



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

WRIT PETITION NO.3152 OF 2024

Anjali Vithalrao Jukte,
Age : 25 years, Occupation : Education,
R/o Bhagyalakshmi Nagar, Vasmat Road,
Parbhani, Tq. And Dist. Parbhani.

...PETITIONER

-VERSUS-

1. State of Maharashtra.
Through it's Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. Directorate of Forensic Science,
Maharashtra State, Hans Bhugra Marg,
Vidya Nagari Kalina, Mumbai-431606.
Through it's Directgor.
3. Maharashtra Public Service Commission,
5th 7th and 8th Floors, Kooperage Telephone
Nigam Building, Maharshi Karve Marg,
Mumbai-400021.
Through it's Secretary.
4. The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad.
Through it's Member Secretary.

...RESPONDENTS

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Shri Mahesh Deshmukh, Advocate i/by Shri Umesh B. Gite,
Advocate for the Petitioner.
Shri S.K. Tambe, AGP for Respondent Nos.1, 2 and 4/State.
Shri S.J. Salgare, Advocate for Respondent No.3/MPSC.
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**CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.**

DATE :- 21st March, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. Leave to add the Competent Validity Committee as Respondent No. 4. Addition be carried out forthwith. The learned AGP causes an appearance on behalf of the added Respondent.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioner has put forth prayer clause A as under:-

“A) Issue Writ of Mandamus and or other appropriate Writ or Order in the like nature thereby direct the Respondent No.1- Home Department, Maharashtra State, Mumbai to forthwith issue Provisional Order of Appointment as "Assistant Chemical Analyzer, Group B (Gazetted)" in favor of petitioner from Schedule Tribe Category without insisting for Tribe Validity Certificate.”

4. The learned Advocate for the Petitioner submits that the Petitioner belongs to the “Mannervarlu”, Scheduled Tribe

category. She has a Tribe Certificate. Her proposal for seeking a validity certificate is pending. She relies upon the judgment delivered by 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.”*

5. 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 of such candidates have spent a complete service life time without a validity certificate and at the stroke of retirement, they approach 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.***

6. The learned AGP further submits that the Committee has already crossed the stage of the vigilance enquiry. The report of the Vigilance Cell is received and the copy is served on the Petitioner. The Petitioner has tendered her reply and also sought additional time for filing an additional reply to the vigilance cell report. He further adds that the Petitioner has voluntarily taken away the original tribe certificate from the Committee, which was a part of the proceedings, and has, thereafter, disappeared. She should re-tender the original tribe certificate within ten days and render fullest cooperation to the Committee.

7. This is a Court of equity and the 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 tender the original tribe certificate to the Competent Committee, on or before 01.04.2024. An acknowledgment of having received the original certificate shall be issued by the Committee to the Petitioner.

(b) The Petitioner has tendered her e-mail address as jukteanjali98@gmail.com. She has also tendered her Cell Phone number as 7387640512 and agrees to receive communications or correspondence from the Committee and enter into correspondence with the Committee through her 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, she will have to put forth a justifiable reason through email/Whatsapp/physical mode.

(e) Subject to the above conditions, Respondent No.1

shall issue a provisional appointment order on probation to the Petitioner as a Assistant Chemical Analyzer, Group B (Gazetted), 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 order would not be denied only for the reason that the Petitioner's claim is pending.

8. Rule is made absolute in the above terms.

9. No order as to costs.

kps (R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)