

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO.11146 OF 2023

ANJALI JAYANT VALSANGKAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH THE PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Savale Amit S.
AGP for Respondents/State : Mr. P.S. Patil
Advocate for R/4 : Mr. C.D. Biradar
Advocate for R/5 & 6 : Mrs. P.S. Gondhalekar
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 8th September, 2023

PC. :-

1. The Petitioner has put-forth prayer clause B and C as under:

“B] By issuing Writ of Certiorari, or any other appropriate Writ, Order of direction in the nature of Writ, the impugned communication dated 25/08/2023 issued by the respondent no.4 and the impugned report dated 26/04/2023 issued by the respondent no.3 may kindly be quashed and set aside.

C] Pending admission and final disposal of the petition the effect, implementation & operation of the impugned communication dated 25/08/2023 issued by the respondent no.4 and the impugned report dated 26/04/2023 issued by the respondent no.3 may kindly be stayed.”

2. After hearing the learned advocates for the appearing parties, we find that the controversy before us lies in a narrow compass. There is no dispute that the Petitioner was appointed from the open category. She had never sought recruitment on the basis of any reservation. While appointing her, there was some error on the part of the appointing authority who allotted the post as per the roster, to a reserved category. This issue was brought before this Court by the Petitioner in Writ Petition No.2565/2014. By judgment dated 10.09.2014 delivered by this Court, it was concluded in paragraph nos. 5 to 10 as under:

“5] It is a matter of record that appointments of all the petitioners have been approved by the respective District Social Welfare officers. The fact that their appointments have been approved is a testimony of proper selection procedure having been followed. At the time of granting approval, it was the duty of the officers to see as to whether they were appointed as against reserved posts or not. After being in service for more than 15 years, the action is sought to be taken against the petitioners on the ground that their appointments were as against a backlog of reserved category candidates. If there was a backlog of reserved category candidates, the services of the petitioners ought not to have been approved at the relevant time. The fact that the said services were approved itself shows that the authorities at the relevant time also were satisfied that the appointments of these petitioners were properly made.

6] Majority of the petitioners are belonging to the reserved categories like OBC, SC etc. As per Rule 9(9) of the MEPS Rules, if a candidate of a particular reserved category is not available, the reservation can be interchangeable. This aspect has also not been considered before issuing the impugned communications.

7] *Considering the fact that the petitioners are in longstanding services, their appointments being approved, it will be too late in the day to remove them from the services for no fault of theirs.*

8] *There is other facet to the case. The reservation as per the MEPS Act and Rules was 34% up to the year 2007 and after 2007, the reservation has been increased to 50%. All these petitioners are appointed when the reservation was 34%. The impugned communications also do not show as to whether the said fact has been considered by the authorities.*

9] *Be that as it may. The managements have also come forward and stated that in case any fresh appointments are made, the candidates from the said reserved categories would be appointed. We accept the said statement.*

10] *Considering the aforesaid aspects of the matter, we pass the following order: -*

A] The impugned communications are quashed and set aside. The services of the petitioners shall not be terminated on the ground on which the impugned communications have been issued.

B] The respective institutions should get their Roster confirmed from the B.C. Cell and the managements shall appoint new candidates as per the Roster confirmed from the B.C. Cell. The Roster should be sent to the B.C. Cell for verification / confirmation of the Roster within three months from today.

C) The respondent officers shall consider the said aspect while considering the proposals seeking approval to the appointments of any fresh candidates.

D] The writ petitions are accordingly disposed of with aforesaid observations and directions. No order as to costs."

3. The learned advocates for the Respondents inform us that this judgment was not questioned before the Hon'ble Supreme Court and the same has attained finality.

4. In view of the above, it is beyond any debate that the Petitioner was appointed from the open category and the act of the appointing authority in mistakenly considering her as a candidate from the reserved category, was disapproved by this Court and it was concluded that the Petitioner should be considered from the open category. As a consequence, this Court recorded the statement of the Management that in case of any fresh appointments, candidates from the reserved categories would be appointed (to balance the backlog).

5. The Zilla Parishad has entered an affidavit in reply dated 08.09.2021 through Shri Sudarshan Bhausahab Tupe, District Social Welfare Officer, Zilla Parishad, Aurangabad. The learned advocate representing the Zilla Parishad has vehemently opposed this petition. He places reliance upon judgments delivered by this Court in which the judgment delivered by the Hon'ble Supreme Court in **Chairman & Managing Director, FCI & Others V/s. Jagdish Balaram Bahira & Ors; 2017 (4) Mh.L.J. 898**, has been referred to, to contend that if a person belongs to a reserved category and has secured employment from the reserved category, the concerned candidate has to submit a validity certificate. If the proposal for validity certificate is negated by the competent authority, such an employee has to forsake his employment.

6. The law laid down in **Jagdish Balaram Bahira** (supra) is applicable to one and all. The view taken by this Court in the judgments cited along with the affidavit in reply, have referred to **Jagdish Balaram Bahira** (supra). There is no reason for us to have a different view. Those judgments are in cases where candidates have applied for appointments on the basis of their reservation. The posts were reserved for a reserved category. The selection and appointment was on account of the social status of a candidate on a reserved post.

7. In the instant case, the Petitioner never sought appointment on a reserved post. Even the communication addressed by Shri Sudarshan Tupe, District Social Welfare Officer, Zilla Parishad, Aurangabad dated 28.08.2023, to the Commissioner, Disabilities and Welfare, Maharashtra State indicates on internal page 3 Clause 1 that the Petitioner Junior Clerk has been appointed through the open category. Despite this position, the same Shri Sudarshan Tupe has issued the impugned order dated 25.08.2023 recommending to Respondent Nos.5 and 6 that the appointment of the Petitioner should be set aside.

8. The learned advocate representing the Management-Respondent Nos.5 and 6 submits that the Petitioner had not sought employment from the open category and she was not selected and appointed for a reserved category. In the backdrop of the judgment of this Court dated 10.09.2014 (supra), the

employer cannot support the contention of the Zilla Parishad that the Petitioner should be treated as being a candidate selected on the basis of her social status and appointed on a post reserved for the backward classes. The Petitioner contends that she has never taken any benefit of her social status ever since joining duties in the last 23 years, as she belongs to the Brahmin class.

9. In view of the above, **this petition is allowed**. The impugned order dated 25.08.2023 is quashed and set aside. Consequentially, the impugned report dated 26.04.2023 would not survive and stands set aside to the extent of the Petitioner.

10. The learned advocate for the Petitioner prays for heavy costs since the Petitioner is not only harassed by Respondent No.4, but is made to rush to this Court for protecting her service. She has been suffering great mental stress on account of the impugned action.

11. We could have thought of not imposing costs. However, the fact that this Court had delivered a judgment on 10.09.2014 concluding the issue to the extent of the Petitioner and the 4th Respondent himself informing the superior authorities in his communication dated 28.08.2023 that the Petitioner is selected from the open category, has aggravated the conduct of Respondent No.4. We are therefore imposing cost of Rs.10,000/- on Respondent No.4

which shall be deposited in this Court from his salary account on or before 30.09.2023. We grant liberty to the Petitioner to withdraw the said amount towards costs.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]