

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2546 OF 2012

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MAYURA MOHAN MAWALGE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Mr. P.V. Jadhavar : Advocate for the Petitioner

Mrs. M.S.Patni : AGP for Respondent No.1

Mr. K.C.Sant : Advocate for Respondent No. 2

Mr. A.K.Tiwari : Advocate for Respondent No. 3

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CORAM : S. V. GANGAPURWALA & V.K. JADHAV, JJ.

Dated: July, 03, 2015

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PER COURT :-

1. Mr. Jadhavar, the learned counsel for the petitioner states that the caste claim of the petitioner is invalidated. Said order is confirmed up to this Court. The petitioner had taken admission to the M.B.B.S. Course and has also appeared for M.B.B.S. Final Year Examination. However, the result has been withheld on the ground that, the caste claim has been invalidated. In fact, the father of the petitioner has been issued with the validity as belonging to 'Koli Mahadev' Scheduled Tribe. However, for want of evidence, the tribe claim of the petitioner has been invalidated. The counsel further submits that the petitioner has given undertaking to this Court that the petitioner shall not claim any benefit of reservation. The result of the Final Year M.B.B.S. Examination be directed to be declared and the petitioner be

allowed to complete the said course.

2. Mr. Tiwari, the learned counsel for respondent No. 3 College and Mr. Sant, the learned counsel for respondent No. 2 strenuously contends that, it is a case of misrepresentation of facts. The tribe claim of the petitioner was already invalidated. Still the petitioner gave an application stating that her tribe claim is pending with the committee for validation. It is because of such misrepresentation that the petitioner was allowed to continue further studies. The petitioner cannot be given any benefit as it is a case of misrepresentation. The petitioner has completed M.B.B.S. course and has appeared in final year M.B.B.S. Examination. According to the learned counsel, on 20.03.2007, the petitioner gave an undertaking that her validation proceedings are pending with the committee. However, on that day, it was already rejected. The same was rejected on 21.07.2006. This Court would not exercise discretion in favour of such a candidate, who has indulged in misrepresentation. If the petitioner is allowed to complete the course, it will be giving prempium to the petitioner who has indulged in misrepresentation.

3. We have heard the learned AGP also.

4. We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that the petitioner has been given admission to the M.B.B.S. Course. The petitioner has completed all 4½ years of the M.B.B.S. and has also appeared for final year examination. The result has been withheld on account of invalidation of the tribe claim. The tribe claim of the petitioner has been invalidated on 21.07.2006 and on 19.09.2006 in writ petition filed by the present petitioner this Court has stayed the judgment of the committee. Admission of the petitioner is cancelled subsequently on 28.04.2011 which is also assailed in the present writ petition. Cancellation of admission is solely on the ground that the petitioner has not been in a position to submit the validity certificate.

5. It is nobody's case that the petitioner has not acquired knowledge of medicine during this period of 4½ years. The petitioner had studied in medical college. The misrepresentation as claimed by the respondent cannot be strictly said to be a misrepresentation. Though the tribe claim of the petitioner was invalidated on 21.07.2006, immediately the petitioner has filed the writ petition and this

Court, on 19.09.2006, has granted interim relief thereby staying the effect and operation of the judgment of the committee. When the undertaking on 20.03.2007 was filed, the interim orders passed by this Court staying the effect and operation of the judgment of the committee was in force. It can be understood that the petitioner, at the relevant time, was a young student, may not know the niceties of the matter pending with the Committee and/or this Court. Be that as it may, at the time when the undertaking was given by the petitioner, petition was pending in this Court and even the petitioner was allowed to continue with the course by the interim orders of this Court.

6. The knowledge which has been acquired by the petitioner cannot be taken away. The said knowledge, in fact, will be useful to the society. Upon perusal of the judgment of the committee, the committee has also nowhere stated that the petitioner has played fraud or is guilty of misrepresentation. Even the father of the petitioner has been issued validity certificate. It is because of lack of evidence the petitioner could not prove her tribe claim.

7. Considering the overall conspectus of the matter, we are inclined to exercise our discretion in favour of the

petitioner. In the light of the above, we pass the following order :-

ORDER

- I. The impugned order dated 28.04.2011 cancelling the admission of the petitioner, is quashed and set aside.
- II. The respondents shall declare the result of the petitioner for final year M.B.B.S. examination. In case the petitioner is held to have passed the said examination, then the petitioner be allowed to complete the further activity such as Internship in case there is no other legal impediment.
- III. It is made clear that henceforth, the petitioner would not be entitled for any benefit of reservation. The petitioner has already given an undertaking to that effect to this Court.
- IV. The petitioner shall pay the total fees as is applicable to the students of open category. In case, the institution has been reimbursed by the Government in respect of fees of the petitioner, the institution will refund the said amount to the Government.
- V. The writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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