

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1367 OF 2016

Deepa Narayan Baiswal
age: 39 years, occu: service,
R/o Gunjal Colony, Khadka Road,
Bhusawal, Tq. Bhusawal,
District: Jalgaon

Petitioner

Versus

- 1 The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai – 400 032
- 2 The Collector, Jalgaon
Tq. & Dist. Jalgaon
- 3 The Superintendent of Police
Jalgaon, Dist. Jalgaon
- 4 The Divisional Caste Certificate
Scrutiny Committee, Dhule
Tq. & Dist. Dhule
through Its Member

Respondents

Mr. Shailesh P. Brahme advocate for the petitioner

Mr. V.M. Kagne, Assistant Government Pleader for Respondents

CORAM : ***R.M. BORDE &
A.I.S. CHEEMA, JJ***

Reserved on: 14.2.2016.

Pronounced on: 8.6.2016

JUDGMENT**(Per: R.M. Borde, J)**

1 The petitioner is objecting to the Judgment & Order passed by the Scrutiny Committee on 7.7.2015, directing invalidation of the caste claim of the petitioner.

2 The petitioner claims to belong to Kori caste, which is recognized as a scheduled caste (ST), in the State of Maharashtra as well as the State of Madhya Pradesh. The father of the petitioner has migrated from the State of Madhya Pradesh (MP) to the State of Maharashtra for securing employment with M.S.E.B. in the year 1966 and since then their family is residing in the State of Maharashtra. The petitioner was born at Rau Tq. & Dist. Indore, M.P. on 3.11.1976. It is stated that, her mother belongs to the State of M.P. and had been to the said place only for the purpose of delivery. The petitioner resides with her father and completed her school and fuhrer education and also secured employment in the State of Maharashtra. The petitioner has been issued a caste certificate by the Sub-Divisional Officer, Khandva, M.P.. The petitioner also has secured a certificate from the Sub-Divisional Officer, Bhusaval, which was forwarded to the

scrutiny committee for verification.

3 In response to the advertisement issued by respondent No.2, the petitioner has undergone selection process and has been selected for the post of clerk from amongst ST category. Since the petitioner did not possess a validation certificate, she was not issued letter of appointment. As such, she approached Maharashtra Administrative Tribunal by presenting Original Application bearing No.549/2011, which came to be dismissed. Being aggrieved by the order passed by the Maharashtra Administrative Tribunal, petitioner approached this Court, seeking direction in respect of employment. This Court allowed the petition and directed the Collector to issue provisional letter of appointment, subject to validation of the caste certificate issued to her. The petitioner was appointed as a junior clerk by order dated 24.2.2014 and the caste certificate issued to her was referred to the scrutiny committee for verification, as directed by this Court in Writ Petition No.3722/2015. The scrutiny committee, after considering the contentions of the petitioner, passed an order on 7.7.2015 and directed invalidation of the caste certificate issued to the petitioner.

4 The scrutiny committee has refused to issue validation certificate to the petitioner, mainly for the reason that, her father had migrated to the State of Maharashtra, after reorganization of the States. The petitioner was born in the State of Madhya Pradesh. Since the family has migrated after the reorganization of States, from the State of M.P., the scrutiny committee, applying the ratio laid down in the matter of ***Marri Chandra Vs. Dean, S.G.S. Medical College*** came to the conclusion that, the petitioner would be entitled to claim benefits only in the State of origin and not in the state of migration. A reference is also made to the Judgment of full bench of this Court in case of ***Shweta Shantalal Lal V/s State of Maharashtra and others*** (reported in 2010 (2) Mh. L.J. Page 904).

5 We have heard learned counsel appearing for the petitioner as well as the learned Assistant Government Pleader appearing for the State.

6 The facts giving rise to the controversy are not disputed. It is not a matter of dispute that, the father of the petitioner had migrated from the State of Madhya Pradesh and started residing in the State of Maharashtra since 1966 i.e. after reorganization of

the States. The issue raised is clearly concluded by the Judgment of *Marri Chandra Vs. Dean, S.G.S. Medical College* (1990 SCC 130). The petitioner, in the matter of *Marri Chandra* was born in the state of Andhra Pradesh. He belonged to Gauda community, which is also known as Goudi. The father of the petitioner obtained a ST certificate from Tahsildar and on that basis secured employment from amongst ST category in a Government of India Undertaking and was posted in Bombay in the State of Maharashtra. The petitioner also was residing with his father in Bombay since the age of nine years. After passing 12th standard examination of Higher Secondary and Secondary school Board examinations, the petitioner submitted application for admission to the Medical College from amongst the ST reserve category. However, he was denied admission and a candidate securing lessor marks was admitted to the course. Denial of the admission was based on the Circular issued by the Ministry of Home Affairs which *inter alia* records that a SC/ST candidate who has migrated from the State of Origin to some other State for the purpose of seeking education, employment etc. will be deemed to be a SC/ST candidate of the State of his origin and will be entitled to derive benefits from the State of Origin and not in the State to which he has migrated.

7 The question that arose in the matter of *Marri Chandrasshekhhar Rao V/s Dean, G.S. Medical College* (1990) 3 SCC 130 was as to whether a person who is recognized as a member of SC/ST in the state of Origin can claim benefits or privileges or rights in the State of migration where he goes. While dismissing the petition, the Supreme Court has observed in para No.10 of the Judgment as below:-

" 10. *It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or a girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has, to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of a community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other*

areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those area. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem.”

8 In para No.13 of the Judgment, the Apex Court has observed:-

" 13.

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. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a scheduled Caste or a scheduled tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere of Maharashtra where this inhibition or this disadvantage is not there, then he

cannot be said to have that reservation which will denude the children or that people of Maharashtra belonging to any segment of that State who may still require that protection. ”

9 It is thus clear that a migrant belonging to SC or ST who has migrated from the State of Origin to some other State for seeking education or employment will be deemed to be SC or ST of the State of Origin and will be entitled to derive benefits from the State of Origin and not in the State of migration. The father of the petitioner has migrated to the State of Maharashtra after reorganization of the States i.e. after 1950 and as such, the petitioner would be entitled to get benefits in the State of origin of her father and not in the State of migration i.e. the State of Maharashtra.

10 In the matter of *Shweta Shantalal Lal V/s State of Maharashtra and others* (2010 (2) Bom.C.R. 497), the issue referred to the full bench is, as to whether a person who was not ordinary resident, as on the date of presidential notification in area, now constitutes State of Maharashtra, will be entitled to benefit of reservation in the State. The Division Bench observed in the Judgment that, the law as to whether a migrant belonging to

SC/ST is entitled to benefits of reservation in the State of Maharashtra, considering the constitutional bench Judgment of the Honourable Supreme Court in *Mari Chandrasshekhhar Rao V/s Dean, G.S. Medical College* (1990 3 SCC 130) and the Judgment of another constitutional bench, in the matter of Action Committee (State of Maharashtra and another Vs. Union of India and anr. Reported in 1994 (5) SCC 244) may no longer be *res integra*.

The Honourable Supreme Court, after analyzing the various Judgments concluded that in case of migrant belonging to SC, not ordinarily resident as on 10.3.1950 in the area that now constitutes the State of Maharashtra and in a case of ST, considering Rule 5, on 6.9.1950, would not be entitled to benefits of reservation as SC/ST in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of origin.

11 In view of the Judgment of the full bench referred to above as well as the Judgment of Honourable Supreme court in the matter of *Mari Chandrasshekhhar Rao V/s Dean, G.S. Medical College* (1990 3 SCC 130), the decision rendered by the scrutiny committee directing invalidation of the caste certificate issued to

the petitioner, does not appear to be erroneous.

In the result, the petition fails and as such stands dismissed.

(A.I.S.CHEEMA, J)

(R.M.BORDE, J)

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