



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CONT. PETITION NO. 251 OF 2024
IN WP/12196/2023**

**MAHEMOOD BAHADURSAB SAUDAGAR
VERSUS
MANISHA RAMCHANDRA BORULKAR**

....

Mr. T. M. Venjane, Advocate for Petitioner

Mr. V. D. Hon, Senior Advocate a/w Mr V. B. Jadhav, Advocate for
Respondent No.3

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 09.07.2024

PER COURT :-

1. We have heard the learned Advocate for the Petitioner and the learned Senior Advocate along with Mr. V. B. Jadhav, Advocate for the management.

2. On 16.10.2023, since the Petitioner in Writ Petition No.12196 of 2023, had put forth an innocuous prayer, seeking pensionary benefits, we observed in our order below paragraph 6 (a) and (b) as under:-

- “(a) Respondent Nos. 5 and 6 shall ensure that all the deficiencies are removed within 30 days from today and the proposals are forwarded to Respondent No.8, within 7 days thereafter. Respondent No.8 would then transmit the papers to Respondent No.7 within 15 days (thereafter).*
- (b) Respondent No.7 would carry out a scrutiny of the proposals and after clearing the same, the pensionary benefits would be extended to the Petitioners with retrospective effect and with admissible interest, if any, to be paid within 45 days.”*

There is no dispute that without issuing notice to the management, we have passed this order on 16.10.2023, since an innocuous prayer was put forth by the Petitioner.

3. The learned Senior Advocate has drawn our attention to the affidavit-in-reply filed by Kusum Shankarrao Mahavarkar, Principal, Shri Balaji Junior College, Walandi, Taluka Deoni, District Latur, along with annexures. He then draws our attention to a Presidential order, Chapter 2 – list of Scheduled Castes (the Constitution, Scheduled Castes) Order 1950, and more specifically part X – Maharashtra, wherein the entry at Serial No.31 indicates Khatik, Chakwa, Chikvi. He submits that these castes fall in the Hindu Khatik Scheduled Tribe category. Since the Petitioner is a Muslim, he would not fall within the Hindu Khatik, S.C. category.

4. Our attention is then drawn to an order dated 04.02.2022, passed by this Court in Writ Petition No. 7085 of 2021. The present Petitioner was at Serial No.10 in the said proceeding. He made a categorical statement that he would adhere to the caste validity certificate of Musalman Khatik (318) i. e. Other Backward Class.

5. The learned Senior Advocate submits that the dilemma before the Principal is that the Petitioner was selected and appointed on a post reserved for S.C. category and he turned out to be a person from the O.B.C. category.

6. The learned Advocate for the Petitioner submits that his appointment has always been from the open category.

7. The learned Senior Advocate places reliance on the record made available along with the affidavit-in-reply by the Principal, to indicate that the employment exchange recommended the name of the Petitioner, because he belonged to the reserved category and an approval granted to his appointment also indicates that he belongs to the reserved category and the caste was shown as Khatik. There is no dispute that he is a Muslim.

8. The proceeding before us is under the Contempt of Courts Act. Either there is a contempt committed by the Respondents, for which, it has to be established that there was a willful, deliberate and intentional disobedience of the order of this Court with the intention of overbearing the majesty of Court, or the Petition fails.

9. The learned Senior Counsel submits that if this Court directs the management, they would give their N.O.C. today itself. He submits that the Petitioner was appointed on the claim of belonging to the Muslim Khatik and his appointment was on a reserved post. His proposal forwarded for seeking approval to his appointment, also indicates that he was considered for appointment on a post reserved for the backward categories by mentioning his caste as Khatik. Such proposal has been sanctioned by the competent authority, treating him from the Khatik category. Therefore, holding back of the N.O.C. by the management, cannot be said to be contemptuous.

10. In the above backdrop, what emerges from the record before us is that the name of the Petitioner was recommended by the District Employment Exchange. His name itself indicates that he

belongs to the Muslim religion. He had a Khatik certificate with him. The management appointed him on a post which was reserved for the backward category. None of the documents before us indicate what is that reserved category. The proposal forwarded by the Principal of the college, which is an admitted position, also indicates that the Petitioner was appointed to the post of Instructor, Building Maintenance. There is no mention in the said format that the Petitioner was appointed against a backward category. The note below the proposal mentions that any appointee from the backward category would be treated from that category. One more document before us at page 75 indicates that the Petitioner was said to be appointed on a reserved post and the caste was written as Khatik. As such, his service record merely mentions his induction in employment till his superannuation, as being a person who belongs to the Khatik caste, his religion was Muslim. The Petitioner does have a validity certificate of the O.B.C. category, under which the Muslim Khatik caste is covered. It is not mentioned in any document that he was appointed on a post which was reserved for the Scheduled Caste or Tribe.

11. The learned Advocate for the Petitioner submits that he is willing to tender an affidavit undertaking that if in future, his appointment or continuation in employment is called in question, and if this Court concludes that he was appointed on a post reserved for the S.C. category and not “reserved category”, and if this Court directs, he would be willing to return the pensionary benefits. It is an admitted position that the management has paid his entire retiral benefits, save and except, the pension.

12. In view of the above and since a statement has been made before us by the Management that an N.O.C. can be given to the Petitioner if this Court makes such an observation, we record that the Petitioner be granted the N.O.C., so that the payment of pensionary benefits would commence strictly in terms of the order passed by the Writ Court, dated 16.10.2023 and in pursuance to which the Petitioner’s entire proposal for pensionary benefits has been cleared even by the Accountant General, Nagpur. Let such N.O.C. be granted within 21 days from today. Let the undertaking be filed in this Court and a copy be tendered to the management, within 30 days from today.

13. We conclude that the Management has not acted in a manner which could be termed as an act of disobedience of our order. Hence, **this Contempt Petition is disposed off.**

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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