

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2846 OF 2015.

Mr. Pascal Andrew Fernandes

... Petitioner

Vs

1. The State of Maharashtra & Ors.

... Respondents

Mr. Nitin V. Gangal for the Petitioner.

Mr. Sudhir Talsania, senior counsel with Mr. Lancy D'Souza, Ms. Kavita Anchan and Ms. Deepika Agrawal i/b M.V. Kini & Co. for the Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

WEDNESDAY, 16TH NOVEMBER, 2016

P.C. :

1. The writ petitioner seeks a writ of mandamus or any other writ, order or direction in the nature thereof directing respondent No.3 to forthwith reinstate him in its services on such terms and conditions as this Court may deem fit and proper. The above relief is sought by the very petitioner who was unsuccessful in seeking it on earlier two occasions.

2. Very few facts are required to be set out so as to appreciate the argument of Mr. Gangal that a third petition on the same cause of action is maintainable. The petitioner claimed to be belonging to Mahadev Koli Scheduled Tribe. The petitioner, on the strength of such a claim, obtained a Caste Certificate. On the strength of the same, he approached the respondent No.3. The respondent No.3 was persuaded to appoint the petitioner to a post reserved for Scheduled Tribes. That was subject to the condition that the petitioner obtains a Caste Validity Certificate from the competent Scrutiny Committee. That is how the writ petitioner forwarded his claim and stated before the Scrutiny Committee that the petitioner and his forefathers belong to the Mahadeo Koli Scheduled Tribe. The petitioner could not succeed in establishing and proving that claim inasmuch as the Caste Certificate came to be cancelled. The order in that behalf was challenged, but the Divisional Commissioner, Konkan Division, dismissed the appeal on 20th February, 1987. Thus, on 30th April, 1984, the Caste Certificate was cancelled and that order was upheld in appeal. Resultantly, the petitioner's services were terminated on 5th February, 1988.

3. The first Writ Petition No.423 of 1988 challenging such termination was filed in this Court and that came to be dismissed by a single Judge on 1st March, 1988. A Letters Patent Appeal No.298 of 1988 was preferred and a Division Bench of this Court allowed it on 5th September, 1991, restored the writ petition to the file of this Court and directed the employer-respondent No.3 not to remove the petitioner from its services.

4. That is how the petitioner was reinstated, but when the writ petition which was restored to file came to be dismissed in default, the petitioner's services were again terminated on 5th December, 2011. The writ petition was restored to the file of this Court on a Motion for restoration made by the petitioner and upon restoration, this Court was pleased to issue a direction to the Scrutiny Committee to pass an order with regard to the petitioner's claim within three months from 25th January, 2012. On such a direction the competent committee once against passed an order rejecting the claim of the petitioner. That order was passed on 20th April, 2012. That order was challenged in the second writ petition No.7426 of 2012. That writ petition was placed before a Division Bench of this Court and it passed the

following order :

“1. Heard the learned counsel appearing on behalf of the Petitioner and Respondents.

2. The Petitioner is aggrieved by the order passed by the Caste Scrutiny Committee, who was pleased to reject the certificate where he was declared as belong to 'Mahadeo Christian Koli'(Schedule Tribes).

3. We have perused the impugned order. The Caste Scrutiny Committee, by a detailed order, has taken into consideration the documents which were submitted by the Petitioner and in our view,correctly held that the petitioner has not established his claim as 'Mahadeo Christian Koli'.

4. In our view, there is no infirmity or illegality in the order passed by the Caste Scrutiny Committee.

5. The learned counsel appearing on behalf of the Petitioner has submitted that in view of the notification issued by the State of Maharashtra dated 15th June1995, the services of the petitioner may be protected and the order of termination which has been passed may be set aside and he may be permitted to continue to work with the Respondents on the condition that he shall not seek any further benefit either for himself or his relatives on the basis of the said caste claim.

6. It will not be possible to accept his submissions. The Petitioner has initially filed writ petition in this Court which was disposed of by a consent order, passed by the Division Bench of this Court. In the said order, it was specifically stated that the Petitioner would make an application before the Caste Scrutiny Committee and the in the event his caste claim has held to be validated by the Caste Scrutiny Committee, the order of termination would be set aside. It was further held that if the Caste Scrutiny Committee rejected his application, the order of termination which was passed on 5th

December, 2011, would be confirmed.

7. In view of the consent order which was passed by the Division Bench, the Petitioner having accepted the order of termination on rejection of this claim by the Caste Scrutiny Committee it is not open for him to take a contrary stand and claim protection under the said notification issued by the Government. Hence, there is no substance in the submissions made by the Petitioner. Hence, writ petition is dismissed.”

5. The Division Bench considered the two-fold request of the petitioner, namely, that the order of the Scrutiny Committee is bad in law and should be set aside. Secondly and alternatively, even if that is presumed to be legal, valid and binding, by virtue of a Government Resolution dated 15th June, 1995, the petitioner's services be protected by declaring him as belonging to Special Backward Category. Both these requests were duly considered and refused. Aggrieved by this order and reproduced above, a Special Leave Petition was preferred in the Hon'ble Supreme Court of India and that came to be rejected on 18th October, 2013. The petitioner thus stood terminated from the services and he was aware of it.

6. However, this third petition is filed on the footing that there are several orders passed by the Hon'ble Supreme Court of India

and this Court, including a Full Bench in distinct cases, but concerning similar claims. The argument is that all such persons whose claims were rejected by the Scrutiny Committee approached this Court but though the order of the Scrutiny Committee was upheld, the claims of the petitioners before this Court, particularly their services were protected by a sympathetic consideration. The consideration resulted in a direction that though the order of the Scrutiny Committee is sound and legally tenable, since the petitioners before this Court rendered long and meritorious service but would be deprived of their source of livelihood, their termination should not take effect and they be allowed to continue till the age of superannuation. It is urged by Mr. Gangal that on the strength of these orders, the petitioner is entitled to maintain this writ petition.

7. We do not agree. Merely because in some other cases the petitioners before this Court were protected or their services continued purely on humanitarian and sympathetic grounds, we do not think that the present writ petitioner can present a third petition and with the same request. We have noted that the order dated 9th April, 2013, passed by this Court in the second writ

petition was based on not only the challenge to the findings of the Scrutiny Committee, but it also took into consideration the request alternatively made for protection of his service. Thus, such orders as are now pressed into service, passed in distinct matters were present to the mind of the petitioner and his counsel when he argued the second writ petition. Rather, he relied on them to seek the protection. Once that is also denied, then, we cannot, in the garb of a third petition, sit in judgment over earlier conclusive findings. That would be judicial indiscipline as well. We do not think that this third petition can be entertained. There is no necessity to go into any of the other contentions and on merits once the writ petition is not maintainable.

8. In the light of the above discussion, this writ petition is dismissed as not maintainable being barred by the principles of res judicata and finality of litigation. It is entirely frivolous, but in deference to the argument of Mr. Gangal, we do not impose any costs on the petitioner.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.