



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

915 WRIT PETITION NO. 3143 OF 2024

NAGESH MOGLAJI DARMOD

VERSUS

**STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

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Shri R.K. Mendadkar i/by Shri Anandsingh S. Bayas, Advocates
for the Petitioner.

Shri V.M. Kagne, AGP for Respondents 1 and 2/State.

Shri Pratap Vikhe, Advocate for Respondent 3.

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CORAM : RAVINDRA V. GHUGE

&

R.M. JOSHI, JJ.

DATE :- 21st March, 2024

Per Court :-

1. The Petitioner is selected as a Teacher (Marathi medium). He has already been appointed. However, the posting order is not issued since the Zilla Parishad has issued a circular dated 07.03.2024, containing the name of the Petitioner with the remark that he should produce the validity certificate of belonging to the Scheduled Tribe category, within 15 days.

2. The issue is no longer res-integra in the light of the judgment of this Court dated 25.08.2011 in Writ Petition

No.2136/2011 (***Shrikant Chandrakant Saindane vs. The State of Maharashtra and others***) and group of cases, wherein, this Court has concluded that a person from the reserved category cannot be denied an appointment order only because his claim is pending. We deem it apposite to reproduce paragraph Nos.15 to 18 of the judgment in Shrikant Chandrakant Saindane (supra) hereunder:-

- “15. *No doubt, that the purpose of the said condition is with a noble aim of ensuring that the reserved seat should be occupied by a candidate belonging to that particular reserved category and no candidate or person, not belonging to reserved category, should usurp the said post. However, at the same time, the Court cannot ignore the fact that it is not in the hands of the candidates to obtain the certificate before they appear for interview or apply for a particular post. If the the impugned condition is upheld, an eventuality cannot be ruled out that a candidate will have to wait till he reaches the maximum age to apply for the post and is given the validity certificate after he becomes age bar. In such a situation, a candidate belonging to a particular backward class, would be deprived of availing the benefits, though, in law, he is entitled to.*
16. *It is a settled principle of law that a party cannot be asked to do an impossible act. Reference, in this respect, can be made to a judgment of the Apex Court in the matter of Mohammed Gazi vs. State of M.P. and others, reported in 2000 (3) SCALE 6.*
17. *In any case, if any candidate's claim is*

subsequently invalidated, the law has taken care for the same. Sub-section (1) of Section 10 of the said Act provides that:

10 Benefits secured on the basis of false Caste Certificate to be withdrawn.-

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

If an ineligible candidate, who is appointed on the post reserved for reserved category, is found to be not belonging to that category and his caste claim is invalidated, his services will be liable to be terminated forthwith and he shall stand discharged from the services.

18. *In that view of the matter, we find that the said condition is totally unreasonable and as such, liable to be struck off. Hence the following order:-*
- (i) *We allow the petitions and hold that condition*

no.7, in Government Resolution dated 5th November 2009, is unreasonable and, therefore, is struck off.

- (ii) Since it is not in dispute, that all the petitioners are duly selected against a post reserved for particular reserved category, we direct the Respondent-employers to forthwith issue provisional appointment orders in favour of the petitioners, which shall be subject to validation of their caste / tribe claims. The same shall be done within a period of one month from today.
- (iii) The respective Respondent-Scrutiny Committees are directed to decide claim of the petitioners as expeditiously as possible and in any case, within a period of six months from today.
- (iv) It is directed that no coercive action shall be taken against the petitioners on the ground of non submission of validity certificate till the Respondent-Committees decide claims of the petitioners.
- (v) It is further directed that in the event any order adverse to the interest of the petitioners is passed by the Respondent-Committees, the same shall not be given effect for a period of four weeks from the date of receipt of communication by the petitioners.”

3. The learned AGP has strenuously opposed this petition and submits that it has become a *modus operandi* for such candidates to seek an appointment under the orders of the High Court. Once they receive the appointment order, they do not cooperate with the Committee for the expeditious disposal of the pending proceedings. There are instances when such candidates

have spent a complete service life time without validity certificates and at the stroke of retirement, have again approached this Court for seeking retiral benefits. He cites the judgment delivered by the Honourable Supreme Court in *Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others, 2017 AIR SC 3271*.

4. The learned AGP submits that the Scrutiny Committee will decide the claim of the Petitioner, on or before 30.09.2024.

5. The next date of hearing is scheduled on 02.04.2024 and the learned Advocate for the Petitioner makes a statement that the Petitioner will be present for the said hearing.

6. This is a Court of equity and equities will have to be balanced while granting relief to the Petitioner. After a thoughtful consideration over the matter and taking a holistic view, **this Writ Petition is disposed off** with the following directions:-

(a) The Petitioner shall appear before the Committee on

the scheduled date i.e. 02.04.2024.

(b) The Petitioner has tendered his e-mail address as nageshdarmod1996@gmail.com. He has also tendered his Cell Phone number as 9049008996 and agrees to receive communications or correspondence from the Committee and enter into correspondence with the Committee through his e-mail address and/or the whatsapp mode.

(c) The Committee shall decide the claim of the Petitioner, on or before 30.09.2024.

(d) The Petitioner would render wholehearted cooperation to the Committee and would refrain from seeking adjournments on unreasonable and trivial grounds. For every adjournment, he will have to put forth a justifiable reason through email/whatsapp/physical mode.

(e) Subject to the above conditions, Respondent No.3 shall issue a provisional probation appointment/ posting order to the Petitioner as a Teacher, on or before 15.04.2024.

(f) The Petitioner's service would not be confirmed and/or an order of confirmation would not be issued, until the Petitioner secures a validity certificate.

(g) The probation appointment/ posting order would

not be denied only for the reason that the Petitioner's claim is pending.

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(R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)