



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5625 OF 2023

(Subhash Krushnarao Khartadkar Vs. Collector, Akola and others)

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

Court's or Judge's orders

Shri S.M. Vaishnav, Advocate for Petitioner.
Shri A.M. Ghogre, A.G.P. for Respondent Nos. 1 & 2/State.
Shri P.N. Atkar, Advocate for Intervenor/Applicant.
Shri V.R. Hamad, Advocate with Shri P.W. Mirza, Advocate for respondent No. 5-A

CORAM : ANIL S. KILOR, AND
SMT.M.S.JAWALKAR JJ.

DATED : 19/03/2024.

1. The challenge raised in this petition is to the change of roster for the election of Sarpanch of village Sirso, Taluka - Murtijapur, District - Akola from Scheduled Tribe category to Scheduled Caste category on the ground that there was no candidate available of the Schedule Tribe category.

2. Admittedly, the election in the present case for the post of Sarpanch of village Sirso was held on 16/10/2023 and before that the roster was changed on 12/09/2023 from Scheduled Tribe to Scheduled Caste category. In the said election, respondent No. 5-A came to be elected as Sarpanch from the Scheduled Caste category.

3. It is the case of the petitioner that though on

the date of change of roster i.e. on 12/09/2023, the petitioner was not possessing the validity certificate of Scheduled Tribe category, subsequently on 21/12/2023, this Court granted validity to the petitioner. The petitioner therefore, submits that grant of validity will relate back to the date of order changing the roster. For this Purpose Shri Vaishnav, learned Counsel for petitioner is relying upon the Division Bench judgment of this Court in case of *Aakash S/o Ravindra Devke Vs. BrihanmumbaiMumbai Mahanagarpalika and others*, reported in *2017 (2)Mh.L.J. 667*.

4. We do not find favour with this arguments for the reason that admittedly on the date of change of roster i.e. on 12/09/2023, there was no candidate available belonging to the Scheduled Tribe category. Moreover, the validity which was granted to the petitioner is after more than three months from the date of change of roster and since the matter relates to election and change of roster, the position which was prevailing on the date of decision of change of roster has to be considered and not the subsequent events, which may be considered in the matter of termination of service, as rightly concluded by the Division Bench of this Court in the case of *Aakash Devke (supra)*.

5. However, the said analogy cannot be applied to the election matter and the validity granted subsequent to

the decision of change of roster would not relate back to the date of change of roster. In that view of the matter, we do not find any substance in the present writ petition and accordingly, it is dismissed.

6. The reliance placed on interim order passed in this petition dated 12/10/2023, is misconceived for the reason that it was an interim order recording the *prima facie* opinion.

JUDGE

JUDGE

Jayashree..