



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CIVIL APPLICATION NO.13508 OF 2023
IN WP/1992/2023

SHRIKANT GANPATRAO JAKKEWAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...
Advocate for Applicant : Ms. Kamble Neha Bhimsen
AGP for Respondents/State : Mr. P.S. Patil
Advocate for R/3 in WP : Mr. P.S. Paranjape

...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

DATE : 8th December, 2023

PC. :-

1. Considering the amendment sought to be made to the petition and in view of the subsequent events post filing of the petition, **the Civil Application is allowed**, since the Respondents do not oppose. Amendment to be carried out.

2. The Petitioner had preferred the Writ Petition challenging the termination notice dated 09.12.2022. It is undisputed that he was to complete his probation period as an Assistant Professor on 11.12.2022. 48 hours prior to his completion of the probation period, he has been terminated solely on the ground that he did not produce the validity certificate of belonging to the Mannervarlu Scheduled Tribe Category.

3. On 03.04.2023, we did not grant interim relief to the Petitioner as at the said stage, he neither had a validity certificate, nor could a final relief in the nature of reinstatement in service could have been granted as an interim order and that too when the claim of the Petitioner was pending before the competent Scheduled Tribe committee. For ready reference, we are re-producing our order dated 03.04.2023 as under:

“1. The Petitioner is aggrieved by the order of termination, dated 09/12/2022, by which, his probation period of two years, which was to end on 11/12/2022, has been concluded w.e.f. the period mentioned in the order of probation. The reason for concluding the probation period is, that the Petitioner did not tender his 'Mannervarlu' Scheduled Tribe validity certificate to the employer.

2. The learned A.G.P. submits on instructions that, the Petitioner's proposal was received on 08/01/2021. On 30/09/2022, the Vigilance Cell Enquiry Report was served on the Petitioner. Thereafter, he sought adjournments on five occasions and remained absent on three occasions.

3. The Petitioner was appointed on probation for a period of two years and was directed by the employer to submit the validity certificate. He submits today that, he has been collecting certain documents and can appear before the Committee on 21/04/2023 along with documents and written notes. The learned A.G.P. submits that the Committee would require at least three month's time thereafter, to decide the claim of the Petitioner.

4. Issue notice to the Respondents, returnable on 19/06/2023. The learned A.G.P. waives service of notice on behalf of Respondent Nos.1, 2 and 5. Liberty to serve Respondent Nos.3, 4 and 6 by E-mail, along with a copy of this order, as an attachment.

5. Since it would not be appropriate to grant exparte ad interim orders in the nature of quashing or setting aside the impugned order and reinstatement in service, the request of the Petitioner for

reinstatement as a probationer would be considered on the returnable date.

6. Since the Petitioner has been terminated vide order dated 09/12/2022, only for the reason that he does not have the validity certificate, it would be appropriate to direct the Respondent/Management/University, not to fill in the post earlier occupied by the Petitioner, until further orders.

7. Insofar as office objection with regard to Page No.44 in the petition paper book, the said page shall be replaced with a typed copy.”

4. As recorded above, it is undisputed that the only reason for bringing the Petitioner's probation to an end was that the Petitioner did not have a validity certificate. The Petitioner received a validity certificate dated 20.10.2023, since the competent committee accepted his claim of belonging to the Mannernvarlu Scheduled Tribe category. As such, the obstacle in the path of the Petitioner has been cleared.

5. In **Shri Shrikant Chandrakant Saindane V/s. The State of Maharashtra; 2012 1 Mh.L.J. 787**, this Court concluded that clause 7 of the G.R. dated 05.11.2009 mandating production of a validity certificate before issuing an appointment order, is unsustainable and was struck down by this Court, concluding that though the purpose of the said condition is with a noble aim of ensuring that the reserved seat should be occupied by a candidate belonging to that particular reserved category and no candidate / person not belonging to the reserved category should usurp the said post, it was held that

it was not in the hands of the candidate to obtain a validity certificate before he could appear for the interviews or apply for a post. This Court, therefore, ruled that lack of validity certificate would not be an impediment for a candidate to participate in the selection process and receive an appointment order.

6. Now that the Petitioner has received the validity certificate, it would be appropriate to direct his reinstatement and allow him to complete the remainder two days period of probation. After completion of the probation and if there is no adverse report as is required to be maintained by the employer, which is to be specifically communicated to the candidate in order to enable him to improve himself, the employer would be at liberty to issue the order of confirmation to the Petitioner. In the event any unpaid salary up to 09.12.2022 is noticed by the employer, the said unpaid salary shall be paid to the Petitioner within a period of sixty days.

7. In view of the above, **the Writ Petition is partly allowed. The Civil Application is disposed off.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]