

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

WRIT PETITION (WP) 332/2023

Kishor s/o Kasturchand Kanojiya,
Age about 58 years,
R/o plot number 487,
near Bholasingh Vidyalaya,
Hiwari Nagar, Nagpur - 440008.

..... PETITIONER

// VERSUS //

1. State Maharashtra, through its
Secretary, School Education And
Sports Department, Mantralaya,
Mumbai – 32.
 2. Education Officer (secondary),
Zilla Parishad, Nagpur.
 3. Hindustan Vidya Mandal, Lakadganj,
Nagpur - 08, Through its Secretary.
 4. Hindustan Vidyalaya, Small factory,
Nagpur-8, Through its Head Master
- RESPONDENT(S)

Mr. A.D. Mohgaonkar, Advocate for the petitioner
Mr. M. K. Pathan, AGP for respondents 1 and 2 /State
Mr. N.S. Warulkar, Advocate for the respondents 3 and 4

**CORAM : ROHIT B. DEO AND
M. W. CHANDWANI, J.J.**

DATED : 03/07/2023

ORAL JUDGMENT : (PER:- M. W. CHANDWANI, J.)

Rule. Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. This petition challenges the order dated 27.07.2022 passed by the respondent 2 – Education Officer whereby refusing to grant the pension.

3. The petitioner was appointed as a Lower Division Teacher in the respondent 4 – School. By order dated 30.03.1992, the respondent 2 – Education Officer granted approval to the appointment of the petitioner and thereafter, by order dated 19.11.1992 also, the respondent 2 – Education Officer granted further approval to the services of the petitioner from 23.06.1992. The petitioner was to retire on 31.03.2022, therefore, the Management forwarded the pension papers to the respondent 2 – Education Officer. The respondent 2 – Education Officer on finding the caste of the petitioner as a “Dhoba” which is Scheduled Tribe asked for caste validity certificate. The petitioner submitted before the respondent 2 – Education Officer that he is appointed from Open Category and belongs to “Dhobi” and not “Dhoba”. The respondent 2 – Education Officer instead of approving the pension case of the petitioner withheld the pension on the ground that till the Management supplied the Roster of Appointment from Reserved

Category, the appointment of the petitioner cannot be said to be made from Open Category.

4. The respondents 3 and 4 appeared and filed its reply, inter alia, contending that the petitioner though appointed from Open Category but, fact remains that he has given forged school leaving certificate mentioning caste “Dhoba” just to take benefits of Scheduled Tribe reservation. According to the respondent 3 the documents which are submitted by the petitioner were forwarded to the respondent 2 – Education Officer for approval of his pension case, there is no fault of the respondents 3 and 4.

5. It is submitted on behalf of the petitioner that he belongs to “Dhobi” and accordingly, he submitted the documents with the respondents 3 and 4 showing his caste “Dhobi” at the time of the appointment but, that has been tampered by the Management whereby the pension case of the petitioner is withheld by the respondent 2 – Education Officer. According to him, the petitioner belongs to “Dhobi” caste and he is appointed from the Open Category, therefore, there is no question of withholding the pension of the petitioner by the respondent 2 – Education Officer.

6. Per contra, the learned Counsel appearing for the respondents 3 and 4 submits that though, the petitioner has been appointed as a Teacher from Open Category and belongs to “Dhobi” caste but, he submitted documents contending his caste as “Dhoba” which comes under the Scheduled Tribe Category perhaps to take benefits of reservation. According to the respondents 3 and 4, the petitioner is at fault by submitting forged documents.

7. Indisputably, the petitioner has been appointed as a Teacher from Open Category. We may not delve deeper in narrative and counter-narrative on the issue of mentioning the caste as “Dhoba” in the document. Fact remains that the petitioner belongs to “Dhobi” and since, the petitioner has been appointed as an Assistant Teacher from Open Category and has worked for almost 30 years, cannot be refused to get the pensionary benefits.

8. Therefore, we direct the respondent - Management to send the proposal mentioning correct position of the post and the documents required by the respondent 2 – Education Officer such as Roster of Appointment.

9. After such proposal is received, the respondent 2 – Education Officer (Secondary) shall decide the same within four weeks from the date of the receipt of the said proposal.

10. In view of the above, the writ petition is disposed of in the aforesaid terms with no order as to costs.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO J.)