

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5450 OF 2022

1. Director, Department of Social Welfare
(Maharashtra State) III, Church road,
Pune.
Current designation Commissioner,
Social Welfare, III Church Road,
Maharashtra State, Pune
2. District Social Welfare Officer,
Current designation Assistant
Commissioner, Social Welfare,
Chandrapur, Dist. Chandrapur

...Petitioners

// VERSUS //

1. Dharamsingh Ranjitsingh Verma,
Aged about 47 years, Occ. Service,
R/o Gurudev Ward, Chimur,
Tah.Chimur, Dist. Chandrapur-
442903
2. Viabhav Shankar Asutkar,
Aged about : Major, Occ. Service,
At Nimsada, Tah.Warora,
Dist. Chandrapur
3. Athawale College of Social Work,
Chimur, Tah.Chimur,
District – Chandrapur 442903,
through its Principal
4. Dr. Chandansing Rotele,
President, Gram Yuvak Mandal,
Bhansuli (Peth), Athawale College of
Social Work, Campus Shedegaon,
Chimur, Tah.Chimur, Dist.
Chandrapur through its President

... Respondents

Shri S.P.Dharmadhikari, Senior Advocate a/w Ms. Nivedita P. Mehta, AGP for the petitioner.

Ms. Venkatram, Advocate for the respondent no.1.

Shri Kalingiwala, Advocate for the respondent no.2.

Shri Khubalkar, Advocate for the respondent no.3.

Ms. Shejal Lakhani, Advocate for the respondent no.4.

CORAM : ANIL S. KILOR, J.

DATED : 3rd FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, the challenge is raised to the correctness and legality of the impugned judgment and order dated 29th June, 2020 passed by the learned Presiding Officer, University and College Tribunal, Nagpur in Appeal No. GN-36/2015 directing the respondent nos. 3 and 4 that after reinstatement of the respondent no.1, send a fresh proposal for correction in the order of approval of the respondent No.1, to the petitioner no.1 Director who shall thereupon, correct the approval suitably and expeditiously.

3. The brief facts of the present case are as under :

The respondent no.3 College issued an advertisement for the two posts of clerks for the “Open” as well as “Schedule Caste” category each on 1st May, 1996.

4. It is the case of the respondent no.1 that he applied in the Open category. Accordingly he was selected and appointed vide order of appointment dated 1st April, 1998.

5. Thereupon, the proposal was forwarded for approval to the petitioner no.2 and the same was granted in the Schedule Tribe category.

6. As the respondent no.1's appointment was in Open category, he made a representation for correction of approval by showing his appointment in Open category.

7. However, no decision was taken by the petitioners but insisted for caste validity. Thereupon, the respondent no.1 applied for validity of his tribe claim, which was rejected on 13th April, 2007. The correctness of it was questioned in Writ Petition No. 2262 of 2007. This Court thereupon, directed the Caste Scrutiny Committee to conduct the inquiry once again into the caste claim of the respondent no.1, as he was not given sufficient opportunity to defend his case, vide order dated 16th April, 2007.

8. The Caste Scrutiny Committee again invalidated the caste claim of the petitioner, vide order dated 23rd September, 2011. Whereupon, the respondent no.3 College cancelled the appointment of the respondent no.1 on the direction of the petitioners.

9. The respondent no.1, hence, preferred an appeal before the University and College Tribunal, Nagpur.

10. The University and College Tribunal, vide judgment and order dated 10th April, 2017, dismissed the appeal on the ground that Tribunal does not have jurisdiction to decide the incidental and ancillary question as regards change of approval from one category to the other. It is further observed that it is necessary for the appellant to first get the approval changed from Scheduled Tribe category to Open category and that jurisdiction lies with different forum.

11. Then, the respondent no.1 filed a writ petition which was allowed vide impugned judgment dated 5th April, 2019 by holding that the question of change of approval from one category to another would also involve the question as to whether the petitioner was appointed from the Open category or Schedule Tribe category, thereby warranting grant of approval from that particular category. It is further observed that since the order of termination is based only on this aspect, the same is required to be gone into by the University and College Tribunal. Therefore, the proceeding was remanded for fresh adjudication on merits.

12. Thereafter, the review application was filed by the respondent no.1 on the ground that the judgment and order passed by the University and College Tribunal, was challenged only to the extent of observations made as regards jurisdiction of Tribunal and not as regards findings recorded in favour of the respondent no.1 to the effect that his appointment was made in the Open category.

13. However, during the pendency of the review petition, the matter was settled between the respondent no.1 and the respondent Management in pursuance to which this Court while disposing of the review application recorded compromise and directed the University and College Tribunal to consider the limited aspect as regards the correction of the order of approval dated 29th July, 1998.

14. Thereupon, the College Tribunal after recording the reasons, vide impugned judgment and order directed the respondent nos. 3 and 4 that on reinstatement of the respondent No.1, send a fresh proposal for correction to approval order to the petitioner no.1 through proper channel and it is directed to the petitioner no.1 to correct the approval suitably and expeditiously, in the light of observations in the impugned judgment and order.

15. The above referred judgment and order dated 29th June, 2020 passed by the University and College Tribunal, is under challenge.

16. I have heard learned counsel for the respective parties.

17. Shri Dharmadhikari, learned Senior Advocate appearing for the petitioners submits that the learned Tribunal has committed error in not dealing with the issue whether the appointment of the respondent no.1 was made in reserved category of Schedule Tribe Category or in Open Category.

18. It is submitted that this Court set aside the judgment and order of the Tribunal dated 10th April, 2017, while remanding the matter back for fresh consideration. Thus, the finding recorded by the Tribunal that the respondent no.1 was appointed in the Open category was also set aside. Therefore, the Tribunal ought to have decided the said issue afresh after remand.

19. It is pointed out that, the petitioner no.2 communicated to the respondent nos. 3 college that there is a backlog of Schedule Tribe and further directed to clear the said backlog by appointing the candidate from the Schedule Tribe Category vide communication dated 31st March, 1998. It is therefore submitted that since beginning the Management as well as respondent no.1 had a complete knowledge that the appointment of the respondent no.1 was made in the reserved category of Schedule Tribe and accordingly, the approval was granted.

20. Shri Dharmadhikari, learned Senior Advocate further points out the conduct of the respondent no.1, namely that, the respondent no.1 applied for validity of his Tribe claim and on rejection of the same, the writ petition was preferred. It is submitted that, on fresh consideration, on remand by this Court, the tribe claim of the petitioner was again invalidated by the Committee. It is therefore submitted that the above referred facts sufficiently show that the respondent no. 1 was appointed in Schedule Tribe category.

21. Shri Dharmadhikari, learned Senior Advocate further points out from the reply filed by the Management to appeal before the Tribunal, wherein the Management had categorically denied the case of the respondent no.1 that his appointment was made in Open category. It is submitted that, all the time the stand of the Management was that, the appointment of the respondent no.1 was made in Schedule Tribe category.

22. It is further submitted taking U-turn and entering into the compromise by accepting that respondent no.1's appointment was made in the Open category, cannot be permitted for the reason that the petitioners were not party to it and therefore such compromise is not bindings on the petitioners.

23. It is submitted that granting approval to the respondent no.1 in Open category amounts to deny the claim of one Schedule Tribe candidate over the said post and further causing loss to the public exchequer by paying salary though the respondent no.1 is not entitled for the same. It is therefore submitted that the impugned judgment and order needs to be quashed and set aside.

24. On the other hand, Ms. Venkatraman, learned counsel for the respondent no.1 submits that the petitioners have not brought any documents on record in support of their contention that the respondent no.1 was appointed in reserved category Schedule Tribe.

25. It is submitted that 100 points roster prepared by State Government, shows otherwise and as per the roster there were three sanctioned posts of clerks at the relevant time, out of which one post was reserved for Schedule Caste and remaining two posts were for Open category. It is pointed out that accordingly, the respondent no.1 was appointed in the Open category. She therefore submits that in absence of any document showing that any post of clerk was reserved for the Schedule Tribe, the claim of the petitioners that the respondent no.1 was appointed on the reserved for Schedule Tribe, is baseless.

26. Ms. Venkatraman, learned counsel for the respondent no.1 has drawn attention of this Court to the advertisement issued on 1st May, 1996, whereby two posts of clerks were advertised out of which, one was for Schedule Caste and another was for Open. It is pointed out from the application made by the respondent no.1 that, he applied for the post in Open category.

27. She further points out that, immediately after approval was granted to the appointment of the respondent no.1 in Schedule Tribe category, vide order of approval dated 29th July, 1998, on 24th August, 1998, the respondent no.1 made a representation for correction of order of approval by pointing out that his appointment was made in Open category and not in Schedule Tribe category.

28. She has further pointed out that he again made same attempt by making application on 6th August, 2011. She therefore submits that

since beginning, it is the case of the respondent no.1 that his appointment was made in the Open category and not in the Schedule Tribe category.

29. It is further submitted that the petitioners are not authority to make the roster and in view of the fact that the petitioners are not denying the 100 points roster issued by the State Government or not claiming that they have the authority to prepare the roster, any appointment made as per the roster cannot be the subject matter of challenge in petition, at the instance of petitioners.

30. Ms. Venkatraman, learned counsel for the respondent no.1 further points out that the remand of the matter by this Court, was limited to the extent of correction of approval order of the respondent no.1 in Open category and not to decide a fresh, whether the appointment of the respondent no.1 was in Open category. It is submitted that the order remanding the matter was for limited purpose as observed in the order.

31. The respondent nos. 3 and 4 reiterated the submission of the respondent no.1 and supports the impugned judgment and order.

32. In the light of rival submissions of the learned counsel for the respective parties, I have perused the petition, the reply filed to the writ petition, the documents on record and the judgment and orders of this Court as well as of the learned University and College Tribunal, Nagpur.

33. From the record following undisputed facts will emerge.

(a) The respondent no.3 college issued advertisement in the News paper on 1st May, 1996 inviting applications for various posts mentioned in the said advertisement. The posts at serial number four was in respect of the two posts of clerks, one was for Schedule Caste category and other was for the Open category.

(b) The petitioner applied on 31st March 1998 for the post of clerk by making a written application. (From the application it appears that, words 'Open category' mentioned in it, appear to have added subsequently).

(c) The respondent nos. 3 and 4 issued order of appointment dated 1st April, 1998, appointing the respondent no.1 as clerk for a period of two years with effect from 1st April, 1998, on probation.

(d) The petitioner no.1 Director, Social Welfare Department, Maharashtra State, Pune granted approval to the appointment of the respondent no.1, with effect from 1st July, 1997, in a category of Schedule Tribe.

(e) On 24th August, 1998 the respondent no.1 made a representation for correction of approval order to the respondent nos. 3 and 4 stating that he had applied and appointed in the Open category, however, the approval was granted in Schedule Tribe category.

(f) The 100 point roster was prepared and issued by the Government of Maharashtra on 29th March, 1997 and accordingly in the year 2011 Rashtrasant Tukodoji Maharaj Nagpur University carried out the exercise of verification. While considering the position of the respondent no.3 college as on 6th April, 1998, it was noted by the University that three posts of clerks were sanctioned out of which one was reserved for Schedule Caste and two for Open category. The appointment of respondent No.1 and Shri Sudhakar M. Gode were shown in the Open category and appointment of one Anil Meshram was shown in the Schedule Caste category and an endorsement was made to the effect that there is no backlog.

(g) The respondent no.1 on 6th March, 2011 therefore, made another representation to the respondent no.3 reiterating his request for correction of order of approval in view of the verification carried out by the University in view of 100 point roster.

(h) The Petitioners started insisting the respondent college and Management for submission of tribe validity certificate by the respondent no.1, treating his appointment in the Schedule Tribe category.

(i) On 9th August, 2011 therefore, the respondent no.1 made a representation pointing out that as per the 100 point roster his appointment was made in the Open category and therefore, there is no need to submit of caste validity certificate.

(j) Similarly, a request was made by the respondent no.3 College to the petitioner no.1 by pointing out the 100 point roster that the appointment of the respondent no.1 was made in the Open category.

(k) Accordingly, the Special District Social Welfare Officer, Chandrapur forwarded the request of the respondent no.1 for correction of order of approval from Schedule Tribe to Open category, to the Divisional Social Welfare Officer, Nagpur, Dist. Nagpur, vide letter dated 2nd December, 2011.

(l) In the meantime, the respondent no.1 applied for validation of his Tribe claim as Schedule Tribe, which was invalidated and that was maintained even after the remand made by the High Court for fresh consideration.

(m) The petitioners cancelled the approval granted to the appointment of the respondent no.1 for non-submission of caste validity certificate, which resulted into termination of the respondent no.1 vide letter dated 15th December, 2011,

which gave cause to the respondent no.1 to approach the University and College Tribunal by filing appeal.

34. In the light of the above referred admitted facts the whole controversy narrows down to following question:

(i) Whether the appointment of the respondent no.1 was made in the Schedule Tribe category as claimed by the petitioners ?

35. In the case in hand, admittedly 100 point roster was issued by the General Administration Department, State of Maharashtra vide Government Resolution dated 29th March, 1997 and in pursuance of the same, the Nagpur University carried out the exercise of verification wherein it was found that there were three sanctioned posts as on 6th April, 1998, of clerks out of which one was reserved for Schedule Caste and two posts for Open category. Thus, it is sufficiently clear that there was no posts of clerk reserved for Schedule Tribe.

36. The verification carried out by the University in pursuance to the roster further shows that all the three posts were filled in by the respondent no.3, by appointing one Shri Anil Yeshwant Meshram on the post reserved for Schedule Caste. Whereas, on the two posts for Open category by appointing one Shri Sudhakar M. Gode and respondent no.1.

37. Thus, University ratified three things in clear terms:

(i) there is no post reserved for Schedule Tribe as per roster dated 29th March, 1997 issued by State Government;

(ii) the respondent no.1 was appointed in the Open category and;

(iii) there is no backlog of backward class.

38. In the circumstances, the letter dated 31st March, 1998 issued by the petitioner no.1 showing that there is backlog of Schedule Tribe candidate, loses its efficacy. Moreover, it is not a case of the petitioners that, the roster point is not applicable to the respondent no.3 college.

39. It is pertinent to note that the dates of the publication of the roster by the State Government and the date of the letter issued by the respondent no.1 informing that there is backlog of Schedule Tribe candidate, clearly show that the letter issued by the petitioner no.1 is subsequent to the publication of the roster. Despite this fact there is no mention of roster in the said letter dated 31st March, 1998, which clearly shows that the 100 point roster was not considered by the petitioner no.1, while issuing the said letter.

40. Undisputedly, the respondent no.1 immediately after the approval was granted by the petitioner no.1 Director, vide order dated 29th July, 1998 in the category of Schedule Tribe, made a representation on 28th August, 1998 for correction of the order of approval, to the respondent nos. 3 and 4. Thereafter, the respondent no.1 once again

made a similar request after the verification made by the University in pursuance to the 100 point roster, on 9th August, 2011.

41. In the said backdrop, the facts of submitting Tribe claim for validity to the Caste Scrutiny Committee and on rejection of the same filing of writ petition, do not go against the petitioners particularly in the backdrop that there was insistence by the petitioners for submission of caste claim with a threat of termination on failure to submit the caste validity certificate.

42. Thus, it can be said that the insistence of the petitioners for submission of caste validity certificate by the respondent no.1 was itself contrary to the 100 point roster issued by the State of Maharashtra, as there was no post of clerk reserved for the Schedule Tribe in the respondent No.3 college.

43. Moreover, when there is nothing on record to show that any post was reserved for the Schedule Tribe, the facts that the respondent no.1 applied for caste validity certificate and on invalidation of the same, the writ petition was filed, have no relevance for the purpose to find out whether the appointment of the respondent no.1 was in the Schedule Tribe category.

44. In the above referred backdrop at this juncture it is proper to refer to the findings recorded by the Tribunal before remand made by the High Court. The Tribunal in paragraph 7 while holding that the

appointment of the respondent no.1 was made in open category, has observed thus:

“7. The contention of the appellant is that his appointment was in the open category and therefore, even if he has not produced the caste validity certificate, his services could not be terminated. The appellant has produced on record the advertisement dated 1-5-1996 issued by the respondent no.3 College. It shows that there were 3 posts, one post was shown to be reserved for Scheduled Caste and one was for open category. The appellant has also produced on record at Annexure-II, copy of the application which he had made for his appointment as a Clerk in open category. There is clear mention that he was applying against open category. Further, the appellant has filed on record the copy of the roster at Annexure-VI. At page No.59 it is clearly mentioned that as on 6th April, 1998 i.e. the date on which the appellant had applied for appointment as Clerk there were 3 posts and two were in Open Category and one was Scheduled Caste. The name of the appellant appears in Open Category. This roster has been approved by the respondent no.3 College, Deputy Registrar of the then Nagpur University, Superintendent of the Nagpur University and it has also been approved by the Assistant Commissioner Backward Class Cell in the office of the Commissioner, Nagpur Division, Nagpur. This has been approved as on 24-2-2011 and it is as per the position available as on 6-4-1998. Further, on 30-8-2011 the respondent no.3 had written a letter to the respondent no.1 that there were 3 posts of Clerk available and out of them two were in Open Category and one in Open Category was lying vacant i.e. position dated 2-7-1997. Thus, in 1997 also two posts in Open Category were available, one was filled and one was vacant. From this evidence it is clear that the appointment of the appellant was made in fact under Open Category.”

45. The finding recorded by the Tribunal to the effect that the appointment of the respondent no.1 was in Open category shows that,

while rejecting the appeal it was not rejected on merit but on a technical ground of not having jurisdiction to correct the order of approval.

46. Thus, the writ petition which was filed by the respondent no.1 against the judgment and order dated 10th April, 2017 passed by the University and College Tribunal, cannot be said to be filed challenging the findings recorded in favour of the respondent no.1 namely that, his appointment was in Open category. Hence, I have no hesitation to say that the writ petition no.2510/2017 filed by the respondent no.1 was filed raising challenge to the findings recorded by the Tribunal on tenability of the appeal only. Therefore, when this Court set aside the order of the Tribunal and directed the Tribunal to decide the appeal a fresh, immediately a review petition was filed raising a ground that the writ petition was not filed questioning the correctness or legality of findings recorded by the Tribunal that the respondent no.1 was appointed in Open category, but it was filed raising the challenge to the limited extent i.e. to the extent of observations made by the Tribunal as regards tenability.

47. It is further clear from the order dated 21st November, 2019 passed by this Court on review petition, wherein it has observed that the remand would be for the limited purpose i.e. correction of the order of approval dated 29th July, 1998.

48. At this juncture, therefore, it is necessary to refer to the order dated 21st November, 2019 of remand restricting its scope which read thus:

“Insofar as correction of the order of approval dated 29.07.1998 is concerned, since the proceedings have been remanded to the University and College Tribunal, this limited aspect can be considered by the University and College Tribunal. In the said appeal after that adjudication, the respondent no.1 would pass appropriate orders. Similarly it is open for the respondent no.5 to seek approval to the appointment of respondent no.4 without his rights being affected by pendency of the petitioners appeal. In terms of the judgment dated 05.04.2019, the parties shall appear before the University and College Tribunal on 09.12.2019.”

The compromise terms are taken on record and marked as ‘A’.

The review application is disposed of in aforesaid terms with the order as to costs.

49. The Tribunal on remand on raising of issue by the petitioners, whether the appointment of the respondent no.1 was made in the Schedule Tribe, has observed thus:

“8. The learned counsel appearing for appellant has vehemently argued that in view of finding of this Tribunal in paragraph 7 of judgment dated 10-4-2017 delivered by my Learned Predecessor that the appointment of appellant was made under Open Category, which has not been challenged by the respondents no.1 and 2 before the Hon’ble High Court, is now not open for challenge by the respondents no.1 and 2, as it has reached finality nor disturbed by the Hon’ble High Court in Writ Petition No. 2510 of 2017. Her submission is that the respondent no.1 cannot be allowed to re-agitate the nature of appointment of the appellant as previously determined by this Tribunal. I find considerable force and merit in her submission. I concur with the view taken by my Learned Predecessor,

since there is no reason to express contrary to the said view that the appointment of the appellant was from Open Category.”

50. In the backdrop of the findings recorded by this Court as regards scope of remand, I do not find any error committed by the Tribunal for not allowing the petitioners to re-agitate the nature of appointment of the respondent no.1 as the Tribunal had previously determined the said issue and answered the same in favour of the respondent no.1.

51. At this juncture, it is pertinent to note that, after the order passed by this Court on the application for review, restricting the scope of the remand, the petitioners did not raise challenge to the same and accepted the said order. Therefore, now by way of present writ petition, the petitioners cannot raise a grievance that the Tribunal after remand did not enter into the issue of nature of appointment of the respondent no.1.

52. Even otherwise, after scrutinizing all the documents available on record namely the 100 point roster, advertisement, the appointment order and verification made by the University of all the appointments made by respondent no.3 on merit also, the petitioners have no case.

53. Accordingly, once, this Court has reached to the conclusion that the appointment of the respondent no.1 was made in Open category, no fault can be found in the order of the Tribunal directing the petitioners to correct the order of approval suitably and expeditiously. Accordingly, I pass the following order:

- i. Writ petition is **dismissed**. Rule discharged.

[ANIL S. KILOR, J.]