

**SUPREME COURT OF INDIA**

Mohd. Asif

Vs.

State of Maharashtra

C.A.No.1094 of 2012

(Cyriac Joseph and Ranjana Prakash Desai JJ.)

27.01.2012

**JUDGMENT**

**CYRIAC JOSEPH, J.**

1. Leave granted.

2. This appeal by special leave is filed against the judgment dated 21.11.2007 passed by the Nagpur Bench of the High Court of Bombay dismissing Writ Petition No. 995 of 2007 filed by Mohd. Asif, the appellant herein.

3. According to the appellant, his ancestors were residents of Rajnandgaon which was earlier part of the State of Madhya Pradesh and is now part of the State of Chattisgarh. According to the Certificate dated 16.12.1988 issued by the Naib Tahsildar of the Rajnandgaon, the appellant belongs to Muslim Pathan Behna Caste which was recognized as OBC (Other Backward Classes) in the State of Madhya Pradesh. The appellant's family had shifted to Kamptee in the Nagpur district of Maharashtra and had become permanent residents of Nagpur district. Admittedly, caste 'Behna' is recognized as a Scheduled Caste in the State of Maharashtra.

4. As per order dated 22.06.1992, the appellant was appointed as an Assistant Teacher by respondent No.2 - Municipal Council, Bhandara in Nagar Parishad Urdu High School, Bhandara (respondent No.3) run by the said Municipal Council. His appointment was in the category reserved for Scheduled Castes.

5. As per the Certificate dated 21.09.1995 issued by the Executive Magistrate, Kamptee, Nagpur, the appellant belongs to the caste 'Behna' which is recognized as Scheduled Caste in the State of Maharashtra.

6. However, on the basis of a complaint dated 24.04.2003 filed by one Sattar Khan, President, Nagar Sudhar Nagrik Samiti, Bhandara, the Divisional Caste Certificate Scrutiny Committee (for short 'the Committee') conducted an inquiry regarding the caste of the appellant. By an order dated 22.03.2006, the Committee came to the conclusion that the appellant failed to submit proof/evidence to show that he belongs to caste 'Behna' and rejected the appellant's claim that he belongs to caste 'Behna'. Challenging the order of the Committee, the appellant filed Writ Petition No. 1993 of 2006 in the Nagpur Bench of the High Court of Bombay. While the said Writ Petition was pending before the High Court, the Standing Committee of respondent No.2 - Municipal Council passed a Resolution dated 27.06.2006 treating the appointment of the appellant as an appointment in the open category. The Standing Committee took such a decision in the light of Maharashtra Government Order dated 07.12.2001 permitting conversion of post reserved for Scheduled Castes in the Urdu medium schools into open category post and for filling up such post by open category candidates. However, it was also stated in the Resolution of the Standing Committee that its decision will be subject to the decision of the High Court in the pending Writ Petition. In the light of the above-mentioned Resolution of the Standing Committee, the appellant sought permission of the High Court to withdraw his Writ Petition and accordingly Writ Petition No. 1993 of 2006 was disposed of as withdrawn on 10.08.2006.

7. After such disposal of the Writ Petition, in its General Meeting the Municipal Council passed Resolution No. 52 dated 08.09.2006 approving the Resolution dated 27.06.2006 of the Standing Committee treating the appellant as a candidate in the open category. In spite of the decisions of the Standing Committee and the Municipal Council, the Chief Officer of the Municipal Council appears to have sought guidance from the Director of Municipal Administration, Nagpur and the Collector, Bhandara regarding further action to be taken in the matter. The Director of Municipal Administration informed the Municipal Council that since the Caste Certificate of the appellant was invalidated by the Committee, new recruitment process should be started and in the new recruitment process, the appellant also could apply.

8. Thereupon, the appellant filed Writ Petition No. 995 of 2007 in the Nagpur Bench of the High Court of Bombay challenging the order dated 23.11.2006 of the Director of Municipal Administration directing to start new recruitment process.

There was also a prayer for a direction to the respondents to continue the services of the appellant on the same post by treating him as an open category candidate and grant him all consequential benefits. The said Writ Petition was dismissed by the High Court as per the impugned order dated 21.11.2007.

9. From a perusal of the impugned judgment of the High Court, it is seen that the appellant raised an alternative contention based on a Government Resolution dated 30.06.2004 which, according to the learned Additional Government Pleader, was only applicable to the candidates belonging to Scheduled Tribes. The High Court accepted the contention of the learned Additional Government Pleader and dismissed the Writ Petition without considering the Resolution dated 27.06.2006 of the Standing Committee and the Resolution dated 08.09.2006 of the Municipal Council by which the appellant was treated as a candidate in the open category and also the Government Resolution dated 07.12.2001 based on which the said Resolutions were passed. Therefore, we are of the view that the High Court failed to properly consider the claims and contentions of the appellant and the impugned judgment is vitiated by non-application of mind and hence liable to be set aside.

10. Therefore we set aside the impugned order of the High Court and remand the matter back to the High Court with a request to consider the matter afresh and pass appropriate orders in the writ petition in accordance with law as early as possible. All contentions of the parties are left open. Till such fresh disposal of the writ petition, status quo as on today shall be maintained with regard to the appointment of the appellant.

11. The appeal is allowed to the above extent. There will be no order as to costs.