

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6938 OF 2014

Rajan Vitthal Tombri	)	
residing at Tere Gally, Versova	)	
Koliwada, Andheri (W)	)	
Mumbai – 61	)	.. Petitioner

Versus

National Bank for Agriculture	)	
and Rural Development through	)	
its Manager, having its office at	)	
BKC Bandra (E) Mumbai 400 051	)	.. Respondent

Mr. R. K. Mendadkar a/w Helen Koli-Mandlik, Advocate for the petitioner.

Mr. S. P. Bharti, Advocate for the respondent.

CORAM:-ANOOP V. MOHTA &
A. K. MENON, JJ.
DATED : -27/07/2015

ORAL JUDGEMENT:-(Anoop V. Mohta, J.)

Rule, returnable forthwith. Heard finally.

2 The petitioner's cast claim that he belongs to Mahadev Koli (Scheduled Tribe) is rejected by the impugned order dated

17/6/2013 passed by the Scrutiny Committee. Therefore, this petition is mainly for the protection of his service by giving up the said caste claim as member of Scheduled Tribe 'Mahadev Koli', in future. The averments are accordingly made in the petition. A submission is also made to treat the same as an '*undertaking*' that neither himself nor his progeny would claim benefit as a member of Scheduled Tribe, Mahadev Koli in future.

3 Heard learned counsel appearing for the respondent. A submission is made by the learned counsel that such protections are not available in case of fraud or misrepresentation and/or manipulation as made out and/or as decided by the Scrutiny Committee. The petitioner is stated to have furnished caste certificate of his cousin brother and sister which showed them as "M Koli" and "Mahado Koli". His real brother and sister's primary school leaving certificates showed them as "Koli". The petitioner may have failed to prove his claim but that itself cannot be the reason to hold it as a 'proved case' of manipulation by the petitioner.

4 After going through the record, it appears that;

That the petitioner had already given up his caste

claim on the basis of which, he entered in the Government service. He, therefore, undertakes that neither himself nor his progeny would claim benefits as a member of Scheduled Tribe-Mahadev Koli in future and thus, he prays with folded hands to protect his bread and butter.

The Petitioner as was appointed on the post of Typist in the year 1993 and as he was permanent employee of the Respondent-Bank, based upon the judgments of Hon'ble Supreme Court in **Dattu Namdeo Thakur v. State of Maharashtra¹** and **Shalini vs. New English High School Association²**, where even after invalidating the caste claim, but for the fact that the appointment was prior to 28.11.2000, protection have been extended. This Court also in **Vijaya Deorao Nandanwar (KU) v. Chief Officer, Municipal Council, Wardha³** and **Meenakshi Dagadu Adhtrao v. State of Maharashtra - Writ Petition No.8447/2013 along with companion matters on 4.4.2014**, dealing with similar situation and caste claim holding though they were held

1 2012 (3) Mh. L. J. (SC) 179

2 2013 (15) SCALE 273

3 2013 (5) Mh. L.J. 153

to be Koli – Special Backward Class (SBC) and there also their services were terminated long back, based upon the above Supreme Court judgments, on 4.4.2014 granted the protection without back wages by setting aside the termination order also.

5 We see that there is no direct finding of any fraud and/or misrepresentation. Different caste claim and/or caste mentioned in other related caste certificates, cannot by itself be a case of fraud and/or misrepresentation. There should be a clear finding and/or material in support of the finding of fraud and/or misrepresentation. Vague reasons of manipulation so mentioned in the present facts and circumstances, in our view, are not sufficient to deny the protective scheme so prayed by the petitioner, in view of Full Bench judgment of this Court in the case of **Arjun s/o Vishwanath Sonone vs. State of Maharashtra and others, 2015 (1) Mh. L.J. 457** and a Division Bench of this Court in **Writ Petition No. 3014 of 2004 and other petitions (Rakesh Sukanji Dafade v. State of Maharashtra & Anr.) decided on 4/4/2014**, specifically dealing with the caste claim of 'Mahadev Koli' (Scheduled Tribe) and/or Mahadev or Koli. This judgment is

confirmed, even by the Full Bench in the case of **Arun s/o Vishwanath Sonone (supra)**. Therefore, we are inclined to dispose of present writ petition on same lines and conditions.

6 The petitioner is in service since 7/12/1993, though initially appointed on the basis of caste, now the said claim is not finalised and is rejected. However, the continuity of service without back wages is an additional factor, which we are inclined to accept that the petitioner's services were terminated on 19/9/2000, i.e. prior to 28/11/2000. As other similarly situated petitioners have been granted interim relief, though their services were terminated long back, and in the circumstances, that his representation was rejected on 29/5/2013 though filed late and the petition was filed in July 2014, we have heard it finally by consent, and we are inclined to pass the final protective order, without back wages.

7 The petitioner is entitled for protection in service with continuity of service without back wages. The petitioner would not be entitled to any caste benefit on the basis of which he has claimed.

ORDER

a) The Petitioner is entitled for protection in service with

continuity of service, without back wages.

b) The order of termination of service dated 19/9/2000 is quashed and set aside.

c) The Petitioner would not be entitled to any caste benefits on the basis of earlier caste/tribe which he had claimed. However, the Petitioner is entitled for the benefits, if any, based upon the concluded/existing caste/tribe in question (Koli SBC).

d) As regards the benefits, if any, granted after 28.11.2000 being belonging to "Mahadeo Koli", (ST), the Respondents/employer/management are at liberty to withdraw the same.

e) The Petitioner to submit the present caste certificates to complete the formality of service record as soon as possible and preferably within six months.

f) All the parties to cooperate accordingly.

8 The petitioner's averments in paragraph 9 (e) of the petition is treated as an 'undertaking', as recorded above for the purpose of deciding the present writ petition and for all other future

purposes as petitioner has given up his caste claim.

9 Subject to the above, the petition is allowed in terms
of prayer clauses (b) and (c).

10 Rule is made absolute.

11 There shall be no order as to costs.

(A. K. MENON, J.)

(ANOOP V. MOHTA, J.)

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