

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.112 of 2024 (D.B.)

Mrs. Malti Vasant Parate,
A/o: 58 yrs. Occ: Awaal Karkoon,
R/o: Flat No. 101, Snowdrop Apartment,
Jaigurudev Nagar, Behind Swaraj Nagar,
Manewada, Nagpur – 440027.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
- 2) State of Maharashtra,
through its Secretary,
General Administrative Department,
Mantralaya, Mumbai - 32.
- 3) The Divisional Commissioner,
Nagpur Division, Nagpur.
- 4) The Collector,
District Nagpur.

Respondent.

**S/Shri G.N. Khanzode, A. Thool, R. Gosavi, A.G. Khanzode, Advs.
for the applicant.**

Shri A.M. Khadatkhar, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar, Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Dated :- 13/09/2024.

J U D G M E N T

Heard Shri G.N. Khanzode, learned counsel for the
applicant and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Clerk-cum-Typist in the category of nominee of Freedom Fighter. Respondent no.2 vide G.Rs. dated 02/03/1981 and 10/01/1985 issued guidelines for making appointment to Class-III and Class-IV posts in the Government offices from the nominees of Freedom Fighters.

3. As per policy decision of the Government, the applicant was appointed as a nominee of Freedom Fighter. The District Selection Committee in its meeting dated 03/06/1996 selected the applicant for appointment to the post of Clerk-Typist. The respondents have issued appointment order dated 26/11/1996. The applicant has joined on the said post. By order dated 30/10/2001 the services of the applicant came to be confirmed on completion of continuous service of three years w.e.f. 24/11/1999. The name of applicant appears at Sr.No.61 in the said order. In the confirmation order, the applicant was shown in the open category and not against the Scheduled Tribe (S.T.) category. In spite of the said appointment being against open category, specifically from the Freedom Fighter cadre, she was asked to submit the validity certificate of her caste of Halba falling under the S.T. category. The applicant has given affidavit stating that she is unable to get validity certificate. She has made representation that she

was specifically appointed in the Freedom Fighter category and there was no any need to get any caste validity certificate.

4. It is submitted by the applicant that the Collector, Nagpur as per order dated 20/03/2013 (P-29) shown the applicant in open category. She was promoted from the open category. The applicant never taken any benefit of caste i.e. Halba.

5. Respondent no.4 issued impugned order dated 28/01/2020 by which the applicant is kept on supernumerary post for not producing the caste validity certificate of Halba caste. Being aggrieved by the order, the applicant approached to this Tribunal for the following reliefs-

“ (9) (i) Quash and set-aside the impugned order dated 03/12/2023 and 28/01/2020 issued by the Respondent no. 4 appointing the applicant on temporary basis for period of 11 months against Supernumerary post, being arbitrary unreasonable and illegal.

(ii) Be further pleased to declare and hold that the grievance of the applicant is squarely covered by the decision of the Respondent No. 2 dated 07/04/2021 in the Original Applications nos. 128 to 131 of 2020 filed by similarly placed applicants before this Hon'ble Tribunal.

(iii) Be further please to quash and set-aside the condition vide clause 1(b) and (c) incorporated in the G.R. dated 21.12.2019 issued by Respondent No. 2 being un-constitutional and illegal.

(iv) By way of ad-interim relief stay the effect and operation of order dated 28/01/2020 issued by Respondent No. 4 being against the legal position and unreasonable, during pendency of the present application to meet the ends of justice.

(V) Be further pleased to direct respondent no. 1 & 4 to release the annual increment of the applicant and grant time bound promotion as per G.R. dated 14/12/2022 as has been granted to the similarly placed employees in the state.

6. The O.A. is strongly opposed by the respondents. It is submitted that the applicant belongs to Halba caste, i.e., S.T. category and therefore production of caste validity certificate was necessary, but the applicant failed to produce caste validity certificate, hence the applicant is kept on supernumerary post as per the impugned order. There is nothing wrong and therefore the O.A. is liable to be dismissed.

7. During the course of argument, learned counsel for applicant has pointed out various documents. As per appointment order dated 26/11/1996 the applicant was appointed as a nominee of Freedom Fighter. Before the appointment order, there was a meeting of 5 members Committee dated 03/06/1996. In the meeting, the applicant was one of the candidates in the category of nominee of Freedom Fighter. In the said meeting, 50 nominees of Freedom Fighters category were called and 4 Project Affected Persons were also called. As per the result in the examination, 10 nominees of Freedom Fighters and one Project Affected Person were appointed / selected as per their merits. Copy of the minutes of meeting is filed on record (P-121).

8. The Collector, Nagpur as per the order dated 20/03/2013 shown the applicant in open category. The material part in the order dated 20/03/2013 is reproduced below –

“सौ. मालती वसंत पराते, यांनी प्रतिज्ञापत्र सादर करून त्यांची नियुक्ती स्वातंत्र संग्राम सैनिकाचे नामनिर्देशित पाल्य म्हणून झालेली असून वैद्यता प्रमाणपत्राकरीता आवश्यक ते दाखले सादर करू शकत नसल्याचे प्रतिज्ञापत्र सादर करून खुला प्रवर्गात दर्शवून जेष्ठता निश्चीत करण्याबाबत विनंती केलेली आहे.

अ.क्रं.	कर्मचा-याचे नांव	जन्म तारीख	नियुक्तीचा दिनांक	लि.टं. संवर्गातील समायोजित दिनांक	अभिप्राय
२८३ अ	सौ.मालती वसंत पराते	१६.९.१९६६	२४.११.१९९६	२४.११.१९९६	खुला

9. The similarly situated nominees of Freedom Fighters at Chandrapur were also considered by the Government. The proposal was submitted by the Collector, Chandrapur to the Government on 21/01/2020 stating that one Shri R.B. Sorte was appointed as a nominee of Freedom Fighter and therefore there was no need for him to produce caste validity certificate of S.T. (Halba) category. The proposal was considered by the Government and it was informed to the Collector, Chandrapur as per the letter dated 07/04/2021 that Shri S.B. Sorte, Shri T.N. Chandekar and Ku. S.R. Khadilkar and Shri P.B. Dhakate were not appointed in the reserved category. They were appointed in the category of nominees of Freedom Fighters and therefore they were wrongly shown on supernumerary posts and it

was directed to correct the said order. The material portion of the letter is reproduced below –

“२. त्यानुषंगाने आपणांस कळविण्यात येते की, श्री.आर.बी.सोरते, श्री.टी.एन.चांदेकर, कु.एस. आर. खाडीलकर व श्री.पी. बी. धकाते सर्व अक्वल कारकून या कर्मचा-यांच्या मूळ नलुक्त्या अनुसूचित जमातीकरीता राखीव जागांवर झालेल्या नसल्याने त्यांना अधिसंख्य पदावर दाखविणे उचित ठरणार नाही. यास्तव सदर चारही कर्मचा-यांच्या अधिसंख्य पदावर वर्ग करण्यात आलेल्या आदेशाचे पुनर्विलोकन करून त्यांना पूर्ववत नियमित पदावर नलुक्ती देण्यात यावी व त्यानुषंगाने सदर चार कर्मचा-यांकरीता निर्माण करण्यात आलेली अधिसंख्य पदे रद्द करण्याबाबतचा प्रस्ताव स्वतंत्रपणे शासनास त्वरीत सादर करण्यात यावा.”

10. The Collector, Chandrapur has corrected the mistake by which Shri S.B. Sorte, Shri T.N. Chandekar and Ku. S.R. Khadilkar and Shri P.B. Dhakate were wrongly shown on supernumerary post. The material part of the order dated 07/04/2021 is reproduced below -

“ ज्याअर्थी, श्री. आर. बी. सोरते, श्री. टी. एन. चांदेकर, कु. एस. आर. खाडीलकर, व श्री. पी. बी. धकाते सर्व अक्वल कारकून या कर्मचा-यांच्या मूळ नलुक्त्या अनुसूचित जमातीकरीता राखीव जागांवर झालेल्या नसल्याने व सन २००२ मध्ये बिंदुनामावली तयार करतांना सदर कर्मचा-यांची मूळ नलुक्ती आदेशाचे अवलोकन न करता किंवा त्यांची कोणतीही सहमती न घेता सदर कर्मचा-यांची नावे अनुसूचित जमाती प्रवर्गाचे यादीमध्ये समावेश केल्याचे व सदर बाब या कार्यालयाकडून अनावधानाने झाल्याचे संदर्भाधीन पत्रान्वये शासनास कळविण्यात आलेले होते.

ज्याअर्थी, श्री. आर. बी. सोरते, श्री. टी. एन. चांदेकर, कु. एस. आर. खाडीलकर, व श्री. पी. बी. धकाते सर्व अक्वल कारकून या कर्मचा-यांच्या मूळ नलुक्त्या अनुसूचित जमातीकरीता राखीव जागांवर झालेल्या नसल्याने त्यांना अधिसंख्य पदावर वर्ग करण्याबाबतच्या आदेशाचे पुनर्विलोकन करण्याबाबतचे मार्गदर्शन प्रस्ताव मा. अपर मुख्य सचिव, महसूल व वन विभाग मंत्रालय, मुंबई यांना सादर करण्यात आले असता संदर्भ क्रमांक १५ अन्वये उक्त चारही कर्मचा-यांच्या अधिसंख्य पदावर वर्ग करण्यात आलेल्या आदेशाचे पुनर्विलोकन करून त्यांना पूर्ववत नियमित पदावर नलुक्ती देण्यात यावी अशा प्रकारचे निर्देश प्राप्त झालेले आहेत.

त्याअर्थी, संदर्भ क्रमांक २ ते ५ अन्वये श्री. आर. बी. सोरते, श्री. टी. एन. चांदेकर, कु. एस. आर. खाडीलकर, व श्री. पी. बी. धकाते सर्व अक्वल कारकून यांना अधिसंख्य पदावर वर्ग करण्यात आलेले आदेश याव्दारे रद्द करण्यात येत असून त्यांना पूर्ववत नियमित पदावर नलुक्ती करण्यात येत आहे.”

11. The applicant is the similar person, who was appointed as a nominee of Freedom Fighter. The Collector, Nagpur itself treated her in the open category. She was promoted from the post of Clerk to Sr. Clerk / Awwal Karkoon in the open category. There is nothing on record to show that the applicant has taken any benefit of caste i.e. S.T. category (Halba). The applicant is the similarly situated person as like Shri R.B. Sorte and others who were wrongly kept on supernumerary posts, but as per the direction of the Government, the mistake was corrected and they are shown in the open category i.e. in the category of nominees of Freedom Fighters. The applicant was also appointed as a nominee of Freedom Fighter, therefore, there was no necessity for her to produce any caste validity certificate of S.T. (Halba) category.

12. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Suryakant C. Koturkar Vs. State of Maharashtra & Ano., 2023 (3) Mh.L.J., 653*** has held that the petitioner was appointed as an Attendant as a nominee of Freedom Fighter and therefore the petitioner was not required to produce any caste validity certificate of OBC / S.T. category. It was the case before the Hon'ble High Court that the petitioner belongs to OBC category, but he was wrongly shown in S.T. category. He was directed to produce the caste validity certificate of S.T. category by the department. The Hon'ble High Court

has held that petitioner was appointed as a nominee of Freedom Fighter and therefore Zilla Parishad was not justified to keep him on supernumerary post.

13. This Tribunal in O.A.No.113/2024 has also recorded the same finding that petitioner who is appointed on compassionate ground, need not to produce any caste validity certificate because his appointment was not on the basis of caste, but the appointment was on the basis of the Government scheme for appointment on compassionate ground. In that O.A., the Judgment of ***Mangal Manohar Salunke @ Mangal Balbhim Jagde Vs. State of Maharashtra & Ors.***, was pointed out.

14. There is no dispute that the applicant was appointed as a nominee of Freedom Fighter. She was shown in the open category by the Collector, Nagpur. She was given promotion in the open category. The applicant never got any benefit of caste. The applicant was not appointed on the basis of her caste, therefore, there was no necessity for her to produce any caste validity certificate of S.T. category.

15. In view of the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Suryakant C. Koturkar Vs. State of Maharashtra & Ano. (cited supra)***, the decision taken by the respondents directing the applicant to produce caste validity certificate is not legal and proper. The decision taken by respondent

no.4 by keeping the applicant on supernumerary post is not legal and proper. Hence, we proceed to pass the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned order dated 28/01/2020 issued by respondent no.4 appointing the applicant on temporary basis (supernumerary post) for the period of 11 months is hereby quashed and set aside.

(iii) The respondents are directed to pay all the consequential benefits to the applicant within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

**(Nitin Gadre)
Member(A).**

**(Justice M.G.Giratkar)
Vice Chairman.**

Dated :- 13/09/2024.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and
Member (A).

Judgment signed on : 13/09/2024.