

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

WRIT PETITION NO. 6096 OF 2018

Chandrashekhar S/o Madhukarrao Kadukar,
 Aged about 45 years, Occu : Peon,
 R/o. At Po : Ghuikhed, Tq. Chandur (Rly.),
 District Amravati.

.....**PETITIONER**

...V E R S U S...

- (1) The State of Maharashtra
 Through its Secretary,
 Education Department,
 Mantralaya, Mumbai : 32
- (2) Shri Shivaji Education Society
 Amravati – through its
 Secretary, Panchvati Square
 Amravati, Tq. & Distt. Amravati.
- (3) Education Officer (Secondary),
 Zilla Parishad, Amravati,
 Tq. & Distt. Amravati.
- (4) Head Master,
 Shri Bendoji Baba Vidyalaya
 Ghuikhed, Tq. Chandur (Rly.),
 District Amravati.

.....**RESPONDENTS**

 Mr. G. G. Mishra with Mr. D. M. Surjuse, Advocates for the
 petitioner
 Mr. M. K. Pathan, A.G.P for respondents 1 and 3
 Mr. A. P. Kalmegh, Advocate for respondent 2

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 13-04-2023

ORAL JUDGMENT (PER : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties.

2. Challenge is to communication dated 21-8-2018 addressed by the Secretary, Shri Shivaji Education Society, Amravati to the petitioner, seeking caste validity certificate. The communication puts the employee on notice that failure to submit the caste validity certificate shall entail termination.

3. Petitioner was appointed vide order dated 3-11-2001 on the post of Peon on compassionate ground, his father having expired in 1992 in harness.

4. Petitioner contends, and there is no rebuttal, that he was not appointed against post which was reserved. Neither the

appointment order nor the approval order issued by the Education Officer speaks of the post being reserved.

5. According to the learned counsel for the employer – management, in the service book the appointment is recorded as against Scheduled Tribe category. This statement is made on the basis of instructions received.

6. We are not required to delve deeper. In as much as neither the appointment order nor the approval order states that the appointment is against reserved category, even if it is assumed that there is some entry in the service book, nothing will turn on that entry in the context of the stand of the Education Officer that the appointment of the petitioner was not against the reserved category.

6. We may extract paragraphs 2 to 6 of the affidavit in response dated 25-2-2021 filed on behalf of the Education Officer (Secondary), Zilla Parishad, Amravati.

“2. It is submitted that, the petitioner was appointed in the school run by respondent No.2- Society on the

post of peon on 03.11.2001, on compassionate ground, vide order dated 03.11.2001.

3. It is submitted that, the proposal was submitted to the authorities for approval and the Competent Authority have granted approval to the appointment of the petitioner vide letter dated 26.08.2002.

4. It is submitted that, after completion of probation period the services of the petitioner were confirmed by the respondent No. 2, Society vide order dated 09.02.2004.

5. It is submitted that, the petitioner belongs to cast "Dhobi" which comes under "OBC" category. It is submitted that, Caste Scrutiny Committee have issued a caste validity certificate in favour of the petitioner on 22.09.2011.

6. It is submitted that, the appointment of the petitioner was on compassionate ground and not made in any reserved post and therefore it can't be treated in reserve category. It is therefore must humbly and respectfully submitted that on appropriate orders may kindly be passed, in the interest of justice."

It can thus be seen that the Education Officer has categorically contended that the petitioner was not appointed against reserved post and that the caste of the petitioner is 'Dhobi' which falls under the OBC category, and that the petitioner possesses OBC validation certificate dated 22-9-2011.

7. We find it safer to rely on the stand of the Education Officer rather than give credence to the submission canvassed on behalf of the management which is predicated on the premise that the service book records that the petitioner was appointed against Scheduled Tribe. We have already observed, that if as a fact, the appointment was not against reserved category, an erroneous entry in the service book means precious little.

8. The communication impugned is quashed.

9. The petition is allowed.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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