

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

WRIT PETITION NO.4126 OF 2013

Manda D/o Ramrao Deshmukh

..vs..

**State of Mah., thr its Secretary, Department of Education,
Mantralaya, Mumbai and ors**

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

Court's or Judge's order

Shri S.G. Joshi, counsel for the Petitioner.
Shri K.V. Deshmukh, counsel for R-4 & 5.
Shri Autkar, counsel for R-6.

CORAM

**: B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.**

DATE

: JANUARY 28, 2015.

1. Heard learned counsel for the respective parties.

2. On the oral request made by Shri S.G. Joshi, learned counsel for the petitioner, the Caste Scrutiny Committee, Amravati Division, Amravati, is permitted to be added as respondent No.6.

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3. Amendment be carried out forthwith.

4. Shri Autkar, Adv. h/f Mrs. Bharti Dangre, learned counsel, waives notice on behalf of newly added respondent.

5. By the present petition, the petitioner has challenged notice dated 29.6.2013 issued by respondent No.4 calling upon the petitioner to submit her Caste Validity Certificate of "*Koli-Mahadeo*" (Scheduled Tribe). It is the case of the petitioner that she belongs to caste "*Koli-Mahadeo*" (Scheduled Tribe) and was issued caste certificate on 31.5.1988 in that regard. She was appointed on the post of "*Assistant Teacher*" on 16.8.1996 on a post that was reserved for *Scheduled Tribe* candidates. On 3.7.2004, the Management passed a Resolution by which the services of the petitioner came to be absorbed in the *Special Backward Classes* category. In the meanwhile, the petitioner had

obtained the caste validity certificate as belonging to caste “Koli” (Special Backward Classes) on 11.6.2012. It is thereafter that impugned communication dated 29.6.2013 calling upon the petitioner to submit the aforesaid validity certificate of belonging to caste “Koli-Mahadeo” (Scheduled Tribe) came to be issued.

6. This Court, while issuing notice on 1.8.2013, had directed that no coercive steps of terminating the petitioner’s services should be taken.

7. The Management has filed its reply on record on which it is stated that the petitioner had played a fraud while securing employment. It is submitted that, though the petitioner was aware that she did not belong to caste “Koli-Mahadeo” (Scheduled Tribe), employment had

been secured by relying on the aforesaid caste certificate which was not genuine. Resolution dated 3.7.2004 is admitted to have been passed by the Management. It is further stated that there is no provision in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to pass such a Resolution by which the services could be absorbed in another category. It is, therefore, stated that the issuance of notice was just and proper.

8. In the present case, the petitioner is seeking protection of her services by relying upon the decision of the Full Bench Judgment of this Court in the case of Arun s/o Vishwanath Sonone ..vs.. State of Maharashtra & ors, reported at 2015(1) Mh.L.J. 457 . However, before considering the aspect of grant of protection, it would be

necessary to first arrive at a finding that the caste certificate produced while securing appointment is not found to be false or fraudulent. Hence, the necessity of examining the validity of the caste certificate dated 31.5.1988 according to which, the petitioner belongs to “*Koli-Mahadeo*” (Scheduled Tribe). The Management, by issuing communication dated 29.6.2013, has insisted upon the submission of such validity certificate. Therefore, unless the said exercise of validity of aforesaid certificate is completed in accordance with the provisions 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, 2000 (Act No.XXIII of 2001), the aspect of protection of services at this stage does not arise.

9. It would, therefore, be necessary to first direct the petitioner to appear before the respondent No.6 – Caste Scrutiny Committee in the matter of verification of her caste certificate dated 31.5.1988. The aspects as regards alleged fraud being played by the petitioner in securing the said certificate or for that matter in securing employment, can be considered after such adjudication. Hence, in the interests of justice, the following order is passed :-

ORDER

i) Respondent Nos.4 and 5 shall first call upon the petitioner to submit all original documents in relation to her caste certificate dated 31.5.1988 of belonging to “Koli-Mahadeo” (Scheduled Tribe) , if the same have already not been so obtained.

ii) On obtaining such documents, respondent Nos.4 and 5 shall forward the same to respondent No.6 – Caste Scrutiny Committee.

iii) The petitioner shall appear before the Caste Scrutiny Committee on 2.3.2015 to facilitate the verification of her caste claim.

iv) The Caste Scrutiny Committee is directed to complete the process of verification within a period of eight months from the date of appearance of the petitioner before it.

v) The *interim* order granted on 1.8.2013 shall continue to operate during the pendency of the proceedings before the Scrutiny committee. The said *interim* order will be subject to final outcome of the aforesaid proceedings.

vi) The contention as regards fraud, misrepresentation, as well as competency of the Caste Scrutiny Committee to consider grant of Validity of Caste Certificate are kept open for being urged after the order of the Scrutiny Committee is passed.

With the aforesaid directions, the writ petition stands disposed of with no order as to costs.

JUDGE

JUDGE

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