

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.987 OF 2019

DISTRICT : SANGLI

Shri Rahul Tanaji Kale.)
R/at : Islampur, Tal.: Walva,)
District : Sangli.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. The Sub-Divisional Officer.)
Walva Division, Islampur,)
District : Sangli.)...**Respondents**

Mr. M.B. kadam, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 15.10.2020

JUDGMENT

1. The Applicant has challenged the order dated 05.08.2019 whereby his claim for pay and allowances / back-wages for the period from 29.05.2017 to 30.05.2018 being out of service stands rejected.

2. Shortly stated undisputed facts for the decision of the O.A. can be summarized as under :-

- (a) The Applicant is working as Talathi on the establishment of Respondent No.2 – Sub-Divisional Officer, Islampur, District : Sangli.
- (b) In the year 1992, the vacancies for the post of Talathi were to be filled-in from the category of Freedom Fighter's family and in pursuance of it, the Applicant made application for the post of Talathi on 23.03.1992.
- (c) In application dated 23.03.1992, he claimed to be belonging to Reserved Category i.e. Scheduled Caste (Page No.19 of Paper Book).
- (d) The Committee headed by S.D.O. interviewed the candidates and Applicant was selected for the post of Talathi in pursuance of minutes of Selection Committee dated 28.06.1992 (Page Nos.45 to 47 of P.B.).
- (e) Accordingly, the Respondent No.2 by order dated 06.07.1992 appointed the Applicant for the post of Talathi subject to conditions mentioned therein (Page Nos.20 and 21 of P.B.) and accordingly, the Applicant joined as Talathi.
- (f) In pursuance of decision of Selection Committee as seen from Page Nos.44 to 46 of P.B, the Applicant was selected to fill-in vacant post of Reserved Category viz. Scheduled Caste on the basis of roster.
- (g) The Respondent No.2 issued notice on 10.11.2016 informing that till date, he had not submitted Caste Validity Certificate and called upon him to show cause as to why his service should not be terminated.
- (h) Then again, the Respondent No.2 by Notice dated 25.11.2016 called upon the Applicant to show cause why his

service should not be terminated on account of his failure to submit Caste Validity Certificate.

(i) By Notice dated 28.11.2016, the Applicant was again called upon to show cause why his service should not be terminated in view of his negligence and failure to submit Caste Validity Certificate, failing which appropriate action would be taken.

(j) Lastly, again final Notice was issued on 09.12.2016 for production of Caste Validity Certificate.

(k) The Applicant failed to submit Caste Validity Certificate despite issuance of Notices.

(l) Ultimately, the Respondent No.2 by order dated 29.05.2017 terminated the services of the Applicant because of his failure to submit Caste Validity Certificate.

(m) The Applicant has challenged the termination order by filing O.A.No.834/2017 in this Tribunal which was disposed of by order dated 16.02.2008 in following terms :-

“2. Shri A.J. Chougule, the learned Presenting Officer for the Respondents states on instructions as below :-

- (a) In the background that applicant's claim in the O.A. is for protection of his employment, that his services are terminated on account of failure to produce the validity certificate.
- (b) Now if the applicant furnishes the required documents the same would be forwarded to the Committee, sacrosanct.

3. In view of the statement of the learned P.O, O.A. is disposed by keeping all issues open, in the event applicant stands in chance to claim reinstatement.

4. Applicant hopes and we have not lost hope, in the event applicant succeeds legal consequences would fall.”

(n) In view of disposal of O.A. and statement made by learned P.O, the Respondent No.2 by order dated 31.05.2018 reappointed the Applicant on condition to submit Caste Validity Certificate within six months from the date of order (Page No.33 of P.B.).

(o) After joining the Applicant made an application dated 28.06.2018 stating that he was terminated without and valid reason and was kept out of service, and therefore, claimed back-wages i.e. pay and allowances of the period from 29.05.2017 to 31.05.2018.

(p) The Respondent No.2 by order dated 05.08.2019 rejected his claim for back-wages on the ground that he was terminated because of his failure to submit Caste Validity Certificate, and therefore, not entitled to back-wages. However, the said period was to be considered as service for pensionary benefits.

3. Shri M.B. Kadam, learned Advocate for the Applicant sought to assail the impugned order dated 05.08.2019 and made two-fold submission. In the first place, he submits that the Applicant was appointed from the category of relatives of Freedom Fighter and there was no such stipulation in appointment order to submit Caste Validity Certificate. He, therefore, submits that the Applicant was kept out of service without fault on his part, and therefore, he is entitled to pay and allowances of the said period. He also tried to contend that it was for the Department to forward his proposal to Caste Scrutiny Committee, and therefore, the Applicant cannot be blamed for not furnishing Caste Validity Certificate.

4. Per contra, the learned P.O. Smt. K.S. Gaikwad submits that the Applicant was appointed to fill-in vacant post of Reserved Category of Scheduled Caste and in terms of G.R. dated 28.05.2013, it was incumbent upon the part of Applicant to submit Caste Validity Certificate

and despite issuance of various Notices, he failed to produce the same, and therefore, termination cannot be termed illegal. She has further pointed out that after reappointment only, the Applicant had submitted Caste Validity Certificate dated 16.06.2018. She, therefore, submits that the Applicant was not on duty in the said period, and therefore, on the principle of 'no work on pay', he cannot claim pay and allowances.

5. True, in appointment order, there is no such stipulation to submit Caste Validity Certificate. However, the perusal of minutes of Selection Committee headed by Respondent No.2 on 28.06.1992 reveals that at the relevant time, six posts of Scheduled Caste were vacant and the said backlog was required to be filled-in in terms of reservation policy. The Committee accordingly selected the Applicant from the category of Scheduled Caste. There is specific noting to that effect in the minutes of the Committee that the Applicant was appointed to fill-in vacant roster point of Reserve Category. In view of specific mentioned in the minutes of Selection Committee, it cannot be said that the Applicant was not required to submit Caste Validity Certificate and absence of any such stipulation in appointment order, hardly matters. Ideally, the condition should have been mentioned in appointment order but non-mentioning condition in appointment order itself, does not matter particularly when the Applicant has not challenged the notices issued to him from time to time for production of Caste Validity Certificate. Had the Applicant was not selected on reserved post, then he ought to have challenged the Notices whereby he was called upon to submit Caste Validity Certificate and failing to which, the appointment was to be cancelled. Furthermore, after reinstatement, the Applicant has admittedly produced Caste Validity Certificate from Caste Scrutiny Committee. This being the position, it does not lie in the mouth of Applicant that his appointment was not from Reserved Category.

6. Material to note that, though the Applicant has challenged the termination order by filing O.A.No.834/2017, it was disposed of in view

of statement made by the learned P.O. that on production of Caste Validity Certificate, the Applicant will be reinstated in service. There is no such declaration of the Tribunal that termination was illegal. It appears that the Applicant himself had shown his willingness to submit Caste Validity Certificate, and therefore, he was reinstated in service on specific condition to submit Caste Validity Certificate within six months which accordingly he obtained on 16.06.2018 and submitted to the Office.

7. The learned P.O. has rightly pointed out that, in terms of G.R. dated 28.05.2013, the Applicant was required to submit necessary documents and to obtain Caste Validity Certificate from Caste Scrutiny Committee. Para No.1 of G.R. is material, which is as follows :-

“(१) शासकीय / निमशासकीय इत्यादींच्या सेवेमध्ये कार्यरत असलेल्या मागासवर्गीय कर्मचाऱ्यांच्यापैकी (अनुसूचित जात, अनुसूचित जमात, विमुक्त जात, भटक्या जमात, विशेष मागास प्रवर्ग व इतर मागास वर्ग या प्रवर्गांमधल्या ज्यांना अद्याप जात प्रमाणपत्राचा वैधता तपासण्यासाठी जात पडताळणी समित्यांकडे अर्ज केला नाही अशा कर्मचाऱ्यांना आपल्या जात प्रमाणपत्राचा पडताळणी करण्यासाठी, आवश्यक त्या परिपूर्ण कागदपत्रासह, अर्ज, संबंधित जात पडताळणी समित्यांकडे दि. ३१.७.२०१३ पर्यंत करावा व त्याबाबतचे पोचपावत संबंधित कार्यालयात आस्थापना अधिकारी यांना तात्काळ सादर कराव. प्रत्येक कार्यालयात आस्थापना अधिकाऱ्यांना त्यांच्या कार्यालयात कार्यरत असणाऱ्या मागासवर्गीय कर्मचाऱ्यांपैकी सर्व कर्मचाऱ्यांना दि. ३१.७.२०१३ पर्यंत जात प्रमाणपत्रांचे पडतानली करण्याबाबतचे प्रस्ताव जात पडताळणी समित्यांस सादर केलेले आहेत याचा खातरजमा पावतसह करून घ्याव.”

8. Thus, in terms of Para No.1 of G.R. dated 18.05.2013, it was incumbent on the part of Applicant to submit proposal to the Caste Scrutiny Committee on or before 31.07.2013. However, admittedly, he did not take any steps. On the contrary, he was continued in service for a long time and having noticed absence of Caste Validity Certificate, the Respondent No.2 had issued various Notices to the Applicant so as to submit Caste Validity Certificate, which was not complied with and ultimately, he came to be terminated. As such, the Applicant was terminated because of his failure to obtain Caste Validity Certificate. He

did not take any steps to produce relevant material before Respondent No.2 nor made any request to forward his proposal to the Caste Scrutiny Committee. He did not respond to any of the Notices issued by Respondent No.2. The termination Notices were given to him on 10.11.2016, 25.11.2016, 18.11.2016 and lastly on 09.12.2016 but none of them was responded by the Applicant nor he submitted any explanation. This being the position, it cannot be said that there was no fault on the part of Applicant.

9. Now turning to the claim of back-wages, admittedly, the Applicant was not in service for the said period i.e. from 29.05.2017 to 31.05.2018. There is no declaration that his termination was illegal. On the contrary, material on record shows that he was terminated because of his failure to take necessary steps to submit Caste Validity Certificate. This being the position, the Applicant cannot be said entitled for back-wages, as the principle of 'no work no pay' squarely applies.

10. It would not be out of place here to mention that under Industrial and Labour Laws, even if termination is found unsustainable and the employee is reinstated in service, he cannot claim back-wages as of right. It is well settled that while claiming back-wages, the employee is required to plead and prove that in the said period, he was not gainfully employed. In the present case, there is absolutely no iota of pleadings or material to establish that the Applicant was not gainfully employed in the intervening period.

11. The totality of aforesaid discussion leads me to sum-up that the claim of Applicant for pay and allowances is devoid of merits and O.A. deserves to be dismissed. Hence, I pass the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.10.2020

Dictation taken by :

S.K. Wamanse.

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