

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

WRIT PETITION NO.5877 OF 2014

Sushil s/o Kashinath Koli
Age: 31 Yrs., occu. Service,
R/o Vidyaniketan Colony,
Plot No.2, Aurangabad
Dist. Aurangabad.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Principal Secretary,
Tribal Development Deptt.
Mantralaya, Mumbai.
- 2) The Scheduled Tribe Certificate
Scrutiny Committee,
Aurangabad.
- 3) The S.D.O., Aurangabad,
Dist. Aurangabad.
- 4) The Superintending Engineer,
Mahavitaran Company,
Jalna, Chanakya Complex No.2,
Kacheri Road, Old Jalna,
Dist. Jalna.

- RESPONDENTS

Mr.AS Bayas, Adv. h/for Mr. BL Sagar-Killarikar,
Advocate for Petitioner;

Mr.PP More, AGP for Respondent No.1/State & 3;

Mr.AB Tele, Advocate for Respondent No.2;

Mr. DS Manorkar, Adv. For Respondent No.4.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE : 19th March, 2015.

ORAL JUDGMENT(PER:- S.S.SHINDE,J.)

1) Heard. Rule. Rule made returnable forthwith with consent of the parties.

2) This petition takes exception to orders dated 30.04.2014 passed by Respondent No.2 and dated 18th June, 2014, passed by Respondent No.4.

3) It is the case of the petitioner that he belongs to "Mahadeo Koli", Scheduled Tribe. The competent authority, after verifying the documents submitted by the petitioner, has issued Caste Certificate as belonging to "Mahadeo Koli" in favour of the petitioner.

4) It is the further case of the petitioner that on 11th September, 2013, he joined the services of Respondent No.4 on a post reserved for S.T. category. The proposal for verification of the tribe claim was forwarded by Respondent No.4 to Respondent No.2-Caste Scrutiny Committee on 28.08.2013.

5) In support of the tribe claim, the petitioner has submitted a copy of Caste validity

certificate in respect of his real elder brother, to whom the Committee has issued Caste Validity Certificate as belonging to "Mahadeo Koli", Scheduled Tribe.

6) It is the further case of the petitioner that Respondent No.2-Committee, without giving an opportunity to put forth his contention in respect of the tribe claim and without deciding tribe claim of the petitioner, on its own merits, invalidated the tribe claim of the petitioner by the impugned order.

7) It is an admitted fact that after filing of this petition, Respondent No.4 has terminated services of the petitioner solely on the ground that the petitioner did not submit Caste Validity Certificate.

8) Learned Counsel appearing for the petitioner tendered across the Bar a copy of Judgment of the Division Bench of this Court delivered in Writ Petition No.4536/2014 & other companion matters (Prakash s/o Subhash Bhopale Vs. Deputy Collector (General) Latur & Ors., and also

placed reliance on unreported judgment of this Court in the case of Anand Mahadu Wagh Vs. The State of Maharashtra and Ors.(WP No. 9960/2014 & Other connected matters) and submitted that the issue raised in the instant petition, is no longer res integra and the same is covered by the aforesaid judgments of this Court. The learned Counsel further submits that the employer terminated the services of the petitioner solely on the ground that the petitioner did not submit Caste Validity Certificate and, therefore, the learned Counsel prays that the impugned order passed by the Caste Scrutiny Committee may be set aside.

. Learned Counsel on instruction submits that the petitioner will not claim back wages for the period for which he was not in employment of Respondent No.4.

9) Learned Counsel appearing for Respondent No.4 submits that the petitioner was supposed to submit the Caste Validity Certificate within stipulated period, however, he did not do

so and, therefore, his services were rightly terminated.

10) Learned Counsel appearing for Respondent No.2 vehemently opposed the prayer of the petitioner and submits that the entries in the school record will have to be read as they appear and there is no scope for any interpretation as regards the said entries in different manner.

11) We have given thoughtful consideration to the submissions advanced by learned Counsel for the parties; perused the pleadings in the petition as well as annexures thereto; the order passed by the Committee and the judgments of this Hon'ble Court in the matter of Prakash s/o Subhash Bhople (supra) and Anant Mahadu Wagh (supra).

. In the case of Prakash Bhople, the Division Bench of this Court, particularly in Para 4 thereof, has adverted to the facts of that case; and after considering the controversy involved in that petition, reached the

conclusion that it is an admitted position that there is no separate tribe or caste in respect of the petitioner as "Mahadeo Koli" and in the facts and circumstances of that case, issued certain directions, in addition to the directions issued by the Scrutiny Committee.

12) Having considered the facts of the present case as also the prayers made in the petition, we find that the controversy raised in this petition has been set at rest in view of the aforesaid two pronouncements of this Court.

13) In that view of the matter, we pass following order, -

(a) The impugned order dated 18.06.2014 passed by Respondent No.4, terminating services of the petitioner is set aside. However, we make it clear that the petitioner would not be entitled for back wages for the period for which he was not in employment of Respondent No.4;

(b) The petitioner, in this petition, may approach the concerned Scrutiny Committee for issuance of photostat copy of the caste/tribe certificate produced by him for verification, within a period of four

months from today. The Scrutiny Committee, on receipt of such application, issue attested/authenticated copy of the caste/tribe certificate produced by the petitioner for verification to the Committee.

- (c) The petitioner, on receipt of photostat copy of the caste/tribe certificate, shall approach the concerned Sub Divisional Officer/competent authority with an application for issuance of caste/tribe certificate within a period of six weeks, thereafter;
- (d) In the event earlier caste certificate had been issued by the Executive Magistrate, it would be open for the petitioner to tender an application to the Sub Divisional Officer of the concerned Division and such officer shall entertain the application and shall issue caste certificate in the prescribed proforma on verifying attested/authenticated photostat copy of the earlier caste certificate.
- (e) The concerned Sub Divisional Officer/Competent Authority, on receipt of the application by the petitioner, together with attested/authenticated photostat copy of the caste/tribe certificate issued earlier, shall proceed

to issue caste/tribe certificate in prescribed proforma certifying that petitioner belongs to 'Koli Mahadev', Scheduled Tribe. The Sub Divisional Officers/Competent Authority shall issue certificate within a period of four weeks from the date of receipt of the application.

- (f) On receipt of Tribe certificate, the petitioner, shall approach the concerned Scrutiny Committees with a proposal in prescribed proforma requesting the Scrutiny Committee to verify the Tribe Certificate and consider his application for issuance of validity certificate. The petitioner shall approach the Scrutiny Committee within a period of eight weeks from the date of receipt of the caste certificate from the competent authority.
- (g) On receipt of the proposal from the petitioner, the Scrutiny committee shall proceed to verify the caste/tribe certificate and take appropriate decision after following procedure prescribed under law in respect of issuance of validity certificate, as expeditiously as possible, preferably within a period of one year from the date of receipt of the proposal/application.

- (h) The Scrutiny Committee shall accept the proposal directly and shall not refuse to accept the proposal on the ground that same has not been routed through employer.
- (i) The employer shall not take any adverse action against the petitioner only on the ground of his failure to produce validity certificate and further appropriate action can be taken only subject to result of verification of the tribe claim, which would be lodged before the Scrutiny Committee, in accordance with the directions issued in this Judgment.
- (j) Petitioner's continuation in service shall be subject to the outcome/decision by the Caste Scrutiny Committee

14) Rule is accordingly made absolute in the aforesaid terms with no order as to cost.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/