

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

WRIT PETITION NO.5857 OF 2014

[Shrikant s/o Motiram Dahikar .vs. Union of India 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, counsel for the petitioner,
Shri Rohit Deo, ASGI for the respondent nos.1 to 4,
Mrs. B.H. Dangre, counsel for the respondent no.5.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATED : JULY 13, 2015.

By this petition, the petitioner challenges the order of the respondent-Account Officer, dated 9.8.2012, directing the petitioner to produce the caste validity certificate or else his services would stand terminated.

The petitioner was appointed as Lower Division Clerk (L.D.C.) with the respondents on 21.10.1981, on a post earmarked for the Scheduled Tribes. According to the petitioner, the respondent-employer did not refer the caste claim of the petitioner to the scrutiny committee for verification. It is stated that since the year 2009, the petitioner was directed to produce original caste certificate and the other relevant documents for referring his claim to the scrutiny committee for verification. Ultimately, by the impugned order, the respondents informed the petitioner to submit the caste validity certificate or else his services would stand terminated. The petitioner has challenged the impugned order of the Accounts Officer in the instant petition.

Shri Parsodkar, the learned counsel for the

petitioner, submitted that the original caste certificate was submitted to the respondents at the time of the appointment. It is submitted that it was necessary for the employer to have sought the verification of the caste claim of the petitioner through the competent scrutiny committee. It is stated that the petitioner could not have submitted the original caste certificate to the respondents along with other documents as the original caste certificate was tendered by the petitioner to the respondents at the time of his appointment. It is stated that the scrutiny committee cannot verify the caste claim of the petitioner on the request made by the petitioner and the same could be scrutinized only if the respondent-employer refers the same to the scrutiny committee.

Shri Deo, the learned ASGI appearing on behalf of the respondent nos.1 to 4, submitted that the case tried to be made out by the petitioner for the first time in the writ petition that the petitioner's caste certificate is possessed by the respondent-employer, is incorrect. It is stated that since the year 2009, the respondents had consistently asked the petitioner to produce the original caste certificate, so that the same could be referred to the scrutiny committee for verification, however, the petitioner did not convey to the respondents, at any point of time before the filing of the writ petition that the original caste certificate was submitted by the petitioner to the respondent-employer at the time of the entry in service. It is submitted that if the petitioner has misplaced the original caste certificate, the petitioner may secure another caste certificate from the competent authority or seek the certified copy of the caste certificate, dated 11.8.1980 and tender the same to the scrutiny committee along with other necessary documents for verification of his caste claim. It is stated that the services of the petitioner cannot be protected unless the petitioner gets the caste claim

verified from the scrutiny committee as if there is an observation of fraud against the petitioner by the scrutiny committee, the services of the petitioner cannot be protected, in view of the law laid down by this Court in the judgment reported in 2015 (1) Mh.L.J. 457 (Arun s/o Vishwanath Sonone .vs. State of Maharashtra and others).

On hearing the learned counsel for the parties and on a perusal of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, as also the judgment of the full bench reported in 2015 (1) Mh.L.J. 457, it appears that the services of the petitioner cannot be protected unless the petitioner gets his caste claim verified from the scrutiny committee. Admittedly, the petitioner has sought the appointment on a post earmarked for the Scheduled Tribes. The petitioner does not possess the caste validity certificate as his caste claim is not verified by the scrutiny committee. It would be necessary for the petitioner to submit an application to the scrutiny committee for verification of his caste claim in pursuance of the provisions of sub-section (2) of Section 6 of Act, 2000, as the respondents have specifically denied that the respondents possess the original caste certificate of the petitioner. There is word against word. It is the case of the petitioner that the original caste certificate is with the respondents, whereas it is the case of the respondents that the original caste certificate was not submitted to them and the respondents do not possess the same. If the petitioner possesses the original caste certificate, the petitioner should tender the same along with the other necessary documents to the scrutiny committee for verification of his caste claim. If the petitioner is not able to locate the original caste certificate, the petitioner may

secure a caste certificate from the competent authority and/or secure the certified copy of the caste certificate of the year 1980 and refer the same to the scrutiny committee for verification of his caste claim, within a period of four weeks. It is made clear that if the petitioner fails to refer his caste claim to the scrutiny committee, within a period of one month, the respondents are free to take appropriate action against the petitioner in respect of his services. While so directing, we are not inclined to accept the submission made on behalf of the petitioner that only an employer is empowered to refer the caste claim of a person/candidate to the scrutiny committee for verification, in view of the provisions of sub-section (3) of Section 6 of the Act, 2000. In view of sub-section (2) of Section 6 of the Act, 2000, a person desirous of availing the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category, is entitled to make an application in such form and in such a manner, as may be prescribed, to the concerned scrutiny committee for verification of the caste certificate and for the issuance of a caste validity certificate. Hence, we do not find any bar, in any candidate or any person desirous of seeking the verification of his caste claim, in making an appropriate application to the caste scrutiny committee for verification of his caste claim.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The petitioner is directed to submit an appropriate application along with the original caste certificate (original or certified copy as the case may be) and the other relevant documents to the scrutiny committee for verification, within a period of one month. If the application is so made, the respondent-scrutiny committee is directed to decide the caste claim of the petitioner, as early as possible and positively within

a period of one year from the date of the receipt of the application under sub-section (2) of section 6 of the Act of 2000. The services of the petitioner are protected till his caste claim is decided. We reiterate that the respondents would be free to take appropriate action, if the petitioner fails to submit an application to the scrutiny committee under sub-section (2) of section 6 of the Act of 2000, within a period of one month. Order accordingly. No costs.

JUDGE

JUDGE

Gulande