

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8040 OF 2013

JUGNUSINH JAISINH DIXIT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Shri Dhananjay A. Mane
AGP for Respondents 1 and 2/State : Shri S.K. Tambe
Advocate for Respondent 3 : Mrs.Yogita S. Thorat

...

CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 06th April, 2023

Per Court :-

1. The Petitioner has put forth prayer clauses B, C, D
and E as under:-

- “B) Quash and set aside the decision dated 04/07/2012, communicated to the petitioner on 07/04/2013, passed by the respondent No.2-Member Secretary, Caste Scrutiny Committee for Scheduled Caste, VJ, NT, Other Backward Class and Special Backward Class, Aurangabad Region at Latur and hold and declare that petitioner belongs to 'Rajput Bhamta' caste and issue directions in that behalf.
- C) Quash and set aside the termination order dated 23/03/2013 issued by respondent no.3-Chief Executive Officer, Zilla Parishad, Nanded and direct the respondent no.3 to forthwith reinstate the services of the petitioner on the post of

- Superintendent and extend him of consequential benefits arising therefrom.*
- D) *Pending hearing and final disposal of this petition, effect, operation and execution of decision dated 04/07/2012, communicated to the petitioner on 07/04/2013, passed by the respondent No.2-Member Secretary, Caste Scrutiny Committee for Scheduled Caste, VJ, NT, Other Backward Class and Special Backward Class, Aurangabad Region at Latur may be stayed.*
- E) *Pending hearing and final disposal of this petition, termination order dated 23/03/2013 issued by respondent no.3-Chief Executive Officer, Zilla Parishad, Nanded, may be stayed with a further direction to the respondent no.3 to forthwith reinstate the petitioner on the post of Superintendent or any other post and continue the services of the petitioner on the post of Superintendent or any other post on such terms and conditions which this Hon'ble Court may deem just and proper.”*

2. The learned Advocate for the Petitioner makes a specific statement, on instructions, that the Petitioner does not desire to press prayer clause B and the same may be treated as deleted.

3. In view of the above, the Petitioner has withdrawn his challenge to the order dated 04.07.2012 by which, the competent Caste Scrutiny Committee has invalidated the claim of the Petitioner of belonging to “Rajput Bhamta”, VJNT category.

4. Considering the above, this Writ Petition lies in a narrow compass. The Petitioner has been terminated from service only for the reason that his claim was invalidated.

5. The father of the Petitioner was working as a Junior Assistant. He passed away on 20.07.2000. The Petitioner applied for grant of compassionate appointment, sometime in 2002. He was appointed on compassionate ground on 27.02.2004. The Zilla Parishad has declared it to be a special drive for reserved categories. Since the claim of the Petitioner was invalidated, he was terminated on 23.08.2013. Subsequently, he was reappointed on 07.02.2014.

6. The contention of the Petitioner is that his father was appointed from the open category. He had never applied for a post, which was reserved for any backward category. He relies on the judgment of this Court (Coram : Anoop V. Mohta and Ravindra V. Ghuge, JJ) dated 18.04.2017 in Writ Petition No.4656/2014 filed by ***Pramod Shivaji Shinde vs. State of Maharashtra and others***, at the Principal Seat. This Court has concluded that if the father has been appointed from the open category, the appointment of the compassionate appointee cannot be from any reserved category, unless he has given up the claim

for compassionate appointment and has applied for seeking employment through the reserved category.

7. In the judgment delivered by the Full Bench of this Court in *Om Bhagwanrao Anjanwad vs. State of Maharashtra and another, 2022 (4) Mh.L.J. 723*, it has been concluded that if the father of the compassionate appointee was inducted in service on the basis of reservation and he did not tender a validity certificate during his lifetime, the compassionate appointee is under an obligation to tender a validity certificate. Until then, his employment cannot be legitimised. If the father had tendered the validity certificate, the compassionate appointee is not required to once again undergo the rigours of validation of his claim.

8. The learned Advocate for the Zilla Parishad submits that though the Petitioner's father was appointed from the open category, the Petitioner was recruited in a special drive for filling in the backlog/ vacancies with regard to the candidates from the reserved categories. The appointment order of the present Petitioner indicates that he was appointed in the special drive to fill up the backlog of reserved posts on compassionate grounds.

9. We are unable to accept the contention of the Zilla Parishad. If a person appointed from the open category has

passed away, notwithstanding that he belongs to a particular reserved category, his son cannot be said to be appointed from the backward category or reserved category though he draws his social status from his father. No matter that he belongs to the reserved category, as his father was appointed from the open category and the issue is as regards the recruitment of a legal heir of such deceased father, on compassionate basis, he could not have been appointed or shown to have been appointed on a post reserved for the backward category.

10. Moreover, much water has flown ever since the Petitioner was appointed on 27.02.2004. After almost 20 years, it would be too much to expect that a rectification exercise can be undertaken to cure any irregularity committed by the Zilla Parishad. Since there is no dispute that the Petitioner's father was appointed from the open category, the Petitioner's appointment on 27.02.2004 ought to be treated as being from the open category.

11. He had approached this Court in Writ Petition No.1677/2002 for seeking an order of compassionate appointment as the Panchayat Samiti, Kinwat, had kept the proposal of the Petitioner pending and no decision was taken

even after two years of his father's demise. It was under the orders of this Court dated 28.01.2003, that the Authorities were directed to decide the application of the Petitioner seeking compassionate appointment. It was in this backdrop that the Petitioner was appointed on compassionate basis.

12. In view of the above and considering the law applicable, we are of the view that the Petitioner's appointment on 27.02.2004, shall be treated as being from the open category. Consequentially, his termination dated 23.08.2013, which was purely for the reason that his claim was invalidated by the Scrutiny Committee, stands quashed and set aside. The Petitioner was reappointed on 07.02.2014. His appointment shall be treated to be from the open category and in continuity with the earlier service of the Petitioner.

13. The learned Advocate for the Petitioner prays for 100% back wages. The learned Advocate for the Zilla Parishad vehemently opposes the said prayer on the ground that "no work-no wages" principle would become applicable.

14. Considering the rival contentions, the fact that the Petitioner was not permitted to discharge his duties and taking into account that the Panchayat Samiti is facing serious financial

crisis, we are granting 50% back wages to the Petitioner for the period 23.08.2013 till 06.02.2014, to balance the equities. The said amount shall be paid within sixty days.

15. Needless to state, the reinstatement of the Petitioner shall be deemed to be on the post from which he was terminated, with continuity.

16. We make it clear that the Petitioner shall not be entitled for any benefit of reservation since he is appointed from the open category as a compassionate appointee.

17. The Writ Petition is, accordingly, allowed.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)