



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 1130 OF 2018

(Mohammed Sadique s/o Abdul Samad (dead) through Lrs. and another ..vs.. the Municipal Council,
Talhara and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.S. Sarda, Counsel h/f. Mr. R.M. Bhangde, Counsel for the
petitioners,
Mr. S.D. Chopade, Counsel for respondent Nos.1 and 5.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 07-05-2024

Heard the learned Counsel for the respective
parties.

2. The challenge in the petition is to the impugned
communication dated 14-2-2018 issued by respondent
No.5-Municipal Council, a declaration that the
communication dated 12-8-2021 issued by respondent
No.5 is illegal and a further declaration is sought that the
legal heirs for petitioner No.1 are entitled for family
pension.

3. The facts necessary for deciding the petition are
as under :

- a) Considering the vacancies in the district, the
District Selection Committee advertised the vacant
post of the Teachers (Shikshan Sevak) on
28-02-2003.
- b) As against the aforesaid advertisement, the
petitioners applied for selection way back in 2003.

- c) The advertisement admittedly was for five posts from respondent No.5-Municipal Council for Urdu Medium and the posts were for Scheduled Tribe Category.
- d) The District Selection Committee selected the petitioners from the reserved category and sponsored the names of the petitioners for appointment to respondent No.5-Municipal Council. Respondent No.5-Municipal Council accordingly issued appointment orders on 10-9-2003 appointing the petitioners into Urdu Medium School managed by it as a trained teacher from Scheduled Tribe Category. The appointment order particularly Clause No.14 speaks that the appointments are from the reserved category and in case of invalidation of the tribe claim, the petitioners have to lose their services.
- e) The petitioners thereafter continued on the said post of Assistant Teacher and approvals were granted by the respondent-Education Officer.

4. The contentions of the learned Counsel appearing for the petitioners are, the petitioners were never appointed from a reserved category that too particularly Scheduled Tribe Category. According to him, in case if the candidate for imparting lessons in Urdu Medium are not available, such post can be filled in from Open category and accordingly the petitioners were appointed

from the Open category. It is the contention of the learned Counsel for the petitioners that along with the application forms, the petitioners never claimed or submitted the Caste Certificates and as such, it has to be inferred that the petitioners have not only applied from Open category but also were granted approval and further continuation in service from Open category. So as to substantiate the aforesaid claim, the learned Counsel for the petitioners has not only relied on the order of granting approval but also the roster point, the Municipal record of the school so as to claim that the petitioners' appointment was always considered from Open category. According to the learned Counsel for the petitioners, it is for the first time that on 14-2-2018 the petitioners were served with a communication thereby directing to produce Validity Certificates, failing which their services were to be terminated. As a sequel of above, the petitioners have approached this Court questioning the impugned orders. The sum and substance is that the appointment of the petitioners was from Open category.

5. As against above, Mr. S.D. Chopde, learned Counsel appearing for respondent Nos.1 and 5 would oppose the prayer. Drawing support from the advertisement published by the District Selection Committee, it is claimed that the post against which the petitioners have applied was advertised from Scheduled Tribe category. In addition, Mr. S.D. Chopde would urge

that the appointment order issued to the petitioners in categorical terms speaks of such selection and appointment was from Scheduled Tribe category as reflected in the appointment order dated 10-9-2003.

6. Clause No.14 of the appointment order contemplates that the petitioners' appointment was from Scheduled Tribe category and they have to submit their Validity Certificates. Similarly, the approval order dated 13-7-2007 speaks of the approval is granted subject to petitioners submitting Validity Certificates and reliance is placed on Clause No.4 of the approval order.

7. Mr. S.D. Chopde would urge that it is at local level in the Municipal Council so as to extend undue benefit to the petitioners the record was manipulated so as to demonstrate that the petitioners' appointment was from Open category whereas there was no vacancy at the relevant time so as to grant appointment from the Open category. In addition to above, Mr. S.D. Chopde would urge that not only the record pertaining to appointment but also the other documents of the Municipal Council speak of the appointment of the petitioners from Scheduled Tribe Category. His further contentions are, the issue is squarely covered by the Division Bench judgment of this Court decided on 19-6-2017 in Writ Petition No. 3990/2013 (Irfan Ahmad Saeed Ahmad and others v. Zilla Parishad, Akola and others). That being so, Mr. S.D. Chopde has sought dismissal of the petition.

8. We have appreciated the aforesaid rival contentions.

9. Perusal of the record depicts that the post against which the petitioners came to be selected and appointed was from reserved category as could be inferred not only from the advertisement but also from the appointment order dated 10-9-2003. The appointment order issued by respondent No.5 in categorical terms mentions that the petitioners were selected and appointed by the District Selection Committee as against the seat reserved in Scheduled Tribe category. Clause No. 14 of the appointment order in categorical terms mentions that the petitioners' appointment since is from reserved category, in case if caste is invalidated, they shall be losing their appointment. Apart from above, the subsequent order issued by the Chief Executive Officer of respondent No.5 also provides that the petitioners' appointment are made subject to final outcome of the caste validity proceedings.

10. The learned Counsel for the petitioners from the record has tried to demonstrate that in the record of the Municipal Council, particularly the roster point register and the monthly record, the appointment of the petitioners is shown from Open category. However, such record will be of hardly any assistance to the petitioners.

11. It is for the petitioners to demonstrate that the Municipal Council, at the relevant time, has converted the appointment of the petitioners from Scheduled Tribe category to that of Open category. The petitioners not only have failed to discharge such burden but also it can be inferred from the record that the Municipal Council is not armed with any such power to convert an appointment from Scheduled Tribe category to that of Open category. Even otherwise, the fact remains that the selection of the petitioners was against the seat reserved for Scheduled Tribe category as could be inferred from the advertisement and the appointment order.

12. Merely because respondent No.5 in some of the record has shown that the candidature of the petitioners was from Open category that by itself will not extend the benefit to the petitioners of considering their appointment from the Open category.

13. The fact remains that after the advertisement, when the appointment order was issued to the petitioners on 10-9-2003, it was well within the knowledge not only of petitioners but also that of respondent No.5 that selection and appointment was as against a post reserved for Scheduled Tribe category.

14. The petitioners continued to draw benefit of such appointment order after occupying the posts which were meant for Scheduled Tribe category till the last moment. The petitioners for the first time questioned the very act

of the respondents of considering their appointment from Scheduled Tribe category after a lapse of a period of more than fifteen years. The only explanation which the petitioners have tried to put forth before this Court is in the Municipal record the petitioners' candidature was shown from Open category. The fact that the petitioners' appointment was from the Scheduled Tribe category and the appointment order dated 10-9-2003 which is not in dispute also speaks so is not a fact in dispute.

15. In such an eventuality, the claim of the petitioners that the Municipal Council converted and considered their appointment from Open category cannot be accepted as neither the Municipal Council nor the District Selection Committee has any authority to convert the vacancies meant for the reserved category to that of Open category. No doubt, such conversion is permissible in law, however, there is a procedure established for such conversion. Admittedly neither at the behest of the petitioners nor respondent No.5 has taken recourse to such procedure of converting the advertised post to that of Open category for want of candidate from the reserved category.

16. If we apply the principles of preponderance of probabilities, the Municipal record, after the selection of the petitioners from Scheduled Tribe category, is manipulated by its employees so as to extend undue benefit to the petitioners. Not only by such illegal act

undue benefit of the services were continued but also the benefits were drawn by the petitioners for last about fifteen years.

17. The petitioner on 20-8-2013 was served with the notice calling upon them to submit the Validity Certificates. Such notice was neither responded by the petitioners nor questioned at the relevant time. It is only after lapse of period of five years from such notice the petitioners have approached before this Court without there being any explanation for such delay.

18. In view of aforesaid observations, we are of the opinion that no indulgence is called for in extraordinary jurisdiction. The petition lacks merit, stands dismissed.

19. The learned Counsel for the petitioners submits that he is intending to approach before the Apex Court and as such the interim relief granted be continued for a further period of four weeks. The prayer is opposed by the learned Counsel for the respondents.

Since the prayer for *status quo* is in operation for last almost six years, same is continued for a further period of eight weeks from today.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)