

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

WRIT PETITION NO.588 OF 2014

Sau. Sunita Vinayak Gosavi

..VS..

**Ekatmata Shikshan Prasarak Sanstha, Chandur, thr its Secretary 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 U.J. Deshpande, counsel for the Petitioner.

Shri A.R. Deshpande, counsel for R-1 & 2.

Shri D.M. Kale, AGP for R-3 & 4.

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

DATE : JANUARY 21, 2015.

Heard.

Learned counsel for the petitioner has restricted the argument only to the point of protection. He submits that the petitioner belonging to “*Kalal*” community, which is recognized as “*Other Backward Classes*”, got married to Vinayak whose caste is “*Gosavi*” which is recognized as “*Nomadic Tribes*”. In the light of Government Resolution dated 27.1.1976 she was issued a caste certificate showing that

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she belongs to “*Gosavi*” community and, therefore, is a candidate falling under “*Nomadic Tribes*”.

She has been, thereafter, appointed on 30.6.1993 by respondent Nos.1 and 2 as “Assistant Teacher”.

The petitioner, thereafter, on 17.6.2013, was called upon to submit her caste validity certificate in support of her claim that she belonged to “*Nomadic Tribes*”. Thereafter, the petitioner submitted the caste certificate which shown that she belonged to caste “*Kalal*” which is recognized as “*Other Backward Classes*”. She also submitted a representation giving all details where she pointed out that, as the caste validity certificate was given on the strength of the caste of parents or relatives on father’s side, she sought validity as a person belonging to “*Other*

Backward Classes". When, on 1.10.2013, she was given last chance to submit validity, she filed the present petition. This Court has protected her employment.

Learned counsel for the petitioner also submits that the husband of the petitioner has been given caste validity certificate on 12.11.2013 as "*Nomadic Tribes*" candidate. It's copy is handed over to the Court. It is marked as Exh. "X".

Learned counsel for respondent Nos.1 and 2 submits that, though there is same effort in writ petition to urge that the petitioner has not been appointed as "*Nomadic Tribes*" candidate, her representation itself contains an admission. He has also invited our attention to said written submissions filed on record along with the appointment order to show that she has been

appointed as a candidate of “*Nomadic Tribes*”.

Learned counsel for respondent Nos.1 and 2 further states that caste validity certificate dated 12.11.2013 is produced before this Court today without any supporting affidavit and as it's copy is received by him, he has no instructions about it.

Learned Assistant Government Pleader for respondent Nos.3 and 4 adopts the arguments of learned counsel for respondent Nos.1 and 2. He also states that the caste claim of the petitioner as belonging to “*Nomadic Tribes*” has not been verified and he has no instructions on document at Exh.“X” which has been handed over just now to the Court.

It is not in dispute that the service conditions of the petitioner are regulated by the provisions of The Maharashtra Employees of

Private Schools (Conditions of Service) Regulation Act, 1977 and 1981 Rules framed thereunder. Though the petitioner has attempted to show that she was not appointed as a candidate belonging to “*Nomadic Tribes*”, the representation sent by the petitioner on 3.10.2013 to the Headmaster clearly shows that she has been selected as a “*Nomadic Tribes (B)*” candidate.

Resolution of School Committee dated 25.6.1993 on which petitioner has placed reliance records that the candidates from “Scheduled Castes” who attended the interviews were not ready to work on unaided classes/schools and, therefore, others were required to be recruited.

After this preliminary narration in this resolution, name of the petitioner appears at

Sr.No.1 and against her name pay-scale and date of appointment is mentioned. Below her name words (Nomadic Tribes) are also recorded. Same is the position in relation to five other candidates whose employment is also looked into by the said Resolution. Words like “Scheduled Tribes”, “Nomadic Tribes”, “Other Backward Classes” or “Non Reserved” are also recorded after their names. These words denote an intention to treat candidate as belonging to that particular castes or tribes.

However here, Government Resolution dated 27.1.1976 is not in dispute. The said Resolution enables a lady like the present petitioner to claim certificate of caste of her husband. On the strength of said Resolution dated 27.1.1976, the petitioner got a caste certificate and then employment on 30.6.1993. It cannot be, therefore, said that the petitioner

has played fraud and practised any falsehood. Though in writ petition same efforts have been made to demonstrate that the petitioner was selected in open category, that obviously is in an effort to protect employment. Before that in representation mentioned *supra*, the petitioner has clearly accepted her status and the employment granted as candidate belonging to “*Nomadic Tribes*”.

It is not in dispute that her caste claim as belong to “*Other Backward Classes*” has not been verified. Learned counsel for the petitioner upon instructions has stated that the petitioner cannot seek validity as a candidate belonging to “*Nomadic Tribes*”. He, however, has produced certificate dated 12.11.2013 which shows that the husband of the petitioner viz. Viynayak is given validity by the competent Scrutiny Committee. Though learned Assistant

Government and learned counsel for respondent Nos.1 and 2 have pointed their inability to comment on said certificate, we have no reason to disbelieve that certificate.

Even otherwise, the recruitment carried out in the year 1993 by respondent Nos.1 and 2 would be subject to provisions of Rule 9(6) of the MSCR Rules, 1981. In absence of candidate belonging to reserved category, candidate from another backward category could have been given appointment. The advertisement issued by the Management shows six posts and a common note that preference would be accorded to other backward category candidates. The Resolution of the School Committee dated 25.6.1993 shows that on posts at Sr.Nos.2 & 3 persons belonging to "*Other Backward Classes*" categories have been given employment. The person at Sr.No.4 is of open

category. The person at Sr.No.5 belongs to “*Nomadic Tribes*” while person at Sr.No.6 is a “*Scheduled Tribes*” candidate.

Thus, material on record demonstrates that the petitioner as a “*Other Backward Classes*” could also have been given appointment in 1993.

In this situation, in the light of this discussion, we find that the petitioner is entitled to the protection of her employment. However, the same is subject to verification by respondent Nos.1 and 2 of the document taken on record today at Exh.“X”. Respondent Nos.1 and 2 shall right to the competent Scrutiny Committee and verify the said document. The petitioner shall also show to respondent No.2 the original of document at Exh.“X” for the said purpose.

Subject to such verification, we direct that

the petitioner shall continue in employment as before. However, she will not be entitled to any benefits as a candidate belonging to “*Nomadic Tribes*” category. She shall accordingly file an undertaking with respondent No.2 and also with this Court within a period of six weeks from today.

Thus, the writ petition is partly allowed and disposed of. No order as to costs.

JUDGE

JUDGE

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