

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

WRIT PETITION NO. 2543 OF 2014

(Rajkumar s/o Jaipalsingh Gahlod vs. Maharashtra State Warehousing Corporation & Ors.)

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

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
FEBRUARY 25, 2015.**

Heard Shri Hazare, learned counsel for the petitioner, Shri Saboo, learned counsel for respondent Nos. 1 & 2 and Mrs. Joshi, learned AGP for respondent No. 3.

The petitioner presently working as Junior Stores Superintendent has already crossed the age of 57 years and is shortly due for superannuation from the employment of Respondent Nos. 1 & 2.

He is born on 05.06.1957. It appears that earlier from 18.09.1976, he was working as casual labour and on 20.08.1977 he was given temporary appointment. On 09.11.1978, he was made Store Keeper. The first order available on record is dated 09.11.1978 and it calls upon him to remain present for interview on 17.11.1978. The next order is dated 19.05.1981 which mentions names of about 30 Class IV employees who were provisionally promoted as Store Keeper. The name of the petitioner appears at Sr.

No. 27 in it. In this order it is not shown that he is promoted against a reserved category seat.

The earlier order dated 20.08.1977 by which he was given temporary appointment also does not show that it was on caste basis. The petitioner has obtained the caste certificate sometimes in the year 1995-96. He has been further promoted thereafter on 28.04.1999 as Junior Stores Superintendent. According to the petitioner, the order of promotion again does not mention that it is on caste basis. He has come up with a specific stand that his original appointment and subsequent promotions are all from open category. The caste claim of the petitioner has been forwarded for verification to the Scrutiny Committee (Respondent No. 3) in 2004 and it has been invalidated on 25.03.2014. In the operative part, the Scrutiny Committee has directed action under Section 10(1 & (2) as also Section 11(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001).

Shri Hazare, learned counsel submits that the employer has not pointed out that in promotion order, the petitioner was placed under obligation to produce validity at any point of time. The employer has also not pointed out any communication sent to the petitioner for production of such validity or consequence of its failure.

He contends that the Scrutiny Committee has also not recorded any finding that the petitioner has obtained the certificate by practicing any fraud or falsehood. He, therefore, restricts the present petition to claim protection in the light of law laid down by this Court in the case of Arun Vishwanath Sonone vs. State of Maharashtra & Ors., 2015 (1) Mh.L.J. 457 (FB).

The learned AGP points out that the Scrutiny Committee has directed action under Sections 10 and 11 of the Act No. 23 of 2001 against the petitioner.

Shri Saboo, learned counsel is relying upon the reply affidavit. He states that though in the orders of promotion it is not expressly mentioned that the promotions were given on caste basis, the proceedings of Departmental Promotion Committee (DPC) record accordingly and, therefore only it became necessary to forward the caste certificate of the petitioner for verification. The learned counsel states that as both promotions are given due to his caste, therefore, even if protection in employment is granted, the promotions cannot be allowed to be retained.

Shri Hazare, learned counsel, in reply arguments submits that as both promotions are prior to 28.11.2000, the petitioner is entitled to retain the benefit thereof in terms of Full Bench judgment mentioned supra.

A perusal of order of Divisional Scrutiny Committee dated 08.05.2014/ 25.03.2014 nowhere

shows any finding of fraud or falsehood practiced by the petitioner for obtaining caste certificate. The caste certificate reveals that he belongs to Rajput Bhamta (V.J.). Respondent No. 3 – Committee could not find any document in which the caste of the petitioner was recorded otherwise.

The facts show that the petitioner earlier was working as a labour on casual basis and perhaps has been regularized as a temporary employee after he completed 240 days of service. Thereafter he was given promotion as Store Keeper on 09.11.1978. The first order of promotion issued on 19.05.1981 shows that he was made Store Keeper provisionally. However, that order does not cast any obligation upon him to produce caste validity. The later order of promotion dated 28.04.1999 is not produced on record but according to the petitioner that order also does not mention that his promotion as Junior Stores Superintendent was on the basis of caste. The copy of said order is also not produced on record by the respondent – employer. The reply also does not contain any roster or proceedings of DPC to demonstrate that the petitioner was selected against the reserved post. Thus, except for the fact that the petitioner got certificate in the year 1995-96, there is nothing on record to show that the petitioner got promotion dated 28.04.1999 on the basis of caste. When he was first recruited and promoted, he did not have certificate also.

In this situation, following the judgment of the Full Bench mentioned supra, we find that the petitioner is entitled to protection. Subject to the petitioner filing an undertaking with the Registry of this Court as also with the employer within a period of six weeks from today that neither he nor his progeny shall claim the benefit or status of Rajput Bhamta (V.J.) category/ person, the petitioner shall be entitled to protection in employment in terms of Full Bench judgment mentioned supra.

Writ Petition is partly allowed and disposed of. However, there shall be no order as to costs.

JUDGE

JUDGE

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