MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.295/2023(S.B.)

Shri. Sushil S/o Ramdas Bakade,
Aged about 44 Years, Occ.-Service,
R/o Rajeshwar Nagar, Vidharbha Mill,
Paratwada, District-Amravati.

Applicant.

Versus

1) The Deputy Director of Education,
   Amravati Division, Amravati,
   Tope Nagar, Amravati.
2) The State of Maharashtra Secretary,
   School Education and Sports Department,
   Mantrayalaya, Mumbai-32.
3) The Commissioner (Education),
   Maharashtra State, Centre Building, Pune-1.

Respondents

Shri A.Deshpande, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 02nd July, 2024.

JUDGMENT

Judgment is reserved on 25th June, 2024.

Judgment is pronounced on 02nd July, 2024.

Heard Shri A.Deshpande, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The applicant was appointed as Clerk-cum-Typist by order dated 31.08.1998 (Annexure A-1). By order dated 28.12.2004 (Annexure A-3) Caste Scrutiny Committee invalidated claim of the applicant that he belonged to Scheduled Tribe – Halbi. In Writ Petition No.609/2005 filed by him the Hon'ble Bombay High Court passed the following order on 18.03.2005 (Annexure A-4) –

> ***The learned Counsel for the petitioner has filed the undertaking of writ petitioner. The same is taken on record. By that undertaking, the petitioner has given up his claim for the caste Halbi in view of order passed by the Scrutiny Committee invalidating his caste claim. In view of this undertaking given by the petitioner, nothing survives in this petition.***
>
> ***As submitted by the Counsel for the petitioner, two weeks' time is granted for petitioner to make representation to respondent no.2. Till then, petitioner's services be not terminated. We direct the respondent no.2 to consider the representation of the petitioner to continue him in service as per the G.R. Dated 30.6.2004.***
>
> ***The petition stands disposed of.***

The applicant had filed an undertaking that he will not claim any benefits of caste. As per his representation dated 28.03.2005

(Annexure A-6), by letter dated 07.04.2005 (Annexure A-7) respondent no.2 passed the following order –

> तेव्हा या सर्व बाबीचा साकल्याने सर्वंकष विचार करुन आपणांस सेवेत सुरू ठेवण्याचा निर्णय देण्यांत येत आहे, मात्र आपणांस हलबी या जातीच्या आधारावर कोणतेच फायदे घेता येणार नाही या अटीवर आपली सेवा सुरु ठेवण्याचा निर्णय देण्यांत येत आहे याची नोंद घ्यावी.

By order dated 08.03.2018 (Annexure A-9) the applicant was promoted as Senior Clerk from "Open" category. Apprehending adverse action the applicant filed Writ Petition No.880/2020. It was disposed of by order dated 01.02.2021 (Annexure A-10) by observing as follows –

> ***3. This petition is filed on an apprehension that adverse action will be taken in view of the Government Resolution dated 21 December, 2019. No such action is taken against the Petitioner.***
>
> ***4. As on today the Petitioner is in service. One order is already passed by this Court. We therefore, find that the petition is based purely on apprehension. If any cause of action arises and that if any action is taken based on Government Resolution dated 21 December 2019, it is always open to the Petitioner to challenge the same on its own merits.***
>
> ***5. Writ Petition is accordingly disposed of. No costs.***

The applicant submitted representation dated 14.10.2022 (Annexure A-11) to extend to him benefits of Assured Progress Scheme.

It was rejected by the impugned order dated 27.02.2023 (Annexure A-12) by concluding as under-

> उपरोक्त विषयाबाबत संदर्भिय अर्जानुसार आपण सुधारित सेवांतर्गत आश्वासित प्रगती योजने अंतर्गत सातव्या वेतन आयोगानुसार १०,२०,३० वर्षाच्या नियमित सेवेनंतर लाभ मिळणेबाबत विनंती केली आहे.
>
> वरील विषयी आपणास कळविण्यात येते की, यापुर्वी झालेली विभागीय पदोन्नती समितीची सभा दिनांक २७.४.२०२१ मध्ये न्यायालयीन प्रकरण असून आपले जात वैधता प्रमाणपत्र नसल्यामुळे २० वर्षाच्या देय होणाऱ्या लाभा बाबतचे प्रकरण स्थगित ठेवण्याचा निर्णय विभागीय पदोन्नती समितीने घेतला होता. याचिका क्रमांक ६०९/२००५ मध्ये मा. न्यायालयाने दिलेल्या निर्णया नुसार आपल्या सेवेला फक्त संरक्षण देण्यात आलेले आहे.
>
> सामान्य प्रशासन विभाग, शासन निर्णय दिनांक १ ऑगस्ट २०१९ मधील ७.१० मध्ये असे नमूद आहे की, जात पडताळणी अधिनियम २००१ च्या कलम ८ नुसार जात सिध्द करण्याची/जात वैधता प्रमाणपत्र सादर करण्याची जबाबदारी संबंधित मागासवर्गीय अधिकारी/कर्मचारी यांची आहे. त्यामुळे विचारक्षेत्रातील मागासवर्गीय अधिकारी/कर्मचाऱ्यांनी जात वैधता प्रमाणपत्र सादर केले नसल्यास त्यांना पदोन्नती देण्यात येऊ नये

असे आदिवासी विकास विभागाच्या दि.२८.५.२००१ चे शासन शुध्दीपत्रकान्वये तसेच सामाजिक न्याय व विशेष सहाय्य विभागाच्या दि.५.३.२००५ च्या शासन परिपत्रकान्वये आदेशित केले आहे.

त्यामुळे आपणास आश्वासित प्रगती योजनेचा सेवा विषयक लाभ देय होत नाही. याची नोंद घ्यावी.

Hence, this O.A..

3. Stand of respondents 1 and 3 is that services of the applicant were protected as per G.R. dated 30.06.2004, and on his furnishing an undertaking and hence benefits of Assured Progress Scheme which are extended to regular employees, cannot be extended to him. Clause (iv) of G.R. dated 02.03.2019 (Annexure R-2) lays down –

(iv) या तीन लाभाच्या योजनेच्या लाभार्थीस, (पदोन्नतीच्या पदाकरीता विहीत केलेली अर्हता, ज्येष्ठता, पात्रता, अर्हता परीक्षा, विभागीय परीक्षा उत्तीर्ण असणे, गोपनीय अहवालाची प्रतवारी, विभागीय चौकशी व न्यायिक प्रकरण प्रलंबित नसणे (शासन निर्णय सा.प्र.वि. दि.१५.१२.२०१७ नुसार), यथास्थिती जातीवैधता प्रमाणपत्र उपलब्ध असणे, अशा पदोन्नतीच्या कार्यपद्धतीची, विभागीय पदोन्नती समितीच्या बैठकीत पूर्तता करणे आवश्यक आहे.

As per G.R. dated 01.08.2019 (Annexure R-3), too, benefits of Assured Progress Scheme could not have been extended to the applicant for want of Caste Validity Certificate. Headings of Corrigendum dated 28.05.2001 (Annexure R-4) and Circular dated 05.03.2005 (Annexure R-5) are as under-

> "अनुसूचित जमातीकरिता राखीव असलेल्या पदावर नियुक्ती झालेल्या कर्मचाऱ्यांचे जमातीचे दाखले तपासणे."

> "अनुसूचीत जाती, विमुक्त जाती, भटक्या जमाती, इतर मागासवर्ग व विशेष मागासप्रवर्गाच्या उमेदवारांना शासन सेवेत, निमशासकीय सेवेत, शासन अंगीकृत संस्थामध्ये पदोन्नतीपूर्वी जाती प्रमाणपत्राची पडताळणी करुन वैधता प्रमाणपत्र सादर करण्याबाबत मार्गदर्शक सूचना."

These headings also show that the impugned order cannot be faulted.

4. After the Caste Scrutiny Committee invalidated his Caste claim, by order dated 18.03.2005 services of the applicant were protected on his filing an undertaking that he would not claim caste benefits. By order dated 07.04.2005 his services were continued subject to the condition that he would not claim any caste benefits. In seniority list he was shown to be belonging to open category (at P.43) and he was

promoted as Senior Clerk by order dated 08.03.2013. He continues to work till date. His claim for extending benefits of Assured Progress Scheme could not have been turned down by relying on Corrigendum dated 28.01.2005 and Circular dated 05.03.2005 since he was to be treated as belonging to open category. For all these reasons the impugned order is quashed and set aside. The respondents are directed to consider afresh claim of the applicant for extending benefits of Assured Progress Scheme in the light of what is held hereinabove. This exercise shall be concluded within two months from today. **The O.A. is allowed in these terms with no order as to costs.**

(M.A.Lovekar)
Member (J)

Dated – 02/07/2024
rsm.

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

Name of Steno	:	Raksha Shashikant Mankawde
Court Name	:	Court of Hon’ble Member (J).
Judgment signed on and pronounced on	:	02/07/2024.
Uploaded on	:	03/07/2024.