



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2296/2023

Sk. Farid S/o Sk. Lal Mia, aged about 47 years,
Occupation-Service, R/o Village – Ganjegaon,
Tq. Umarkhed, District – Yavatmal.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Through its Secretary,
Department of Minorities Development,
Mantralaya, Mumbai-32.
2. The Zilla Parishad, Yavatmal, District – Yavatmal,
through its Chief Executive Officer.
3. The Gram Panchayat, Ganjegaon, Tq. Umarkhed,
District – Yavatmal, Through its Secretary.

RESPONDENTS

Shri K.S. Narwade, counsel for the petitioner.
Shri A.A. Madiwale, Additional Government Pleader for the respondent no.1.
Shri V.S. Kulsange, counsel for the respondent no.2.
Shri A.M. Motlag, counsel for the respondent no.3.

CORAM : A. S. CHANDURKAR AND ABHAY J. MANTRI, JJ.

DATE : OCTOBER 31, 2023.

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner came to be appointed to the post of Helper with the third respondent-Gram Panchayat Ganjegaon, Taluka Umarkhed, District Yavatmal. His services on the said post came to be confirmed on 12.03.2001. Ordinance No.XIV of 2014 came to be issued by the Department of Minority Welfare under which 'Shaikh'

community came to be included in the Special Backward Category -A. Pursuant thereto the petitioner obtained the caste certificate dated 08.09.2014 of belonging to 'Shaikh' Special Backward Category – A. In the recruitment process initiated by the second respondent – Zilla Parishad, Yavatmal the posts of Gram Sevak were sought to be filled in. The petitioner participated in the recruitment process in the SBC-A category and his name was included in the list of eligible candidates. The petitioner came to be issued an order of appointment on 07.11.2014 and he was posted at Panchayat Samiti Umarkhed. In view of such appointment order, the petitioner resigned from the post of Helper on 08.11.2014. Pursuant to the petitioner's appointment his caste certificate was referred to the Scrutiny Committee for verification. On 09.07.2020, the Scrutiny Committee returned the proposal on the ground that Ordinance No.XIV of 2014 was subjected to challenge in the High Court and there was an interim order of staying the operation of the Ordinance. For that reason, the Scrutiny Committee refused to verify the caste claim of the petitioner and returned the proposal. In this backdrop, the Deputy Chief Executive Officer issued a show cause notice to the petitioner calling upon him to show cause why his services should not be terminated in absence of any validity certificate. The petitioner replied to the said show cause notice. However, by an order dated 03.03.2023 the services of the petitioner came to be terminated by the

Chief Executive Officer by taking recourse to the provisions of Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, 'the Act of 2000'). Being aggrieved by the order dated 28.03.2023 followed by the communication dated 05.04.2023 issued by the Block Development Officer, the petitioner has challenged the said action.

3. We have heard the learned counsel for the parties and we have perused the documents on record. It is seen from the record that the initial appointment of the petitioner was on the post of Helper since the year 1998. In view of Ordinance No.XIV of 2014 a provision of 5% reservation for the members belonging to SBC-A category came to be provided. In the light of aforesaid Ordinance, the petitioner was issued a caste certificate by the Sub-Divisional Officer on 08.09.2014. In the meanwhile, Ordinance No.XIV of 2014 was the subject matter of challenge before the Principal Seat. By the order dated 14.11.2014 the operation and implementation of the said Ordinance came to be stayed. Admissions made till the date of the said order based on the said Ordinance were however saved. In the meanwhile, the said Ordinance lapsed. The Scrutiny Committee on 09.07.2020 refused to verify the petitioner's caste certificate in view of the interim stay

granted to the operation of the said Ordinance. It is thus clear that the caste certificate dated 08.09.2014 that was issued to the petitioner was not verified and hence there was no question of it being cancelled. Consequently, the provisions of Section 10 of the Act of 2000 would not be attracted since those provisions would apply only if the Scrutiny Committee finds that the caste certificate is false.

4. Once it is found that the provisions of Section 10 of the Act of 2000 are not attracted, there would be no basis for terminating the services of the petitioner by taking recourse to Section 10 of the Act of 2000. The only reason indicated in the order of termination is with regard to the consequential steps taken under Section 10 of the Act of 2000. In the facts of the present case, we find that the Zilla Parishad ought to have absorbed/adjusted the services of the petitioner on some other post of Gram Sevak since Ordinance No.XIV of 2014 had lapsed. The petitioner cannot be blamed for the situation in which he finds himself placed. It is not the case of the Zilla Parishad that on account of unsatisfactory services or any alleged misconduct the petitioner's services were being terminated. The termination is by taking recourse to Section 10 of the Act of 2000 which provision is not attracted at all. We therefore find that this action on the part of the Zilla Parishad in terminating the petitioner's services was uncalled for and is thus unsustainable.

It is also to be noted that the Government Resolution dated 02.03.2015 issued by the General Administration Department seeks to protect the appointments made prior to 14.11.2014. In the present case the petitioner was appointed on 07.11.2014. This is another reason to hold the petitioner entitled for the relief as prayed for.

5. As per the additional affidavit filed on behalf of the Zilla Parishad, in the cadre of Gram Sevak there are about forty eight posts, some of which are reserved for various categories. Since we have found that the order of termination of the services of the petitioner was not justified, it would be necessary for the Zilla Parishad to absorb/adjust the petitioner on some vacant post available with it. Accordingly, the following order is passed :-

- (I) The order dated 28.03.2023 passed by the Chief Executive Officer, Zilla Parishad, Yavatmal is set aside.
- (II) It is directed that the services of the petitioner be absorbed/adjusted on any vacant post of Gram Sevak that is available with the Zilla Parishad. The petitioner would be entitled for continuity of service from the date of his initial appointment being 07.11.2014 for all purposes.
- (III) Since the learned counsel for the petitioner on instructions does not press the prayer for back wages, there is no order passed in that regard.
- (IV) The Zilla Parishad shall take appropriate steps in this regard within a period of four weeks from today.

6. Rule is made absolute in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

APTE