

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6138 OF 2022

Macchindra s/o Maruti Kone,
Age-60 years, Occ. Pensioner,
R/o At & Post-Shahapur, Tq. Tuljapur,
Dist. Osmanabad

- Petitioner

VERSUS

1. The State of Maharashtra,
Tribal Development Department,
Mantralaya, Mumbai- 32.
Through its Secretary.

2. Scheduled Tribe Certificate
Scrutiny Committee, Aurangabad Division,
Aurangabad, Tq. & Dist. Aurangabad.
Through its Member Secretary.

3. The Chief Executive Officer,
Zilla Parishad, Osmanabad,
Tq. & Dist. Osmanabad.

-Respondents

Mr.S.C.Yeramwar, Advocate for the petitioner.
Mr.S.G.Sangle, AGP for respondent Nos. 1 and 2.
Ms. Rani V.Ghogare, Advocate for respondent No.3.

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

DATE : JANUARY 5, 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) To direct the Respondent No.3 to forthwith grant and release the pension and all the pensionary benefits to the Petitioner without insisting for submission of Certificate of Validity as he is retired from service by superannuation on 30.6.2020, by issuing appropriate writ, orders, or as the case may be;

(C) To direct the Respondent No.2- Committee to decide Tribe Claim of the Petitioner which is pending since 31.7.2013 as expeditiously as possible within a stipulated period as this Hon'ble Court deems fit, by issuing appropriate writ, orders, or directions as the case may be;

(D) To direct the Respondent No.3 to forthwith grant provisional pension and release all the pensionary benefits to the Petitioner pending hearing and final disposal of the present Writ Petition;"

3. When this matter was heard on 22.07.2022, we noted that the petitioner was appointed as an Attendant on 21.08.1986 from the Freedom Fighters' Quota. His father is a freedom fighter who was issued with a Freedom Fighter certificate. This is an undisputed aspect, notwithstanding the fact that the petitioner has apparently wrongly stated in his pleadings that he was appointed on a post reserved for the

Scheduled Tribe Category. Subsequently, he was promoted as a Driver and he superannuated on 30.06.2020. His pensionary benefits have been withheld on account of his failure to submit a validity certificate of belonging to the Koli Mahadev ST category.

4. The Full Bench of this Court had an occasion to deal with a situation as to when would a compassionate appointee be required to tender his/her validity certificate in the matter of **Om Bhagwanrao Anjanwad Versus The State of Maharashtra, Through it's Principal Secretary and another [2022(4) Mh.L.J.723]**. We have concluded that if a person is appointed on a post reserved for a backward category, he would be obliged to tender a validity certificate. If his son / daughter is appointed on a compassionate basis and the father failed to submit a validity certificate, such a compassionate appointee will have to tender a validity certificate since his compassionate appointment has its roots in the entry of his/her father who was appointed on a post reserved for a backward category. Therefore, the basic requirement is that the entry of a person in employment should be on a post reserved for the backward category.

5. The learned Advocate representing the Osmanabad Zilla Parishad submits on specific instructions that the petitioner was never appointed on a post which was reserved for a particular backward category. Despite opportunities, the Zilla Parishad is unable to produce any order indicating that the petitioner was appointed on a post which was reserved for a backward category.

6. This brings us to the next issue of whether the petitioner was granted promotion purely on the basis of his belonging to the Koli Mahadev Scheduled Tribe Category. The learned Advocate for the Zilla Parishad has tendered a compilation of documents (9 pages) which is taken on record and collectively marked as "X-1" for identification. We are dealing with the said compilation, document wise, as under :-

[a] Page No.1 pertains to a request letter made by the petitioner dated 07.04.1994 addressed to the CEO, Osmanabad praying for promotion to the post of a driver.

[b] He has disclosed that he was working as an Attendant from 01.09.1986. He had a driving license and he declared that he had the experience to drive a vehicle.

[c] He has mentioned in his application that he belongs to the Koli

Mahadev ST Category and his father is a freedom fighter. Relevant fact is that the petitioner has never prayed for promotion on the basis of his belonging to the ST category and never claimed that if the post of a Driver, that may be reserved for the ST category, be allotted to him.

[d] With regard to the minutes of the Osmanabad Zilla Parishad Internal Divisional Promotional Committee meeting dated 17.03.1997, they clearly indicate from the first paragraph that the 23 applicants for 8 posts of Drivers, had to undergo a driving test. The second paragraph indicates that the Maharashtra District Services (Maharashtra Zilla Parishad District Recruitment) Rules, 1967 were made applicable for selecting the candidates for promotion. 1 : 3 proportion was followed. It is specifically noted that the candidates that were selected for promotion, were held eligible purely on the basis of their seniority and the marks scored by them in their driving test. This indicates that all 8 candidates were promoted on the basis of seniority and merit. Out of the 23 candidates, 15 candidates were rejected as they failed in their driving test or they remained absent for the driving test. That left 8 candidates who were eligible on the basis of their seniority and merit (marks scored in the driving test).

7. We do not find from the entire proceedings of the Committee dated 17.03.1997 that these 8 candidates were selected as per the reservation roster and the other candidates were eliminated on the same ground. One paragraph discusses the reservation, but that does not disclose anything as regards accommodating any appointee on a particular reserved post. Out of the 23 candidates, 8 candidates including the petitioner qualified in the driving test and based on the marks scored, they were promoted.

8. We repeatedly called upon the Zilla Parishad to point out from any document or the order of promotion issued to the petitioner that his selection and promotion was purely on the basis of his belonging to the Koli Mahadev Scheduled Tribe Category. The Zilla Parishad is unable to establish before us through any document that the selection of the petitioner was not on the basis of his passing the driving test , but because he belonged to the Koli Mahadev Scheduled Tribe Category. Had this been established before us, we would have been required to take a different view.

9. As such, it is obvious that the petitioner entered employment

from the freedom fighters' quota. His promotion was on the basis of his seniority and as he passed the driving test. In the absence of any documentary evidence, merely because he belonged to the Koli Mahadev Scheduled Tribe Category, would not mean that his selection for promotion was on the basis of reservation, when the Committee comprising of the C.E.O., Zilla Parishad, Deputy C.E.O. and District Social Welfare Officer, have observed that his selection alongwith 7 others was on the basis of seniority cum merit.

10. In view of the above, we arrive at a conclusion that the retiral benefits of the petitioner, inclusive of the pensionary benefits, can not be withheld as he is not legally bound to submit a tribe validity certificate.

11. We, therefore, partly allow this petition. It is directed that the petitioner's service benefits be released in terms of prayer clause B alongwith admissible interest. Such arrears alongwith admissible interest should be paid to the petitioner within 4 months from today.

12. In view of the above, there is no requirement to direct the

competent committee to decide the pending claim of the petitioner urgently. The same has been pending since 2013. We, therefore, observe that the said claim, with the wholehearted co-operation of the petitioner, be decided on or before 31.01.2024. If the petitioner does not co-operate in the proceedings and seeks adjournment on unreasonable or trivial grounds, the Committee would be justified in progressing to the next stage in the proceedings.

13. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)