Parishad that the petitioner's appointment was on vacant post reserved for the S.T. category.

5. Having considered the submissions of the learned advocates for the respective sides, we find that there is no dispute that the petitioner is a nominee of a freedom fighter (his father). He belongs to 'Shimpi' caste, which falls in the O.B.C. category. It is also undisputed that the Zilla Parishad does not have any record to indicate that the petitioner was issued with an appointment order after selecting and appointing him on a post reserved for the S.T. category. Moreover, this could not have been possible since the petitioner never claimed, nor has the Zilla Parishad ever asserted that the petitioner belongs to S.T. category. If he falls in the O.B.C. category, he could not have been appointed on the permanent vacant post which was reserved for S.T. category. Be that as it may, there is nothing on record to indicate that the petitioner was appointed on a vacant post, which was reserved for any backward class or category.

6. The learned advocate for the Zilla Parishad has contended that the entry in the service book of the petitioner indicates his caste. We are not impressed by this submission for the reason that in the service record, the social status of a person is always mentioned,

notwithstanding, whether he is appointed from a reserved category or from the open category. Even if a person belongs to an open category, his caste and religion is mentioned in the service book. It is also undisputed that the petitioner has never taken any service benefits on account of belonging to O.B.C. category, much less the S.T. category.

7. In view of the above, we do not find that the Zilla Parishad is justified in placing the petitioner on a supernumerary post on the ground that, *“he has failed to submit a validity certificate of belonging to S.T. category”*.

8. Hence, this petition is allowed. The impugned order dated 31.12.2019, is quashed and set aside. The petitioner would stand restored to the position that he earlier held prior to the issuance of the impugned order.

9. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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