

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12053 OF 2016

Bank Karmachari Sangh ... Petitioner.
1349, B, Sadashiv Peth, Pune-411030

V/s.

1. The State of Maharashtra ... Respondents.
(To be served through Addl. Govt.
Pleaders Office, High Court, Mumbai)

2. Pune District Central Co-operative Bank Ltd.
4-B, B.J. Road, Pune -411 001.

Mr. Nitin A. Kulkarni, Advocate, a/w. A. R. Belge for the
Petitioner.

Ms. Rupali Shinde, AGP for Respondent No.1.

Mr. Vilas B. Tapkir a/w. Mr. J. S. Yadav for Respondent No.2.

Mr. D.M. Rane, Desk Officer, Co-op., Textile & Marketing Dept.
Mantralaya, Mumbai, is present in the court.

सत्यमेव जयते ---

**CORAM : ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.**

DATE : 19 APRIL, 2017

ORAL JUDGMENT : (PER ANOOP V. MOHTA, J.)

1 Rule. Rule is made returnable forthwith. Heard
finally by consent of the parties.

2 The question is whether the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes/ Special Backward Category And Other Backward Classes) Act, 2001 (hereinafter for short called as “the Reservation Act”) and the State circulars for promotion are applicable to Respondent No.2 Bank (i.e. Pune District Central Co-operative Bank Ltd.), a Co-operative Bank, in which there is no share capital of the State Government and/or State Government is not involved.

3 Respondent No.1, the State of Maharashtra (the State), has issued Government Resolutions from time to time so far as the “Reservation Policy” in relation to the scheduled caste and scheduled tribes and such others are concerned.

4 Respondent No. 2 is a Co-operative Bank registered under the Maharashtra Co-operative Societies Act, 1960 and is having its registered office at the address mentioned in the cause title of the petition.

5 The Petitioner is a registered trade union under the Trade Unions Act, 1926 and is also an approved representative union under the provisions of the Maharashtra Industrial Relations Act, 1946, having its office at the address mentioned in the cause title of the petition. The challenge is to the

Respondent No.2 Bank's decision to extend the State reservation policy while granting promotion to the Bank employees.

6 The Reservation Act provides for reservation in public services posts for the persons belonging to the scheduled castes, schedule tribes, de-notified tribes, (vimukta jatis), nomadic tribes/special backward category and other backward classes in the State. The state circulars are issued accordingly. The Reservation Act is applicable to an “establishment” defined under section 2(c) where government share capital is involved and/or it is the government aided institutions. The term “establishment” is reproduced hereunder:

(c) “establishment” means any office of the Government or of a local authority or statutory authority constituted under any Act of the State Legislature for the time being in force, or a University or a company, a corporation or a Co-operative Society in which share capital is held by the Government or any Government aided Institutions.

Explanation – For the purposes of this clause the expression “Government aided institutions” shall also include institutions or industries which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at

concessional rates or any other monetary concessions by Government, or is recognised, licenced, supervised or controlled by Government;

7 The first requirement is that the Reservation Act shall be applicable to the “establishment” as defined and not otherwise. Respondent No. 2 in their affidavit specifically averred that Respondent No.2-Bank has no share capital of the State and that there is no aid of the State in any form including the State land at concessional rates and further there is no monetary concession given by the government to the Bank.

8 Strikingly, apart from above, on a clarification sought by Respondent No.2 -Bank from the State, a letter/ communication dated 09.03.2007 is issued by the State. The communication is taken on record and marked as “X” for identification. It reads as under :

महाराष्ट्र शासन

ई-मेल ramesh.shingte@gov.in
दूरध्वनी 022 22885984

क्रमांक: व्हीआयपी ०८१५/प्र.क्र २९३/२-स
सहकार, पणन व वस्त्रोद्योग विभाग
(विस्तार इमारत), ३रा मजला,
मादाम काम मार्ग, हुतात्मा राजगुरू चौक,
मंत्रालय, मुंबई-४०००३२
दिनांक: ९ मार्च, २०१७.

प्रति,

मुख्य कार्यकारी अधिकारी, पुणे जिल्हा मध्यवर्ती सहकारी बँक लि., पुणे.

मुख्य कार्यकारी अधिकारी, ठाणे जिल्हा मध्यवर्ती सहकारी बँक लि., ठाणे.

विषय :- जिल्हा मध्यवर्ती सहकारी बँकांना सेवक भरती व बढती साठी
आरक्षणा संदर्भात मार्गदर्शन मिळणेबाबत

संदर्भ :- आपली पत्रे अनुक्रमे दिनांक ८.३.२०१७ व दि.१८.२.२०१७.

महोदय,

उपरोक्त विषयाबाबत आपल्या संदर्भाधीन पत्रास अनुसरून कळविण्यात येते की, विधी व न्याय विभागाचे अभिप्रायानुसार कोणत्याही सहकारी संस्थेमध्ये किंवा जिल्हा मध्यवर्ती सहकारी बँकेत राज्य शासनाचे भागभांडवल स्वरूपात गुंतवणूक असेल अशाच सहकारी संस्था किंवा जिल्हा मध्यवर्ती सहकारी बँकेस राज्य शासनाचा उपरोक्त आरक्षण अधिनियम लागू होईल.

आपण संदर्भाधीन पत्रात आपल्या बँकेत शासन भाग भांडवल नसल्याचे नमूद केले आहे. या कारणास्तव आपणास राज्य शासनाचा उपरोक्त आरक्षण अधिनियम लागू होणार नाही.

आपला

(दि.म. राणे)

कक्ष अधिकारी

प्रत :- सहकार आयुक्त व निबंधक, सहकारी संस्था, महाराष्ट्र राज्य, पुणे
यांना अग्रेषित. त्यांना विनंती करण्यात येते की, आरक्षणासंदर्भात
उपरोक्त वस्तुस्थिती राज्यातील सर्व जिल्हा मध्यवर्ती सहकारी
बँकांच्या निदर्शनास आणावी.

9 The above communication/letter issued from the government makes a position clear that the Reservation Act and related promotional policies are not applicable to the private co-operative bank like Respondent no. 2, as it does not fall within the ambit of the word “establishment”, which is the requirement for extending the benefits of the reservation policy.

10 Learned AGP on instructions of Mr. D. M. Rane, Desk Officer, Co-operative, Textile & Marketing Department, Mantralaya, who is present in the court, also makes a statement that Respondent No. 2 Bank is not funded by the State Government, as required under section 2(c) of the Act as per their record. Therefore, Respondent Bank, in view of the above, cannot be treated as the “establishment” for the purpose of extending the benefits under the said Act and/or related promotion policy/circulars. Therefore, any extension of such reservation policy and even such provisions to the Bank is impermissible and contrary to the law. The Apex Court in Madhya Pradesh Rajya Sahakari Bank Maryadit vs. State of M.P. & Ors., reported in (2007) 12 SCC 529 , in other States' similar provisions, has already expressed that such “Banks or establishment” are not covered by the reservation Act and the policy .

11 It is made clear that in the present petition we are dealing with the facts and circumstances of the existing position of the State Act and the declared State promotion policy, so reflected above. It is also made clear that we are not dealing with the general proposition of law of extension of reservation policy to such bank by such other specific provision and the rules. There is no other contrary provisions to support such extension of reservation policy in such reservation matters.

12 The validity of the Reservation Act has been upheld by a Division Bench of this Court in The State of Maharashtra vs. Shri Vijay Ghogre - Writ Petition No. 2797 of 2015 dated 4 May 2016. The issue of promotion based upon the related circulars is in debate. It is pending. However, in the instant case, as the stated reservation policy itself is not applicable, as recorded above, to the Respondent Private Co-operative Bank, we are inclined to allow this writ petition, as prayed for.

13 Therefore, taking overall view of the matter and the reasons so recorded above and in view of the given facts, the present petition is allowed in terms of prayer clause (a), which reads thus :

(a) This Hon'ble High Court may be pleased to exercise the jurisdiction under articles 226 and 227 of the Constitution of India and may be pleased to hold and declare that, the action of the Bank in providing for reservation policy while granting promotion to the employees is illegal and void-ab-initio.

14 Rule is made absolute in the above terms. No costs.

(RAVINDRA V. GHUGE,J.)

(ANOOP V. MOHTA J.)