



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3588 OF 2024

Sunil Narayan Wallamwad

VERSUS

State Of Maharashtra Through Its
Principal Secretary And Others

...

Mr. U. B. Gite, Advocate for the Petitioner

Mr. D. R. Korade, AGP for Respondent Nos. 1 and 2

Mr. S. J. Salgare, Advocate for Respondent No. 6

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CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : APRIL 05, 2024

PER COURT :

1. The only issue before us is that the Petitioner, who is in the select list at Serial No. 15 and is eligible for an appointment from the ST category on the post of "Scientific Officer, Cyber Crime, Tape Authentication and Speaker Identification, Grade B (Gazetted)", has not been given an appointment since Respondent No. 1 is insisting on a tribe validity certificate.

2. The above issue is no longer *res integra* in the light of the judgment of this Court dated 25.08.2011, delivered in Writ Petition No. 2136/2011

(Shrikant Chandrakant Saindane Vs. The State of Maharashtra and Others) and connected cases. Paragraph nos. 15 to 18 of the said judgment reads as under:

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 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. & 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. Subsection (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, Denotified 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 Cooperative 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 co-operate 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. He further submits that Mannervarlu S.T. validity claim of the Petitioner is going to be decided today itself. A Judgment would be delivered and the same would be communicated to the Petitioner.

4. In view of the above and by keeping all contentions open, **this Petition is disposed off**. If the Petitioner is aggrieved, he is at liberty to approach this Court.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)