

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

WRIT PETITION NO. 4367/2013.

Ku. Ujwala Bapurao More
VERSUS
State of Maharashtra and others.

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

Court's or Judge's orders.

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

DATED : JANUARY 29, 2015.

Heard Shri A.S. Mardikar, learned Senior Counsel with Shri S.G. Joshi, learned Counsel for the petitioner, Shri N.S. Khubalkar, learned A.G.P. for respondent nos. 1 and 4 and Shri G.G. Mishra, learned Counsel holding for Mrs. I.L. Bodade, for respondent nos. 2 and 3.

Petitioner born in 1976, joined employment on 30.06.1998. Petition does not disclose

the date on which the petitioner obtained any certificate showing that she belongs to 'Koli-Mahadeo' Scheduled tribe. However, subsequently, she has been given validity by a competent Caste Scrutiny Committee as person belonging to Special Backward Class. In roaster prepared by her employer in the year 2007, she has been shown as an SBC candidate and again in the seniority list, circulated in the year 2012, she has been mentioned accordingly.

In this situation, challenge by petitioner is to a communication dated 19.06.2013, calling upon her to submit the validity as Koli Mahadeo, scheduled tribe.

Shri Mardikar, learned Senior Counsel, submits that the petitioner has been rightly accepted as Special Backward Class candidate and has been regularized/absorbed against that roaster point, and as such the employer cannot turn back and issue such notice.

He further submits that in these facts it is not necessary to ask the petitioner to get her certificate verified to find out whether claim was made

bonafide or not. He is relying upon an order dated 15.01.2015 passed by this Court in Writ Petition No. 5396/2013, to submit that there because of subsequent conduct of the employer and employee, this Court did not find it necessary to forward the caste claim of that petitioner for verification to the Scrutiny Committee. One of us (B.P. Dharmadhikari, J), is party to that order.

Shri Mishra, learned Counsel appearing for respondent nos. 2 and 3 and Shri Khubalkar, learned A.G.P. for respondent nos. 1 and 4 are strongly opposing the contentions. Respondent no.4 has filed reply, accepting validity given to petitioner as SBC candidate.

Learned A.G.P. and Shri Mishra, learned counsel submit that the selection procedure for recruitment in June 1998, was carried out by the office of the Collector, Akola and in the select list prepared, petitioner has been shown as appointed against a seat reserved for scheduled tribe candidate. It is further mentioned therein that her caste certificate was obtained in the year 1985. They rely upon Full Bench

judgment of this Court in case of Arun Vishwanath Sonone .vrs. State of Maharashtra and others (2015 (1) Mh.L.J. 457) to urge that merely because a person has SBC certificate or validity, it does not obviate need of verification, as genuineness of certificate obtained needs to be looked into. If a certificate is found to be obtained by practicing falsehood or fraudulently, the protection is not available. They submit that in that situation, the SBC certificate or validity could not save employment of petitioner.

Shri Mardikar, learned Senior Counsel submits that in the light of the arguments advanced in reply, the facts on record do not show that the petitioner was selected against any reserved category post. He submits that the petitioner has not produced before this Court any certificate obtained by her to show that she belong to Koli Mahadeo, scheduled tribe.

He also adds that if SBC status is recognized and validity is given, the exercise of verification is merely an academic exercise.

After hearing respective counsel, we find that this Court has already protected employment of

petitioner while issuing notice in the matter on 14.08.2013. Petitioner, therefore, continues in service. The law as laid down by the Full Bench of this Court shows that question of protection in employment can be looked into only if claim is verified by the Scrutiny Committee. As such, at this stage prayer for protection cannot be gone into.

If it is accepted that all SBC certificate holders are exempted from the process of verification of caste claim, an anomalous situation may result. The facts here show that the employer has accepted the status of present petitioner as SBC candidate and accordingly way back in the year 2007, treated her/absorbed her against SBC roster point. If in a given case, there is any falsehood or fraud practiced by the holder while procuring caste certificate and then employment, that fraud or falsehood will remain undetected and merely on the strength of 15.06.1995 Government Circular and employer's conduct, the employment will be required to be regularized. This is not the import of the judgment of Full Bench of this Court, but, against it.

This issue was not raised and brought to the notice of this Court on 15.01.2015 when it decided Writ Petition No. 5396/2013.

We therefore, find that in this situation, petitioner has to submit necessary documents with her to her employer for verification of her caste claim as belonging to Mahadeo Koli, scheduled tribe. The said documents be furnished by the petitioner within a period of four weeks from today. After receipt of those documents, the employer to forward the same to the competent Scrutiny Committee within a further period of three weeks. The Scrutiny Committee shall thereafter, attempt to verify the caste claim of petitioner in accordance with law, within a further period of one year. We direct the petitioner to appear before the Scrutiny Committee for said purpose on 06.04.2015 and to abide by its further instructions in the matter.

Needless to mention that such appearance by the petitioner shall be without prejudice to the contentions raised by Shri Mardikar, learned Senior Counsel in present matter about the impact of her

absorption and validity given to her of SBC. Accordingly issue of protection shall be considered if occasion therefor arise, after the order of the Scrutiny Committee.

Interim orders already passed, shall continue to operate and shall be subject to further orders of the Scrutiny Committee in the matter.

Writ Petition is, thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

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