

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO.2128 OF 2014**

Aakash s/o. Ravindra Devke

... Petitioner

Vs.

The Municipal Corporation of  
Greater Mumbai & Ors.

... Respondents

Mr.Vishal Kanade i/b Jayesh Vyas for the Petitioner

Ms.Vandana Mahadik for Respondent Nos.1 & 2 – Corporation

Ms.J.S. Saluja, Assistant Government Pleader, for Respondent No.3-State

**CORAM: SMT. VASANTI A. NAIK &  
SHRI C.V. BHADANG, JJ.**

**DATE: 20<sup>th</sup> JANUARY, 2015**

**ORAL JUDGMENT (Per C.V. BHADANG, J.):**

Rule. Rule returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. By this petition, the petitioner is challenging the issuance of the show-cause notice dated 21.1.2014 (exhibit A) and the consequent order dated 10.4.2014 (exhibit H) by which the petitioner has been dismissed from service.

3. The brief facts are that the petitioner claims to be belonging to Hatkar caste which falls under Nomadic Tribe (C) category. The petitioner

is holding a caste certificate to that effect, which is issued by the competent authority i.e., Sub-Divisional Officer, Akola, on 20.3.2000.

4. The petitioner had applied for the post of clerk which was advertised by the respondent – Mumbai Municipal Corporation on 15.10.2011. The petitioner had so applied for appointment against a post reserved for NT(C) category on 16.11.2011. It appears that the petitioner was accordingly selected and came to be appointed as a clerk vide appointment order dated 28.5.2012 and the petitioner accordingly joined the service on 29.5.2012 on probation for a period of three years.

5. The petitioner was served with a show-cause notice dated 21.1.2014 by the Corporation asking him to show cause as to why action should not be taken against him. It was claimed that the concerned Caste Scrutiny Committee had already invalidated the caste claim of the petitioner on 20.4.2012 and this fact was suppressed by the petitioner while seeking employment. It was, thus, claimed that the petitioner had misled the Corporation and had thus, obtained the employment against the reserved category to which he was found to be not belonging. The petitioner sent a reply to the show-cause notice. According to the petitioner, although it was not disputed that the concerned Caste Scrutiny Committee had

invalidated the caste claim of the petitioner prior to the petitioner joining the post of a clerk, it is contended that the decision of the Caste Scrutiny Committee was communicated vide letter dated 26.5.2012, which was sent to the native place of the petitioner at Akola. It is contended that on that date, the petitioner was at Mumbai and was not aware of the invalidation of his caste claim. The said letter was received by his mother, who is illiterate and the petitioner learnt about the invalidation of the caste claim only when he went to his native place at the time of Diwali. It is contended that the petitioner of his own, intimated the concerned officer and the Dean of Nair Hospital where he was working on 5.12.2012 that his caste claim has been invalidated. It was also contended that the petitioner had challenged the said order of the Committee in Writ Petition No.6280 of 2012 before the Nagpur bench of this Court. That petition was allowed and the matter has been remanded to the Caste Scrutiny Committee. It was thus, contended that there was no suppression or concealment of any fact and in the absence thereof, no action be taken against him.

6. It is after this, that by an order dated 10.4.2014, the petitioner has been dismissed from service under Rule 28(b) of the Service Rules of the Corporation, which is challenged in this petition.

7. It is submitted by Mr.Kanade, the learned Counsel for the Petitioner, that there was no intentional concealment of any fact by the petitioner. The learned Counsel would submit that the petitioner was at Mumbai when the decision of the Caste Scrutiny Committee was communicated at his native place address and that communication was received by his mother, who on account of her illiteracy, was unable to understand the nature of the communication. It is contended that it is only when the petitioner visited his native place at the time of Diwali that he came to know of the invalidation of his caste claim. The learned Counsel would also submit that this was intimated by the petitioner of his own accord to the Corporation which would clearly indicate that there was no intentional suppression of any fact by the petitioner.

The learned Counsel submitted that the caste claim is pending before the Caste Scrutiny Committee after the order of remand. He, therefore, prayed that the petitioner be reinstated in service and a direction be issued to the Caste Scrutiny Committee to decide the claim in a time bound manner.

8. Mr.Saluja, the learned Assistant Government Pleader, appearing for the Caste Scrutiny Committee, did not dispute that the caste claim is

pending on remand before the Committee. Mrs.Mahadik, the learned Counsel for the Corporation, submitted that there was clear suppression of an important aspect about the invalidation of the caste claim by the petitioner while seeking employment. The learned Counsel would submit that the reasons given by the petitioner in the show-cause notice cannot be accepted. It is submitted that in such circumstances, the order of dismissal is legal and proper and may not be interfered with.

9. We have considered the rival circumstances and submissions made. The relevant dates for the purpose of deciding the present controversy are not in dispute, apart from being matters of record. It is, thus, clear that the petitioner came to be appointed by an order dated 28.5.2012 as a clerk in Nair hospital run by the Corporation and the petitioner had joined the post on 29.5.2012. The petitioner had applied for the said post in pursuance of the advertisement dated 15.10.2011. It is further clear that prior to the issuance of the appointment letter, the caste claim of the petitioner was invalidated by order dated 20.4.2012, which was communicated by letter dated 26.5.2012. We have given our anxious consideration to the circumstances as mentioned and the reasons given claiming that the petitioner was not aware of the invalidation of his caste claim and we express our inability to persuade ourselves to hold that indeed the petitioner was not aware of invalidation of his caste claim. The petitioner

whose caste claim admittedly was pending before the Caste Scrutiny Committee immediately prior to his appointment, the petitioner would have been anxious to know the outcome of the proceedings before the Caste Scrutiny Committee particularly when the petitioner had received an appointment order dated 28.5.2012. We find it improbable to hold that for six months thereafter, i.e., till December of that year, the petitioner was unaware of the invalidation of his caste claim. A perusal of the affidavit in reply filed on behalf of the Corporation would show that the Divisional Caste Scrutiny Committee by communication dated 4.12.2012 (received by the Corporation on 17.12.2012) had intimated about the invalidation of the caste claim of the petitioner. Thus, in all probability, the petitioner on learning about the communication being sent by the Divisional Caste Scrutiny Committee on 4.12.2012, sent a letter on 5.12.2012 to the Corporation about invalidation of his caste claim, in order to create an impression that he had of his own accord chosen to intimate the decision of the caste scrutiny committee to the Corporation. In the given circumstances, we are not inclined to accept the explanation as submitted and we find that in all probability, the petitioner was having knowledge about invalidation of his caste claim at the time he joined the service of the Corporation. In that view of the matter, we do not find any reason to interfere with the impugned order of dismissal passed on 10.4.2014. In the

circumstances, we are only inclined to direct the Divisional Caste Scrutiny Committee to decide the caste claim of the petitioner, as expeditiously as possible in a time bound manner.

10. In the result, the petition is dismissed. However, the Divisional Caste Scrutiny Committee, Akola, is directed to decide the caste claim of the petitioner, as expeditiously as possible and preferably within a period of six months from the date of communication of this order. In the circumstances, there shall be no order as to costs.

**(C.V. BHADANG, J.)**

**(VASANTI A. NAIK, J.)**