

Review Application No.10 of 2020
In O.A. No. 769 of 2018 (D.B.) –
(Shri Rangji Bhangyaji Bhukya Vs. State of Mah. & Ors.)

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Dated :- 29/06/2020.

ORDER

Per : Member (J).

Heard Shri N.R. Saboo, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant joined service as Store Attendant from 18/09/1997. The applicant is V.J. (A) category candidate and on 31/05/2011 the applicant was promoted on the post of Junior Clerk. Vide order dated 10/04/2018 the applicant was reverted to her initial post on the ground that the applicant was V.J. (A) category candidate and the promotional post was reserved for N.T. (D) category. The O.A.No. 769/2018 was filed by the applicant to challenge the impugned order dated 10/04/2018. The matter was finally heard by the Bench and decided on 26/02/2020.

3. In the O.A. contention of the respondents was that the applicant was V.J. (A) category candidate and she was wrongly promoted on a post which was reserved for N.T. (D) category candidate, therefore, the promotion was illegal. During course of the hearing information was collected from the respondents whether any

N.T. (D) candidate was available for the promotion. It was informed by the respondents that in the Department there was no N.T. (D) category candidate, therefore, due to promotion of the applicant prejudice was not caused to any N.T. (D) category candidate.

4. However, it was submitted by the respondents that as the post was reserved for N.T. (D) category candidate, consequently, the applicant who was V.J. (A) category candidate could not be promoted on that post. It was submission of the respondents that the reserved post was for the specific category and interchange was not permissible. In view of this, liberty was given to the applicant to make representation to the Government to consider her case sympathetically.

5. In this Review Application, it is submission of the applicant that when O.A. was decided by this Bench correct position of law was not placed before the bench. The learned counsel for the applicant invited our attention to the Maharashtra Act No. VIII of 2004. It is submitted that as per the Section 4 (3) of the Act the reservation specified for the categories in the table under Sub section 2 is inter transferable. The learned counsel for the applicant submitted that the reservation provided for the categories in the table in Section 4 (2) of the Act was inter transferable and consequently as the N.T. (D)

candidate was not available, the applicant was entitled to be promoted.

6. It is submitted that this legal position was not brought to the notice of this Bench and consequently liberty was given to the applicant to make representation to the Government.

7. The second submission of the applicant is that in Writ Petition No. 6808/2015 the Hon'ble Division Bench of the Bombay High Court by its Judgment dated 5/6/2018 as explained the Section 4 (3) of the Act No.VIII of 2004 and held that the reservations specified for the categories were inter transferable. On the basis of this, it is submitted by the learned counsel for the applicant that this is a fit case to review the order dated 26/02/2020 and the O.A. be allowed.

8. It is submission of the learned P.O. that the applicant took disadvantage at the time of promotion and she made misrepresentation and got the promotional post. It is further stated that the applicant enjoyed the promotional post and after four years she requested the Department to make correction in her service record regarding her caste. The learned P.O. also submitted that in view of the Judgment in case of **Vijay Ghogre** delivered by the Hon'ble Bombay High Court, now there is no reservation in promotion quota and consequently the applicant was not entitled for promotion, therefore, no relief can be granted.

9. After hearing the submissions on behalf of the learned counsel for the applicant and the learned P.O., we are of the view that when the matter was decided on 26/2/2020 the correct legal position was not placed before this Bench. It is clear after reading the Act No.VIII of 2004 and the Judgment in Writ Petition No.6808/2015 that the reservations provided to various categories in Section 4 (2) of the Act No. VIII of 2004 were inter transferable, therefore, the action of the Department to revert the applicant for the reason that the post was reserved for N.T. (D) category is erroneous and contrary to the provisions in Section 4 (3) of the Act No. VIII of 2004.

10. It is rightly pointed out by the learned counsel for the applicant that the applicant is not claiming promotion, but the applicant is challenging her reversion which is illegal. It is submitted that the Judgment rendered in case of Vijay Ghogre is challenged by the State Government by filing SLP and that matter is pending before the Hon'ble Apex Court. It is further submitted that there was no direction issued by the Hon'ble High Court or Hon'ble Apex Court to revert all the candidates who were promoted on the basis of their caste. Under these circumstances, according to the applicant the impugned order passed by the respondents on 10/04/2018 is apparently illegal.

11. We do not see merit in the contention learned P.O. that the applicant practiced fraud and got promotion. In O.A. such contention

was not raised, but it was submitted in the reply that error was committed while preparing the seniority list and the applicant made request to correct her caste.

12. There is no dispute about the facts that in case of Vijay Ghogre the Hon'ble Bombay High Court was pleased to quash the Government G.R. dated 25/05/2004 holding that the provision made by the Government of Maharashtra to promote the S.C. and S.T. candidates giving advantage of their caste was illegal. There is no dispute that the Judgment delivered by the Hon'ble Bombay High Court is challenged by the Government of Maharashtra and that matter is subjudice before the Hon'ble Apex Court. The learned P.O. was unable to satisfy us on the point that there was direction given by any Court to cancel the promotions which were given before the decision in the Writ Petition by the Hon'ble Bombay High Court. In view of this, the position is that in terms of Section 4 (3) of the Act, VIII of 2004 the reservation category was interchangeable and consequently the action of the Department to revert the applicant on the ground that the applicant was candidate of V.J. (A) category and the post was reserved for N.T. (D) category is apparently illegal.

13. In view of this, in our opinion this is a fit case to allow the Review Application. Hence, we pass the following order –

ORDER

- (i) The application for Review stands allowed.
- (ii) The O.A. No.769/2018 is allowed. The order dated 10/04/2018 passed by the respondents reverting the applicant is hereby set aside.
- (iii) No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 29/06/2020.

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