

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7325 OF 2022

Kishore Jetha Somai)
Age 32 years, Occupation: Student,)
Residing at 14, Mopar Complex,)
Village Shelu, Taluka-Karjat,)
District-Raigad - 41010) ...Petitioner

Versus

1. Union Of India)
(Through the Secretary))
Ministry of Law and Justice)
Department of Legal Affairs,)
Branch Secretariat, Aaykar Bhavan,)
Annex, 2nd Floor, New Marines Lines,)
Mumbai – 400020)
2. Chief General Manager)
in-charge of Human Resource)
Management Department at Reserve)
Bank of India, Fort, Mumbai – 400001)
3. The Reserve Bank of India)
Fort, Mumbai – 400001) ...Respondents

Mr. Anupam Dighe a/w. Mr. Hamza Lakhani i/b. India Law Alliance for
the Petitioner.

Mr. Milind Sathe, Senior Advocate a/w. Ms. Kirti Ojha i/b. BLAC Co.,
for the Respondents No.2 and 3

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 19 APRIL 2024

Judgment (Per M. M. Sathaye J)

1. Rule. Affidavit of service is filed. Learned Senior Advocate appearing for the Respondent Nos. 2 and 3 waives service. Rule is made returnable forthwith, taken up for final disposal by consent.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking to quash and set aside the impugned termination order dated 28 August 2017 issued by the Respondent No. 2 (Chief General Manager in-charge of HRM Department, Reserve Bank of India – Respondent No. 3) and is further seeking directions to the Respondent No. 3 - Reserve Bank of India (RBI) to reinstate the Petitioner in the service in the same designation as he was serving on the date of termination and further seeking directions to pay full arrears of salary and other benefits till re-instatement.

CASE

3. The Petitioner applied to RBI for the post of Officer Grade-B (Direct Recruit) disclosing that he is a person with physical disability and also that he belonged to Hindu Thakur Scheduled Tribe (ST). Under letter dated 28 January 2014, the Petitioner was called for interview. Before the interview, on 10 April 2014, the concerned Caste/Tribe

Scrutiny Committee invalidated the Petitioner's caste certificate and confiscated the same. On 22 April 2014, the Petitioner visited the office of the Respondent No. 3 for interview. According to the Petitioner, he informed the concerned officer of the RBI regarding cancellation of the cast certificate. But this is a contentious issue. On 29 May 2014, the Petitioner received an 'offer of appointment' letter and on 2 June 2014 the Petitioner accepted the offer by sending acceptance letter. On 19 June 2014, RBI issued recruitment letter asking him to report at Chennai for induction training. On 6 August 2014, the Petitioner received an email from the Respondent No. 3 asking him to submit his caste/tribe certificate and validity certificate. On 7 March 2017, a show cause notice was issued to the Petitioner asking him why his services should not be terminated on account of invalidation of caste claim by the Scrutiny Committee. The Petitioner addressed a detailed reply dated 24 March 2017 to the show cause notice. On 28 August 2017, the impugned termination order was passed. After the impugned order, the Petitioner's father addressed a letter dated 20 December 2017 to the Governor requesting him to look into the Petitioner's termination contending that it is on incorrect grounds. On 1 January 2018, the Respondent No. 3 – RBI replied confirming its decision of termination. It is in these circumstances that the Petitioner has approached this Court.

4. Reply-affidavit has been filed by the Assistant General Manager of the Respondent No. 3-Reserve Bank of India dated 16 December 2022

on behalf of the Respondent No. 2 and 3 opposing the Petition. A preliminary objection is raised contending that RBI has not violated any fundamental rights and legal rights of the Petitioner and therefore, the present Petition is not maintainable. It is contended that the Petition is not maintainable because the Petitioner has no statutory or legal right that can be enforced. It is contended that the Petitioner is guilty of suppressing the material facts and making false statements and has not come to the Court with clean hands. It is contended that disputed question of facts are involved in the Petition, which cannot be adjudicated under writ jurisdiction of this Court.

5. It is inter alia contended that RBI has rules and regulations in place for recruitment against regular vacancies in different classes of its employees and the governing rules and regulations are within constitutional parameters. It is contended that appointment, probation and termination of service of various categories of staff are governed by the provisions of Reserve Bank of India (Staff) Regulations, 1948 (for short “the said Regulations”). It is contended that under paragraph no. 3 of the call letter for interview (dated 15 April 2014) it is advised that candidate has been called for interview purely on provisional basis and if on verification of original documents or otherwise it is found that candidate does not strictly satisfy the prescribed eligibility criteria, he or she may not be entertained for interview itself. It is contended that the Petitioner was allowed to sit for an interview on the basis of caste

certificate produced by him. It is further contended that throughout the recruitment process including interview and induction training, the bank was unaware of the Petitioner's caste certificate being invalidated and only in July 2016 the Petitioner submitted his invalidation order. It is contended that the bank was under the impression that the Petitioner's caste certificate is pending with the concerned scrutiny committee until that time. It is specifically contended that the Petitioner was allowed to sit for interview on the basis of Caste Certificate produced by him.

6. The Petitioner has filed affidavit of rejoinder dated 2 February 2023 re-asserting his case.

SUBMISSIONS

7. Learned counsel Mr. Dighe argued on behalf of the Petitioner and made the following submissions:

- a) The Petitioner had disclosed to the concerned Officer of the RBI that his original caste certificate has been invalidated and confiscated in April 2014 and the recruitment process required both the caste certificate and the validity certificate compulsorily produced at every stage i.e. pre-selection, selection, document verification, interview, appointment and joining.
- b) Despite non-production of the caste validity certificate, the Petitioner was appointed and allowed to work and this implies

that the Petitioner was appointed and always treated as a candidate from the general category with a physical handicap status.

c) There is nothing to indicate that the Respondent- RBI ever wrote to the Petitioner for three years regarding the issue of a caste certificate or any matter connected therewith.

d) It was the duty of prominent government organization like RBI to check the credibility of all candidates minutely and with high level of due diligence and therefore, the Respondent- RBI would not have selected the Petitioner under ST category in the absence of a caste validity certificate.

e) During the period when the Petitioner was working with the Respondent RBI, its IES portal (website) showed the category and quota of Petitioner as 'General'.

f) The Petitioner had voluntarily disclosed all the information, and no fault can be found with his conduct.

g) After appointment, the Petitioner was posted in Mumbai and successfully completed his probation and was given salary and other perks, which itself shows that the impugned order of termination is an afterthought to discriminate against the Petitioner, in violation of the provisions of statutes such as Persons with Disabilities (Equal Opportunities, Protection of Rights and

Full Participation) Act, 1995 and Rights of Persons with Disabilities Act, 2016.

h) Clause (xxv) of offer of appointment letter, on which the impugned termination is based, itself shows that it would come into effect only when selection of the candidate is under any category including ST. The Petitioner always claimed to be a general category candidate with PH status and therefore, said clause will not apply.

i) To get the benefit of ST reservation, it is mandatory that an original caste and validity certificate is produced at every stage of selection and appointment, which the Petitioner could not produce because it was invalidated and confiscated on 10 April 2014 and the interview itself was on 22 April 2014.

j) The Petitioner's services were terminated without any hearing and in a summary manner.

k) As per the office order dated 1 October 2014 issued by Respondent- RBI, the Petitioner's name was not mentioned in the list of candidates whose applications were deficient and this is sufficient to show that the Petitioner's application was duly completed and compliant.

l) The RTI reply received by the Petitioner from the Respondent- RBI shows that he was selected in a PWD category and invalidation of his employment is owing to unrelated and different reason and therefore, the impugned order is arbitrary.

8. Per contra, Mr. Sathe, learned Senior Advocate appearing for Respondent-RBI opposed the Petition by making following submissions, on the basis of following documents :

a) The letter giving an offer of appointment dated 29 May 2014 is a standard format document sent to all candidates called for appointment and it has a clause (xix) which requires the candidate to produce a caste certificate in the prescribed format issued by the Competent Authority at the time of reporting appointment and it also has a clause (xxiv) providing that if any declaration, statement or information given by the candidate is found to be false and untrue at any time or if material particulars are suppressed then the services are liable to be terminated forthwith without any notice or compensation in lieu thereof.

b) Clause (xxv) of the said letter specifically provided that the appointment is only provisional, and is subject to caste/tribe certificate being verified through proper channels and if the claim is found to be false the services will be terminated forthwith without assigning any further reason and without prejudice to

further action under the provisions of the Indian Penal Code for production of a false certificate.

c) The recruitment letter dated 19 June 2014 also contained clause 3(c) requiring the Petitioner to bring a caste certificate issued by the Competent Authority in the prescribed format if the candidate belongs to any category including ST.

d) Exhibit- 'N' produced by the Petitioner himself (Page 95) which is a 'Staff Application Form' filled by the Petitioner himself shows a claim of the Petitioner as belonging to ST (Hindu Thakur) with PH (Orthopedic) i.e. physically handicapped. This Staff Application Form is dated 25 August 2014 which is immediately after the date of appointment.

e) Exhibit-'S' annexed by the Petitioner himself shows that the record of the Petitioner at seniority No. 991 shows the Petitioner as belonging to ST category.

f) It is specifically pointed out that there are two clear communications by the Respondent- RBI dated 30 May 2014 and 1 July 2014 issued to the Petitioner pointing out that on verification of the caste certificate, it is noticed that the name is spelled differently and therefore under both these communications, the Petitioner was called upon to submit proper

caste certificate and its validity certificate. It is submitted that these communications are suppressed by the Petitioner and are produced by RBI with its reply. It is then pointed out that Petitioner was well aware of this, in view of Exhibit K to the petition (Email / reminder dated 6 August 2014) annexed by Petitioner himself, which is a reminder sent by RBI referring to earlier communication dated 1 July 2014.

g) If the Petitioner was not claiming to be a candidate belonging to a Scheduled Tribe, and if the caste/tribe certificate was not relied upon by the Petitioner himself, there was no reason for the Respondent- RBI to make such scrutiny and issue as many as three communications asking for correct caste certificate and validity certificate. This documentary evidence is sufficient to indicate that the Petitioner was always treated, processed, interviewed, and appointed as a candidate belonging to ST category with orthopedic handicap i.e. ST-OH.

h) About website/portal status, it is submitted that it does not reflect the correct position and in any case such erroneous entry on website will not change the fact that the Petitioner has entered the whole process on the caste/tribe claim.

i) Therefore on learning that the Petitioner's caste/tribe certificate is invalidated, RBI has issued a show-cause notice to the

Petitioner on 7 March 2017 pointing out that he was selected under ST-OH category on the basis of Petitioner's claim as belonging to Scheduled Tribe category and because caste certificate was relied upon. But the caste certificate has been invalidated. Therefore the Petitioner's services were terminated in terms of clause no. (xxv) of the offer of appointment letter dated 29 May 2014.

j) The candidate like the Petitioner who knew that his caste certificate has been invalidated even prior to the interview and still chose to rely upon it, must not be shown any indulgence in the extraordinary writ jurisdiction of this Court and the Petition deserves to be dismissed.

REASONS AND CONCLUSION

9. We have considered the rival submissions carefully and perused the records. This is a case where continuation of a candidate on a 'public post' such as an officer in RBI is involved. It is settled law that appointment to public posts must be done scrupulously in accordance with applicable rules and regulations.

10. It is the case of the Petitioner that after he came to know about the invalidation of his caste certificate, when he had attended the office of the Respondent No. 3 on 22 April 2014 for document verification and interview, he had informed the officer/authority of the Respondent No. 3

about cancellation of his Scheduled Tribe Certification and that he no longer falls under the said category. It is also the case of the Petitioner when he received an email dated 6 August 2014 from the Respondent No. 3, asking him to furnish his caste and validity certificate, he was in Delhi and therefore his father personally visited the office of the Respondent No. 3 at Mumbai and a letter dated 11 August 2014 was submitted, asserting that the Petitioner has been appointed under the General PH category and informing that the Petitioner's caste certificate has been invalidated. It is further the case of the Petitioner that on 11 August 2014, his father met the concerned officer of the Respondent No. 3 and explained the facts and furnished a letter dated 11 August 2014 but the concerned officials did not accept the letter. It is further the case of the Petitioner that Petitioner's father was directed to submit the letter at Chennai office and accordingly the Petitioner's father also went to Chennai on 25 August 2014 and submitted the same letter dated 11 August 2014, which was accepted and acknowledged. It is the case of the Petitioner that under the directions of the authorities of the Respondent No. 3 at Chennai, the Petitioner had mentioned ST (Hindu Thakur) and PH (Orthopedic) in the Staff Application Form. These averments are made in paragraph VII, XIV, XV and XVI of the Petition.

11. These paragraphs have been dealt with by the Respondent No 3-RBI in its affidavit-in-reply and apart from the usual denial, specific case is made out in paragraphs 16, 21, 22 and 23 that the Petitioner was

qualified under ST-OH category and had submitted a copy of the caste certificate invalidation order by the concerned caste scrutiny committee only in July 2016. It is the specific case of the Respondent – Bank that throughout the recruitment process i.e. during the interview, appointment and induction training, the bank was unaware of the caste certificate of the Petitioner being invalidated. It is also the specific case of the Respondent-Bank that the Petitioner was allowed for interview under ST-OH category and was appointed under the said category and the Petitioner had not submitted any document informing or intimating about invalidation of his caste certificate. It is further specific case of the Respondent-Bank that the Petitioner had written/indicated his category as ST-OH in the Staff Application Form filled by him on 25 August 2014 during his induction training. The Respondent-Bank has further taken clear stand that the case of the Petitioner that he indicated his category as ST-OH in the Staff Application Form as directed by the Respondent-Bank authority, is not at all supported by any evidence, much less any documentary evidence and therefore, said contention is not correct. It is also the specific case of the Respondent – Bank that Petitioner was allowed to join, subject to subsequent verification of his caste status.

12. Apart from this specific case, the Respondent-Bank has also clarified in paragraph no. 28 of its reply affidavit that the Petitioner has secured 181 marks and after giving him notional marks of 24.5 as applicable to PWD candidates (persons with disability) the official score

came to 205.5 marks, which was below the cut-off for General category (215) but above the cut-off marks for ST candidates (198) and therefore, it is clear that the Petitioner entered under ST (OH) category as he qualified for the same only.

13. It is further specific case of the Respondent Bank that after the Petitioner submitted an application dated 28 March 2016 requesting the bank for correction in the bank records about the category in which he is appointed i.e General-PH, according to Petitioner that the process was initiated and it was found on scrutiny of the documents that the Petitioner's caste certificate was invalidated, which resulted in the impugned termination. It is further specific case of the Respondent – Bank that the Petitioner had applied for the post as ST-OH candidate; he was selected in the category of ST-OH category; his marks crossed the cut-off for ST-OH category only. The Petitioner could not have been considered in general category, both because he had not applied under the said category and also because he had not crossed the cut-off for general category.

14. We have considered the case of the Petitioner in light of this stand taken by the Respondent-Bank. As a matter of fact, the Petitioner has suppressed two communications of the Respondent-Bank viz. email dated 30 May 2014 and letter dated 1 July 2014 whereunder the Respondent-Bank as early as in May and July 2014 i.e. immediately after the offer of appointment letter, asked to submit proper caste certificate

along with validity certificate, because there was some difference in the spelling of name. Third such communication/reminder is dated 6 August 2014. If the Petitioner was treated as general category physically handicapped candidate, there was no reason for the Respondent-Bank to seek explanation about the caste certificate. This itself falsifies the case of the Petitioner. Further the fact that the Petitioner himself filled the Staff Application Form stating that he belongs to ST-OH category stares him in the face. These three communications, coupled with a Staff Application Form filled by the Petitioner himself, completely demolishes the case of the Petitioner that he was always treated and appointed as a general category candidate with physical handicap. It is too spacious and convenient a ground to contend in Writ Petition that Staff Application Form is filled by the Petitioner 'as per the directions of the Respondent – Bank officer'. There is nothing on record to support this.

15. The argument about the Petitioner's name appearing in IES Portal of RBI showing his category as 'general' can hardly help the Petitioner. Learned Counsel for the Respondent – Bank has explained that it is an incorrect entry made. By no stretch of imagination, it can be said that the entry made on the website/portal of the employer can actually change the category in which the candidate has entered the system, appeared for interview and selected/appointed based on his caste/tribe or handicap or both and the marks obtained after considering the applicable cut-off. The factual position about the category in which the application was made

and candidate was considered and appointed, cannot be changed by an erroneous entry made on the website/portal.

16. Further spacious argument of the Petitioner that he and his father had tried to give a letter dated 11 August 2014 disclosing that the Petitioner's caste certificate has been invalidated, is also unbelievable on the face of the record. We say so because the Petitioner has produced a document purported to be such letter with acknowledgment at Exhibit-M as averred in paragraph XIV. However, in the very next paragraph it is asserted that the said letter was not accepted by the concerned official of the Respondent – bank. Exhibit M does not show any date of acknowledgment. These are self-destructive contentions and certainly cannot be considered to hold any merit in the limited writ jurisdiction that we exercise. We have to be mindful of the fact that the writ jurisdiction of this Court under Article 226 of the Constitution of India can not be exercised when contentions are in realm of the disputed questions of facts.

17. Perusal of the offer of appointment letter dated 29 May 2014 shows that the Clauses (xxiv) and (xxv) thereof clearly provided that the appointment was provisional subject to Scheduled Tribe Certificate being properly validated and if the claim is found to be invalidated or false then the services will be terminated forthwith without assigning any further reasons. The said clauses also provide that if any declaration, statement or information give by the candidate is found to be false or untrue at any

time or if any material particular is found to be suppressed, then the services are liable to be terminated forthwith without any notice or compensation in lieu thereof. The impugned termination order relies upon the Clause (xxv) of the offer of appointment letter. Invocation of the said clause is found to be correct in the light of what is stated above viz. the claim of caste/tribe being found invalidated/false. Before the impugned termination order, show cause notice was issued on 7 March 2017, to which the Petitioner had even submitted his reply. The impugned termination order records that the reply submitted by the Petitioner has not been found satisfactory by the Bank. It is, therefore, clear that due procedure was followed and no fault can be found with the impugned order of termination. If the Petitioner knew before appearing for interview that his caste/tribe claim has been invalidated, he ought not to have appeared for interview for the said post reserved for a particular caste/tribe. Knowing that the Petitioner does not belong to scheduled tribe and still occupying the post reserved for that category, itself is a fraudulent act and no equity can flow from it, no matter how long the post was held as such. The Petitioner by such an act, has deprived one genuine candidate belonging to scheduled tribe from occupying the said post.

18. The law about selection and appointment on the public post through public participation is settled, which is based on the advertisement with clear indication about number of available posts,

category-wise, and then inviting applications ensuring level playing field and then scrupulously applying the selection procedure. Under this method, the person who has applied for a particular post under a particular category, if found to be not eligible (not belonging to a particular caste or tribe), cannot be directed to be accepted in some other category. Such a situation cannot be countenanced. If permitted, it would result in obvious injustice to some other genuine candidate in that other category.

19. There is one more angle to the present case, which is whether such a mandamus can be issued to the Respondent-Bank. If we have to exercise writ jurisdiction and direct the Respondent-Bank to reinstate the Petitioner then he cannot be reinstated in the category of ST-OH, simply because his caste certificate is invalidated and he is found not belonging to said caste/tribe. In such a situation, a writ of mandamus is unimaginable.

20. In view of the aforesaid factual and legal position, the Petition is devoid of merits and same is accordingly dismissed. No order as to the costs.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)