***MAHARASHTRA ADMINISTRATIVE* TRIBUNAL,**

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.745/2016. (D.B.)

Somdeo Wamanrao Nikhare,
Aged about 53 years,
Occ-Service,
R/o Plot No.42, Chintamani No.3,
Manewada, Nagpur. **Applicant.**

-Versus-.

1. The State of Maharashtra,
   Through its Principal Secretary,
   Department of Water Resources,
   Mantralaya, Mumbai-32.

2. The Superintending Engineer,
   Quality Control Circle, Vainganga Nagar,
   Ajni, Nagpur.

3. The Superintending Engineer and
   Co-ordination Officer,
   Irrigation Vigilance Unit, Administrative Building No.1,
   2nd floor, Nagpur.

4. The Superintending Engineer and Administrator,
   Command Area Development Authority,
   Ajni, Nagpur.

5. The Executive Engineer,
   Control Division, Ajni, Nagpur. **Respondents.**

Shri M.R. Khan, the learned counsel for the applicants.
Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 10th day of October 2017).

Heard Shri M.R. Khan, the learned counsel for the applicants and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant has claimed that the impugned order dated 15.11.2016 (Annexure A-1) issued by respondent No.2 whereby the applicant has been reverted from the category of Class-III to the category of Class-IV, be quashed and set aside. The applicant was appointed in Class-III category initially on 10.5.1982 in the office of the Executive Engineer, Land Development Division, Nagpur. He was appointed from general category and not in the reserved category. He was promoted to the post of Junior Clerk on 27.7.1996 and had served as such in the office of Executive Engineer, Quality Control Division, Nagpur. His promotion was purely on the basis of seniority-cum-merit and he was never promoted in reserved category. The applicant has thus served for 14 years in Class-IV category and 20 years in Class-III category.

3. Vide impugned order dated 15.11.2016, respondent No.2 all of a sudden reverted the applicant from the category of Class-III to the category of Class-IV on the ground that he has obtained promotion on the basis of his caste i.e. Halba and could not produce

the caste validity certificate for the said caste. On the contrary, he has produced the caste certificate for Koshti and that he cannot take advantage of such certificate. The exact order of reversion is at page No.13 of the O.A. which is as under:-

“ज्याअर्थी श्री. सोमदेव वामनराव निखारे, कनिष्ठ लिपिक यांचे “हलबा” जातीचे (अनुसूचित जमातीचे) प्रमाणपत्र अवैध ठरुन त्यांनी विशेष मागास प्रवर्गाचे “कोष्टी” (३)/१) जातीचे प्रमाणपत्र सादर केलेले आहे.

ज्याअर्थी अधीक्षक अभियंता व परिमंडळीय अधिकारी, दक्षता पथक, नागपूर यांचे अर्धशासकीय पत्र क्र.५/द.ल.प/परि/ दि. २०.४.२०१६ च्या निर्देशानुसार तसेच मा. मुख्य अभियंता समवेत दि. १५.९.२०१६ ला झालेल्या बैठकीत दिलेल्या सूचनेनुसार व साप्रवि शा.नि.क्र. बीसीसी २००२/प्र.क्र. ९३/०४/१६ ब. दि. ३० जून २००४ तसेच महाराष्ट्र अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, इतर मागास वर्ग (जातीचे प्रमाणपत्र व त्यांच्या पडताळणीचे विनियमन) अधिनियम २००० मधील १० (१) तसेच श्री. सो. वा. निखारे, कनिष्ठ लिपिक पदावर अनुसूचित जमाती संवर्गातून पदोन्नती झालेली आहे. असे अधीक्षक अभियंता व प्रशासक लाभक्षेत्र विकास प्राधिकरण नागपूर यांनी कळविलेले आहे. त्याआधारावर नियुक्ती प्राधिकारी यांना प्रदान केलेल्या शक्तीचा वापर करुन या आदेशान्वये श्री. निखारे यांची दि. १५.६.१९९५ ला शिपाई पदावर संरक्षण प्रदान करुन सेवाजेष्ठता करण्यात येत आहे व श्री. सोमदेव वामनराव निखारे यांना कनिष्ठ लिपिक या पदावरुन शिपाई या मूळ नियुक्तीचे पदावर दि. २५.७.१९९६ (म.पु.) पासून पदावनत करण्यात येत आहे.

श्री. सोमदेव वामनराव निखारे यांची शिपाई या मूळ पदावर कार्यकारी अभियंता, गुण नियंत्रण विभाग, नागपूर येथे रिक्त असलेल्या पदावर पदस्थापना करण्यात येत आहे. सदर आदेश तात्काळ अमलात येतील.”

4. The respondents have filed their affidavit in reply and submitted that the applicant was appointed as a Peon in Class-IV category on 19.5.1982 and as per his service book record, he belongs to Halba (ST) category. It is not disputed that he was promoted to

Class-III category on 25.7.1996, but in reserved category. It is stated that as per the G.Rs dated 15.6.1995 and 30.6.2004, candidates who are non-tribal and are appointed / promoted before 15.6.1995, their services are to be protected. Though, the applicant was appointed as a Peon in Class-IV category on 19.5.1982, he was promoted on the reserved category in the cadre of Junior Clerk on 25.7.1996 i.e. after 15.6.1996 and, therefore, his promotion cannot be protected and hence, he was reverted.

5. The applicant has filed rejoinder and reiterated his claim.

6. Material question to be considered in this case is whether the applicant was appointed as per his caste i.e. Halba as a Peon in the reserved category and / or whether the applicant was promoted to Class-III category of Junior Clerk in such reserved category of Halba ?

7. The impugned order, though states that the applicant was appointed under reserved category and was also promoted from reserved caste Halba, the documents show otherwise. The applicant has placed on record the appointment order, a copy of which is at pages 15 & 15 of the O.A. (both inclusive), it is dated 19.5.1982. Though, the applicant has been recommended by the Employment Exchange, in his earlier order, it is nowhere stated that he

was appointed under a particular category. In any case, the appointment order of the applicant is not in dispute and what is disputed is the promotion order only and, therefore, it is necessary to see as to whether the applicant was promoted in his capacity as Halba or on merit.

8. The promotion order of the applicant has been placed on record at Annexure A-3, pages 16 & 17 (both inclusive). The said relevant order reads as under:-

"संदर्भाधीन शासन निर्णयाच्या अनुषंगाने खालील अर्हताधारक गट क चतुर्थश्रेणी कर्मचाऱ्यांना तृतीय श्रेणीतील लिपिक-टंकलेखक पदावर वेतनश्रेणी रुपये ९५०-२०-११५०-दरो-२५-१५०० मध्ये खालील परिच्छेद क्र.२ मधील अटींवर पदोन्नती देण्यात येत आहे.

सदर पदोन्नती दि. ३१.१२.१९९५ रोजी तयार केलेल्या वर्ग-४ मधील सर्व पदांच्या ज्येष्ठतेनुसार निवड सूची तयार करुन अर्हताधारण करण्याच्या व पात्र कर्मचाऱ्यांना देण्यात येत आहे. निवड सूचीत दर्शविल्यानुसार त्यांच्या पदस्थापनेचे आदेश सावर्जनिक हितास्तव देण्यात येत आहेत."

9. From the aforesaid mention in the promotion order, it seems that the general seniority list of all posts was prepared as per seniority. It nowhere states that the applicant's name was being considered for any particular category. Even otherwise promotion order is totally silent to state that the applicant was promoted on the basis of his caste i.e. Halba.

10. Respondent Nos. 2 to 5, alongwith their affidavits in reply have placed some documents on record such as promotion

order of the applicant. The said order is at Page Nos. 55 & 56 of the O.A. (both inclusive). However, in the said order it is mentioned that the applicant's caste as per roster book is Halba. However, this fact is not mentioned in the promotion order in respect of the applicant which is produced by the applicant on record at Annexure A-2 at pages 29 and 30. Even the order filed by the respondents on record, a copy of which is at page Nos. 55 & 56 also shows that the select list was prepared as per seniority and promotion orders were issued as per seniority.

11. Respondent Nos. 2 and 3, alongwith their affidavits themselves have filed on record the minutes of the meeting whereby the applicant's case was considered for promotion to the post of Junior Clerk and the said communication is very important. The most important statement which may help the applicant is as under:-

"पदोन्नती करिता ठेवावयाच्या ५०% बिंदू नामावली माणे दि. ३०.६.९५ पावेतो २१ बिंदू वापरण्यात आलेले असून कोणाचाही अनुशेष शिल्लक नाही. वापरावयाचे बिंदू १, २२ व २३ खुल्या वर्गाचे आहेत. दि. ३०.६.९५ नंतर वर्ग ४ मधून वर्ग ३ मध्ये पदोन्नत्या झालेल्या नाहीत.

श्री. खंडारे व श्री. निखार हे अनुक्रमे "कुंभार" व "हलबा" जातीचे असले तरी ते येथील ठराव माणे व अहवाल माणे व त्यांचेवर कोणतीही विभागीय चौकशी (दक्षता विषयक) नसल्यामुळे श्री. खंडारे व श्री. निखारे पदोन्नतीस पात्र ठरतात."

12. Thus, the aforesaid communication filed by the respondents themselves clearly shows that Shri Nikahre i.e. the applicant and Shri Khandare, though belong to the caste Kumbhar and

Halba respectively, their cases were considered purely on the basis of their seniority, qualification and merits. Thus, it clearly shows that the submission made by the respondent authorities that the applicant was considered for promotion on the basis of his caste as per roster, seems to be not proper. The applicant, therefore, can be said to be promoted on the basis of seniority-cum-merit and not on the basis of his caste Halba. In such circumstances, there was absolutely no reason for the respondents to revert the applicant on the ground that he could not produce caste certificate or that the caste certificate produced by him is of Koshti which is under the Special Backward Class (SBC) and not Halba which caste comes under Scheduled Tribe (ST). Even for the sake of argument, it is accepted that the applicant belongs to SBC. There is no reason as to why he was not considered for promotion from that category, once he has produced the certificate which, in fact, there was no necessary for him to produce. It is material to note that, the applicant has worked in Class-IV category for 14 years and from last 20 years he is promoted as Junior Clerk and serving as Junior Clerk form 25.7.1996. Considering this aspect, it would cause great injustice on the applicant if his promotion is cancelled and he is reverted to the post of Class-IV on the basis of impugned order dated 15.11.2016. Action taken by the respondents vide impugned order dated

15.11.2016 is not legal and proper. Hence, I proceed to pass the following order:-

ORDER

(i) The O.A. is allowed.

(ii) The impugned order dated 15.11.2016 (Annexure A-1) issued by respondent No.1 reverting the applicant from the category of Class-III to the category of Class-IV is quashed and set aside.

(iii) The applicant shall continue to work in Class-III category as he was working prior to his reversion.

(iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)

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