



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

WRIT PETITION NO. 1656 OF 2018

Abdul Rafique Abdul Majeed
 age : 47 years, Occ : Service
 R/o Behind Haquania Masjeed
 Muzappur Nagar, Akola

}

.. Petitioner

Versus

- 1 Zilla Parishad,
through its Chief Executive Officer,
Akola, Taluka and District : Akola
- 2 Education Officer (Primary)
Zilla Parishad, Akola,
Taluka and District : Akola
3. Block Education Officer,
Panchayat Samiti, Akola
Tq and Dist. Akkola

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.. Respondents

 Mr. A. R. Deshpande, Advocate for Petitioner.

Mr. Mangesh Bute, Advocate for respondent Nos.1 and 2.

CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.

DATED : JANUARY 31, 2025

ORAL JUDGMENT (Per : Abhay J. Mantri J.)

Rule. Rule made returnable forthwith. Heard finally, with
 the consent of the learned counsel, appearing for the parties.

(2) The petitioner is challenging the notice/communication dated 23.02.2018 issued by respondent No.2 to respondent No. 3 directing him to ask the petitioner to appear before him for a hearing with the caste validity certificate showing that he belongs to '*Sikalgar*' Nomadic Tribe - B category as illegal and arbitrary.

(3) It also appears that during the pendency of the petition, the petitioner was terminated despite this court's stay order. Therefore, the petitioner amended the petition to challenge the said termination order.

(4) Learned counsel for the petitioner, Mr. Deshpande, vehemently contended that in the year 1992, the petitioner was appointed from the Open category; however, by the impugned show-cause notice dated 23/02/2018, the petitioner was called upon to submit the validity certificate that he belongs to Nomadic Tribe (B) category. As such, he canvassed that the issuance of the said communication/notice by respondent No.2 is contrary to the facts on record, and hence, he has challenged the same.

(5) He further submitted that despite the stay order dated 20/03/2018 passed by this Court, respondent No.2 terminated him on 04/04/2018. Therefore, he has challenged the said termination order by amending the petition. By order dated 11/04/2018, the stay has been granted to the said termination order, and since then, he has continued in service.

(6) As per the order of this Court, he has also produced a copy of the service book on record to show that he was not appointed in the reserve category.

(7) In response, learned counsel for the respondent failed to point out from the record that the petitioner was appointed in the Nomadic Tribe (B) category. However, he submitted that until 2018, the petitioner was shown in the Open category. However, for the first time in 2018, he was called upon to produce the document relating to his caste Nomadic Tribe (B). Therefore, he submitted that the issuance of the notice by respondent No.2 is just and proper, and no interference is required in it.

(8) We have perused the service book and record. It does not indicate that the petitioner's appointment was made in the reserve category/Nomadic Tribe (B) category; therefore, it would not be appropriate to draw the conclusion that he was appointed in the reserve category. On the contrary, the record denotes that from 1992 to 2018, he was served in an open category. As such, we do not find substance in the contention of the learned counsel for the respondents or in the notice dated 23/02/2018 issued by respondent No.2 directing the petitioner to produce a caste validity certificate to substantiate his contentions.

(9) In the background above, in our view, the issuance of the notice by respondent No.2 calling upon the petitioner to produce the caste validity certificate that he belongs to the Nomadic Tribe (B) category appears illegal, arbitrary and contrary to the record. So, passing the termination order pursuant to the said notice is also arbitrary and contrary to the provisions of law. Therefore, the notice and termination order cannot be sustained in the eyes of the law, and the same are required to be quashed and set aside.

(10) In the wake of the above, we deem it appropriate to pass the following order :-

(11) The writ petition is allowed. The impugned notice/communication dated 23/02/2018 issued by respondent No.2 to respondent No.3 directing him to ask the petitioner to appear before him for a hearing with the caste validity certificate showing that he belongs to 'Sikalgar' Nomadic Tribe—B category and termination order dated 04/04/2018 pursuant to said communication are hereby quashed and set aside.

(12) Rule is made absolute in the above terms. No costs.

[ABHAY J. MANTRI, J.]

[AVINASH G. GHAROTE, J.]

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