

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 70/2020(D.B.)**

Mrs. Anuradha Sanjay Barapatre,
@ Ku.Domeshwari Wamanrao Kohad,
(Maiden name)Aged about Major,
Occu.: service R/o Janki nagar, Nagpur.
Tq. and Distt Nagpur.

Applicant.

Versus

1. The State of Maharashtra,
through its Principal Secretary,
General Administration Department,
Mantralaya, Mumbai- 32.
2. The Divisional Joint Registrar,
Co-Operative Societies (Audit),
Nagpur Division, Nagpur.

Respondents.

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

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

Dated: - 24th September, 2024.

JUDGMENT

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

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

The applicant belongs to the caste Koshti/Halaba. Applicant is having Caste Validity Certificate of Special Backward Class (SBC). The applicant was appointed as per order dated 23.05.2000 on the post of Junior Clerk on "compassionate ground".

3. The respondents have directed her to produce Caste Validity Certificate of Scheduled Tribe (ST). The applicant applied for the Caste Validity before the Caste Scrutiny Committee. The Caste Scrutiny Committee as per order dated 22.03.2013 declared her caste Halaba is not of Scheduled Tribe(ST).

4. The applicant was promoted by the respondent in Open category as per order dated 09.09.2014. She was promoted on the post of Sub-Auditor in Open Category. Thereafter, the respondents have issued impugned order dated 27.12.2019 by which the applicant is kept on supernumerary post for 11 months for not producing Caste Validity Certificate of Scheduled Tribe(ST). Hence, the applicant has challenged the impugned order dated 27.12.2019 for the following reliefs-

i. allow the instant original application with costs;

ii. be pleased to hold and declare that the provisions of the Government Resolution dated 21.12.2019 are not made applicable to the case of the present applicant;

iii. be pleased to quash and set aside the impugned order dated 27.12.2019 passed by the respondent no.2 - The Divisional Joint Registrar Co-Operative Societies (Audit) Nagpur Division Nagpur (Annexure-).

iv. grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant application.

J. INTERIM RELIEF TO BE SOUGHT:

a. during pendency of the present application be pleased further be pleased to stay to the effect, operation and implementation of the impugned order dated 27.12.2019 passed by the respondent no.2 - The Divisional Joint Registrar Co-Operative Societies (Audit) Nagpur Division Nagpur (Annexure-) till the disposal of instant application;

b. be pleased to grant ad-interim relief in term of prayer clause (a).

5. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was directed to produce the Caste Validity Certificate. Her caste claim is decided by the Caste Scrutiny Committee on 22.03.2013 and the caste of Halaba of the applicant is declared not belonging to Scheduled Tribe(ST). Therefore, the respondents have issued impugned order for keeping the applicant on supernumerary post. Hence, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for the applicant has pointed out Judgments of the Hon'ble Bombay High

Court, Bench at Aurangabad in the case of **Promod Shivaji Shinde Vs. the State of Maharashtra and Others 2017(3)Mh.L.J., 925 dated 18.04.2017** and in the case of **Ajinkya s/o Rajiv Khadatkar Vs. Managing Director, Maharashtra State Electricity Distribution Co. Ltd. Prakashgad and Others 2019(2)Mh.L.J.654, dated 17.01.2019.**

The learned counsel for the applicant has submitted that in view of the Judgments, the applicant was not required to produce Caste Validity Certificate. Hence, the impugned order is liable to be quashed and set aside.

7. The learned P.O. has strongly objected the O.A.. As per his submission, the applicant belongs to Halaba/Scheduled Tribe(ST). Therefore, it was necessary to her to produce Caste Validity Certificate. Her Caste claim of Scheduled Tribe is invalidated by the Caste Scrutiny Committee. Therefore, the applicant is kept on supernumerary post. Hence, the O.A. is liable to be dismissed.

8. The Hon'ble Bombay High Court in the case of **Ajinkya Khadatkar Vs. Managing Director, Maharashtra State Electricity Distribution Co.Ltd. dated 17.01.2019** has held as under -

Order to submit caste validity certificate - It is law that unless rules and policy of state specifically provide that reservation policy is applicable to compassionate appointments, there cannot be presumption that compassionate appointment would be subject to validation of

caste claim only because candidate belongs to scheduled caste or tribe Order to submit caste validity certificate to petitioner is liable to be set aside. 2017(3) Mh.L.J. 925, Rel. (Para 6)

9. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Promod Shivaji Shinde Vs. the State of Maharashtra, dated 18.04.2017** has held as under-

Constitution of India, Art. 16 and Compassionate Appointment - Appointment made on compassionate basis - In absence of making such an appointment on a post reserved for a particular category, such an appointment would not be deemed to have been made as against a reserved post-Candidate so appointed would not be required to submit a caste or tribe validity certificate -Petitioner appointed by State Road Transport Corporation on compassionate ground in place of his deceased father Petitioner was not appointed on a post reserved for Backward category Corporation not justified in demanding caste validity certificate Impugned order of termination of petitioner on ground of non-production of caste validity certificate quashed and set aside - Petitioner entitled to be reinstated in service with grant of 50% backwages. W. P. No. 4185 of 2015, Ref. (Paras 7, 9, 13 and 19).

9. In view of the Judgments of the Hon'ble Bombay High Court, it is clear that once the employee is appointed on compassionate ground, then he is not required to produce Caste Validity Certificate. The Hon'ble Bombay High Court has held that the applicant / employee who is appointed on compassionate ground therefore there was no necessity to produce Caste Validity Certificate.

In the present O.A., the applicant was appointed on compassionate ground. She was not appointed in reserve category of Scheduled Tribe(ST) on her caste basis i.e. Halaba/Scheduled Tribe(ST) category. Therefore, there was/is no necessity for the applicant to produce Caste Validity Certificate. Hence, the action of the respondents by keeping her on supernumerary post as per impugned order dated 27.12.2019 prima facie appears to be not legal and proper. Therefore, we proceed to pass the following order-

ORDER

1. The O.A. is allowed.
2. The impugned order dated 27.12.2019 is hereby quashed and set aside.
3. The respondents are directed to give the consequential benefits to the applicant.
4. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 24/09/2024.
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 Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 24/09/2024.
and pronounced on
