

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR**  
**BENCH, NAGPUR.**

**Writ Petition No. 3454 of 2013**

(Ramesh S/o Tukaram Kumbhare Vs. The Superintendent of Post Offices,  
Thane, Central Division, Thane and ors.)

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

Court's or Judge's order

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Shri R. S. Parsodkar, Advocate for petitioner  
Shri Rohit Deo, ASGI for the respondent no. 2

**CORAM** : **B.P.DHARMADHIKARI &**  
**S. B. SHUKRE, JJ.**

**DATE** : **24-4-2015.**

Heard.

2. Learned Advocate Shri R. S. Parsodkar submits that dismissal from service after Departmental Enquiry just prior to superannuation by the impugned order dated 30-11-2012 is unsustainable. He submits that caste certificate of the petitioner was already with the employer and on the basis of that certificate, promotion was obtained by the petitioner way back in 1996. Hence, as laid down by the Full Bench judgment of this Court

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in the case of *Prakash Namdeorao Kedar and ors. Vs. Union of India and ors.* reported at *2003(4) Mh.L.J. 233*, claim should have been forwarded for verification within reasonable time. He is also relying upon judgment of Division Bench of this Court in the case of *Dr. Sadique Hussain Sheikh Azim Qureshi Vs. Divisional Caste Certificate Scrutiny Committee, Nagpur and ors.* reported at *2011(1) ALL MR 145* to submit that in view of express provisions of Section 6(1) and 6(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jati) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification) of Caste Certificate Act, 2000 (Act No. 23 of 2001), the employer was duty bound to forward caste certificate for verification.

3. An unreported order dated 31-3-2015 in Writ Petition No. 1591/2014 is pressed into service by him to urge that there in similar situation and such termination on the eve of retirement has been found vitiated and this Court has reinstated the employee with further direction to release his terminal benefits.

4. Without prejudice to this contention, he also invites attention to Full Bench judgment of this court in *Arun Vishwanath Sonone Vs. State of Maharashtra and ors.* reported at **2015(1) Mh.L.J. 457** to submit that even if caste of petitioner is presumed to be Koshti, as the certificate is obtained before the delivery of the judgment by the Constitution Bench of Hon'ble Apex Court in the case of *State of Maharashtra Vs. Milind Katware* reported at **2001(1) Mh.L.J. 1**, the petitioner is entitled to the protection of employment. Hence, in this

situation, punishment must fall to ground.

5. Lastly, it is contended that if this Court is not convinced as caste claim is still not invalidated, the order of punishment must go.

6. While replying to preliminary objection raised by the respondent nos. 1 and 2, the learned Advocate for petitioner submits that as issue arises out of the verification of tribe claim, it was not necessary for the petitioner to approach the Central Administrative Tribunal.

7. Learned Advocate for respondent nos. 1 and 2 submits that punishment is not imposed for not proving caste claim. As petitioner did not cooperate in the process and did not submit necessary documents, his caste certificate could not be forwarded to the Scrutiny Committee. Thus for said not cooperating, the charge-sheet was issued and therefore, Departmental Enquiry

has been conducted. Learned counsel submits that documents were demanded from petitioner from the year 2005 onwards at least on four to five occasions and when he failed to submit the same, the charge-sheet was issued. Even when Departmental Enquiry is going on, he did not supply those document.

8. In the background of arguments advanced, we have perused the judgments/orders on which Advocate for petitioner has placed reliance.

9. Order of this Court dated 31-3-2015 in Writ Petition No. 1591/2014 shows that the petitioner there was appointed in the year 1981 and he was not asked by the respondents till year 2009 to get the caste claim verified. There petitioner had informed his employer in the year 2009 that original caste certificate was

submitted by him along with School Leaving Certificate and those documents should be submitted to the Scrutiny Committee for verification of the caste claim. His reply dated 4-3-2009 showed that he never refused to refer his caste claim to the Scrutiny Committee for verification. There was no further communication in this respect. In this background, when the petitioner was on the verge of retirement, a communication was issued to the petitioner to get his caste certificate verified. Thus, this Court has found the employer guilty of laches in the matter. That petitioner had challenged the communication dated 9-8-2012 by which he was asked to get his caste certificate verified from the Scrutiny Committee and he was to retire on superannuation on 31-10-2014.

It is, therefore, apparent that said petitioner had never refused to cooperate with

his employer in the matter. No charge-sheet was issued to him and no Departmental Enquiry was conducted in the matter.

10. Insofar as judgment reported at *Dr. Sadique Hussain Sheikh Azim Qureshi Vs. Divisional Caste Certificate Scrutiny Committee, Nagpur and ors.* (cited supra) is concerned, there, the Division Bench has looked into the provisions of Section 6. Division Bench was approached against show cause notice dated 7-7-2010 asking employee as to why he should not be reverted to the post of Live Stock Development Officer since he could not produce caste validity certificate. In this background, the Division Bench finds that if an employee does not produce necessary certificate, he cannot escape from getting the caste certificate validated from Scrutiny Committee. It has also found that Section 6(3) enables appointing

authority to make an application to the concerned Scrutiny Committee for validation of the caste certificate. Thus, there again, there was no charge of non-cooperation against an employee. The Division Bench on the contrary found by directly issuing show cause notice for taking action against an employee, the employer was avoiding to refer the caste certificate for verification to Scrutiny Committee.

11. Full Bench judgment in the case of *Prakash Namdeorao Kedar and ors. Vs. Union of India and ors.* (cited supra) in fact negates the arguments that the reference to Scrutiny Committee for considering validity or otherwise cannot be made belatedly. The observations that it should be made within reasonable time appears in this background. The Full Bench observed that if there is delay in making reference for some valid reasons, the reference

made by the employer beyond the period of two years is neither invalid nor is the order passed by the Scrutiny Committee on such reference is null and void.

12. At this stage, Shri R. S. Parsodkar, learned Advocate has invited our attention to reply submitted by petitioner on 13-12-2010 to his employer. The reply is in furtherance of charges levelled against him on 25-9-2009. There, the petitioner has pointed out the situation prevailing as understood by him. He has stated that though on 25-6-1996, CPMG Mumbai had directed divisional head to ensure verification of caste claim of selected candidates, that letter was silent about authorities from whom the caste claim was to be verified. Shri Parsodkar further submits that caste certificate given by the petitioner was with the employer and that caste certificate could have been

forwarded to the Scrutiny Committee under Section 6.

13. The facts looked into by us show that caste certificate given by the petitioner to his employer needed other documents so as to forward caste certificate to the Scrutiny Committee functioning under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jati) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification) of Caste Certificate Act, 2000. The petitioner has not supplied those documents. He has nowhere expressed his readiness and willingness to supply the same. On the contrary, it appears that the Departmental Enquiry initiated on 25-9-2009 remained pending and ultimately, he was terminated by order dated 30-11-2012. The petitioner was otherwise due

to reach the age of superannuation on 7-3-2013. In this situation, we find that above mentioned cases on which the petitioner has placed reliance are not relevant in present adjudication.

14. Learned Advocate for respondent nos. 1 and 2 in this situation has rightly pointed out that the petitioner should have challenged the termination before the Central Administrative Tribunal. Whether the punishment in the circumstances is harsh or otherwise and whether the enquiry is conducted by following principles of natural justice are the issues that can be looked into by that forum. Hence with liberty to approach the Central Administrative Tribunal, we dispose of the writ petition with no order as to costs.

**JUDGE**

**JUDGE**

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