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wp 6253.20.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6253 OF 2020

Smt. Rekha Ashok Thakur,
Age 31 years, Occ. Service,
as Assistant Teacher,
R/o. C/o. Shri Pramod Prabhakar Ahire,
Flat No. 302, B-Wing, Sumanshilp,
Phaste II, S.No. 85/1-2, Parande Nagar,
Didhi, Pune 411 015.

.. Petitioner.

VERSUS

1. The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
2. The Scheduled Tribe Certificate Scrutiny
Committee, Nandurbar Division,
Nandurbar, through its Member
Secretary.
3. The Education Officer (Secondary),
Zilla Parishad, Pune.
4. Genba Sopanrao Moze Trust,
191/A, Maharashtra Housing
Board, Yerwada, Pune 411 006
through its President.
5. Sundarabai Marathe Vidyalaya,
Secondary Division, Kharadi,
37/20A/2-B, Pune 411 004.

.. Respondents.

Mr. Madhur A. Golegaonkar, Advocate for petitioner
Ms. R.P. Gaur, AGP for respondent Nos. 1 to 3.
Mr. N.S. Kadam, Advocate for respondent Nos. 4 and 5

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 19TH MARCH, 2024.
PRONOUNCED ON : MARCH, 2024.**

JUDGMENT [PER S.G. CHAPALGAONKAR, J.] :-

1. The petitioner approaches this Court under Article 226 of the Constitution of India with following prayers :-

“(B) To direct respondent No.2 – Scrutiny Committee to decide the tribe claim of the petitioner which is submitted afresh in pursuance to its decision dated 31.12.2019 as expeditiously as possible, which this Honourable Court deems fit, by issuing appropriate writ, order or directions, as the case may be.

(C) To quash and set aside the impugned termination order dated 31.12.2019 issued by the respondent No.4 – President, Genba Sopanrao Moze Trust, yewada Pune (Exh.O) thereby terminating the services of the petitioner and direct the respondent Nos. 3 to 5 to continue the services of the petitioner and allow her to work on the post of Assistant Teacher by issuing appropriate writ, order or directions in the like nature.”

2. The petitioner contends that she belongs to “Thakur Scheduled Tribe” category. The caste certificate was issued by the Deputy Collector, EGS, Dhule, who was the competent authority at the relevant time. On 7.6.2009, the petitioner came to be appointed with respondent No.4 Private School as Shikshan Sevek. Her appointment is from Scheduled Tribe reserved category. Her services were approved by

the respondent No.3 Education Officer. Since her appointment was from the reserved category, her caste claim was referred to the Scrutiny Committee on 28.5.2019. The Scrutiny Committee at Nandurbar invalidated the tribe claim of the petitioner and cancelled/confiscated the caste certificate dated 16.11.2000 issued by the Deputy Collector, EGS, Dhule observing that it is issued by an incompetent officer.

3. The petitioner obtained fresh certificate from the S.D.O. Pachora, Dist. Jalgaon i.e. competent authority and re-submitted her tribe claim. However, meanwhile respondent No.4 issued termination order dated 31.12.2019 for the reason of invalidation of tribe claim. Petitioner filed this Writ Petition seeking reliefs in terms of prayer clauses referred in para No.1.

4. During pendency of this petition, the petitioner's claim based on fresh certificate has been validated vide order dated 21.12.2023. Consequently, certificate of validity has been issued to her. As a sequel of aforesaid developments, she seeks to quash and set aside the impugned termination order and direct her reinstatement with respondent No.4 school.

5. We have heard Mr. Madhur Golegaonkar, learned advocate for the petitioner and Mrs. R.P. Gaur, learned AGP for respondent Nos. 1 to 3 and Mr. N.S. Kadam, for respondent Nos. 4 and 5.

6. It is not disputed before us that the petitioner was appointed with respondent No.4 school against a reserved post for ST category and her caste claim was referred to the Committee on the basis of Tribe Certificate issued by the Deputy Collector (EGS) Dhule, dated 16.11.2000. However, the Committee declined to validate the claim

citing the reason that he is not competent officer to issue caste certificate. However, subsequently, the petitioner obtained fresh Tribe Certificate from the competent authority i.e. Sub Divisional Officer, Pachora, District Jalgaon and her caste claim for “Thakur Scheduled Tribe” has been validated by the Scheduled Tribe Certificate Scrutiny Committee Dhule, Division Nasik vide order dated 26.12.2020. the Petitioner’s services as Assistant Teacher with Sundarbai Marathi Vidyalaya have been terminated only for the reason that her caste claim was invalidated by the Committee under order dated 12.12.2019. Therefore, when the petitioner was permanent employee of respondent No.4 and her caste claim is now validated by the competent authority, the whole basis of the termination of services does not survive. The learned counsel for respondent No.4 submits that one post of Teacher is available to accommodate the petitioner and there would be no difficulty if her reinstatement is ordered.

7. In that view of the matter, we pass the following order :-

ORDER

[i] The writ petition is partly allowed in terms of prayer clause (C) which reads thus :-

“ To quash and set aside the impugned termination order dated 31.12.2019 issued by the respondent No.4 – President, Genba Sopanrao Moze Trust, yervada Pune (Exh.O) thereby terminating the services of the petitioner and direct the respondent Nos. 3 to 5 to continue the services of the petitioner and allow her to work on the post of Assistant Teacher by issuing appropriate writ, order or directions in the like nature.”

[ii] The petitioner shall be entitled to continuity of service and retain her seniority and other consequential benefits.

However, the petitioner shall not be entitled for the back wages for the period during which she was not in employment i.e. from the date of her termination till her reinstatement.

[iii] Writ petition stands disposed of in above terms. All pending civil applications stand disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-