

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1591/2014

Mohansingh s/o Ramawatarsingh Thakur

...Versus...

Union of India, Ministry of Communication and Information Technology,
through its Secretary, New Delhi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.S. Parsodkar, Advocate for petitioner
Shri R.S. Sundaram, Advocate for respondent nos.1 to 3

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATE : 31.03.2015

By this petition, the petitioner impugns the order of the respondent – Accounts Officer (Administration-I) dated 9.8.2012, directing the petitioner to get his caste certificate validated from the Scrutiny Committee or to prove that he belongs to Halba Koshtis/Koshti.

The petitioner was appointed as a Junior Accountant by the respondent on 18.7.1981 on a post earmarked for the Scheduled Tribes. The appointment of the petitioner with the respondent – Director of Accounts (Postal), Nagpur was based on the caste certificate that the petitioner belongs to Thakur Scheduled Tribe. From the date of appointment of the petitioner in the year 1981 till the petitioner was on the verge of retirement, the respondent did not ask the petitioner to produce the relevant certificates/documents for getting the caste claim of the

petitioner verified from the Scrutiny Committee. By the impugned order dated 9.8.2012, when the petitioner was due to attain the age of superannuation on 31.10.2014, the petitioner was asked to get his caste certificate validated from the Caste Scrutiny Committee. The petitioner has challenged the communication dated 9.8.2012 in the instant petition.

Shri Parsodkar, the learned Counsel for the petitioner submitted that the petitioner is ready to give up his caste claim and also furnish an undertaking that neither the petitioner nor his progeny would claim any benefits meant for the Thakur Scheduled Tribe in future. It is stated that the action of the respondent in asking the petitioner to get his caste certificate verified, when the petitioner was on the verge of retirement, is bad in law. It is stated that the petitioner had already submitted the caste certificate and the other relevant documents to the respondent no.2 at the time of appointment and it was necessary for the respondent no.2 to get the caste certificate of the petitioner verified from the Scrutiny Committee. It is submitted that in view of the order of *status quo* granted by this Court when the petitioner was due to retire, in a couple of months, the petitioner continued to serve till he attained the age of superannuation. In the peculiar facts of the case, according to the learned Counsel for the petitioner, the services of the petitioner are required to be protected and the impugned communication is liable to be quashed and set aside as no purpose would be served by sending the caste claim of the petitioner for verification to the Scrutiny Committee after the retirement of the petitioner.

Shri Sundaram, the learned Counsel for the respondent nos.1 to 3 opposes the prayer for the protection of

services. It is submitted by placing reliance on the additional affidavit filed on behalf of the respondents in January, 2015 that the petitioner was served with a memorandum in the year 2009, asking the petitioner to submit the original caste certificate and the relevant documents for verification of his caste claim. It is stated that despite the issuance of the office memorandum to the petitioner in the year 2009, the petitioner did not submit the original caste certificate and the other documents and instead, sought the protection of his services on the basis of several office memorandum and circulars. It is stated that the refusal on the part of the petitioner to get his caste claim verified is clearly illegal and it is necessary to verify the caste claim of the petitioner. It is stated that if the services of the petitioner are protected, several other employees who are on the verge of retirement or have retired recently will take the benefit of the order of protection, granted in favour of the petitioner. The learned Counsel sought for the dismissal of the writ petition.

On hearing the learned Counsel for the parties, it appears that in the peculiar circumstances of the case, the services of the petitioner need to be protected. The petitioner was admittedly appointed in the year 1981 and even according to the respondents, the petitioner was not asked by the respondent till the year 2009 to get his caste claim verified. That means, the petitioner was not directed to produce the caste validity certificate for a period of nearly 30 years during his service. For the first time, when the petitioner was on the verge of retirement, the respondent asked the petitioner to produce the original caste certificate and the other relevant documents for verification of his caste claim. The petitioner immediately replied to the

communication issued by the respondent in the year 2009 and informed the respondent that the original caste certificate was submitted to the respondents along with the school leaving certificate and those documents could be submitted to the Scrutiny Committee for verification of the caste claim. It is, thus, clear from the reply of the petitioner dated 4.3.2009 that the petitioner did not refuse to refer his caste claim to the Scrutiny Committee for verification. There is no further communication from the respondent to the petitioner, informing the petitioner that the necessary certificates and documents were not available with the respondent. Then, when the petitioner was on the verge of retirement, the impugned communication was issued to the petitioner, asking the petitioner to get his caste claim verified from the Scrutiny Committee and/or to produce the caste validity certificate of belonging to Halba Scheduled Tribe/Koshti caste. The impugned communication could not have been issued by the respondent to the petitioner as the petitioner had already stated in the reply dated 4.3.2009 that the relevant documents were submitted to the respondent no.2 and the respondent no.2 was free to get the caste claim of the petitioner verified. If the respondents – employers were really interested in verifying the caste claim of the petitioner, they could have done so, by sending the necessary documents pertaining to the petitioner's caste claim to the Scrutiny Committee for verification. However, this was not done and when the petitioner was on the verge of retirement, the petitioner was directed to produce the caste validity certificate of belonging to Halba Scheduled Tribe/Koshti caste. In any case, no fruitful purpose could be served by referring the caste claim of the petitioner to the Scrutiny Committee after the retirement of

the petitioner as the petitioner has retired from service after attaining the age of superannuation on 31.10.2014. It is rightly submitted on behalf of the petitioner that in the peculiar facts of the case, the services of the petitioner are required to be protected, specially when the petitioner is ready to furnish an undertaking that neither the petitioner nor his progeny would claim the benefits meant for Thakur Scheduled Tribe in future.

For the reasons aforesaid, the writ petition is partly allowed. As no fruitful purpose could be served by sending the caste claim of the petitioner to the Scrutiny Committee for verification after his retirement, the services of the petitioner are protected and the petitioner would be entitled to all the service benefits on the petitioner furnishing an undertaking in this Court and also to the respondent no.2, within a period of two weeks, that neither the petitioner nor his progeny would claim the benefits meant for the Thakur Scheduled Tribe in future. The concerned respondent should release the retiral benefits to the petitioner on the submission of the undertaking.

Order accordingly. No order as to costs.

JUDGE

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