
(2007) 04 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No. 742 of 2005

Charansingh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Citation : (2007) 115 FLR 911

Hon'ble Judges : J.P. Devadhar, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : B.P. Maldhure, for the Appellant; P.D. Kothari, A.G.P. and J.S. Mokadam, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Considering the nature of controversy, Rule is made returnable forthwith and heard finally at the stage of admission itself with the consent of Mrs. Maldhure, learned Counsel for the petitioner, Shri Kothari, learned AGP for respondent Nos. 1 to 3 and Shri Mokadam, learned Counsel for respondent No. 4.

As per orders of this Court dated 29.3.2007, Shri Kothari, learned AGI? appearing for Respondents No. 1 to 3 has today produced a copy of order dated 9.5.2006 passed by the Caste Verification Committee in the matter of Shri Sanjay Dhait. The Caste Verification Committee has found that he does not belong to VJ(A) category and his claim as candidate belonging to caste Wanjari which is included as NT (D) has been upheld. It is not in dispute that post in employment of Respondent No. 4 against which Shri Sanjay Dhait was initially appointed was reserved for VJ(A) category and the petitioner belongs to that caste. The petitioner also has produced a certificate issued by the Caste Scrutiny Committee in his favour to substantiate his stand.

2. Respondent No. 4 had provided employment to Sanjay Dhait because of his claim that he belonged to VJ(A) category sometime before 1.7.2004. His exact

date of appointment is not placed on record either by the petitioner or by Respondent No. 4. Respondent No. 4, however, has mentioned that Shri Sanjay Dhait was terminated on 7.12.2004 after his certificate was earlier invalidated by the Caste Verification Committee. It is also not in dispute that the Caste Verification Committee issued certificate to Shri Sanjay Dhait holding that he belongs to NT (D) category and therefore Respondent No. 4 found that he could not have been appointed against reserved post on which he was appointed and therefore terminated him. The select list in this respect was published on 30.9.2003 and the petitioner was also informed of his selection by Respondent No. 4 vide communication of even date informing him that he should produce a caste validity certificate within a period of three months. The petitioner thereafter got validity certificate on 28.11.2003 but as already mentioned above, it appears that as Shri Sanjay Dhait was appointed, he made a representation on 1.7.2004 for employment in place of Sanjay Dhait.

3. In these circumstances, Shri Mokadam, learned Counsel for respondent No. 4 contends that select list prepared on 30.9,2003 was valid only for, one year i.e. upto 30.9.2004 and expired thereafter and hence the petitioner has no right to appointment in view of inclusion of his name in the said list. After termination of services of Sanjay Dhait, Respondent No. 4 has communicated the vacancy to the State Government and is awaiting further instructions from the State Government in the matter. He points out that Respondent No. 4 has forwarded last reminder in this respect to the State Government on 17.1.2007.

4. Shri Kothari, learned AGP appearing for respondents No. 1 to 3 adopts the arguments of learned Counsel for Respondent No. 4.

5. However, learned Counsel for the petitioner has stated that as Shri Sanjay Dhait was appointed when the select list was valid and as his appointment is found to be vitiated, the petitioner was entitled to be appointed on the post when the list was valid and these objections are misconceived. We find that injustice has been done to the petitioner and the petitioner as VJ (A) ought to have been given employment in place of Shri Sanjay Dhait. If Sanjay Dhait could not have been given employment, the petitioner ought to have been given employment and hence said error can be corrected and contention that select list has expired in the meanwhile cannot be an answer to the claim of the petitioner.

6. Accordingly, writ petition is allowed. Respondent No. 4 is directed to issue appointment order to the petitioner on the post of Class IV Attendant with it within a period of two months from today. Rule is made absolute in above terms. However, in the facts of present case, there shall be no order as to costs.