

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2687 OF 2014**

Shashikant Bhagawant Dhale

... Petitioner

Versus

State of Maharashtra through Secretary
Social Justice and Special Assistance
Department Mantralaya, Mumbai.

... Respondents

...

Mr. Ramchandra K. Mendarkar for the petitioner.

Mr. V. N. Sagare, Asstt. Govt. Pleader for the State.

...

**CORAM : ANOOP V. MOHTA &
G. S. KULKARNI, JJ.**

DATE : 18 October, 2016.

ORDER:

1. The petitioner has approached this court challenging the decision of the Caste Scrutiny Committee dated 5 December, 2013 whereby the petitioner's claim for validity of the Caste Certificate belonging to Scheduled Caste "Mahar" has been rejected. The apprehension of the petitioner was that in view of the invalidation of his caste claim, the services of the petitioner would be terminated by respondent no.3.

2. The petitioner was appointed by an order dated 2 January, 2009 on compassionate ground by respondent no.3 in place of his father who was declared medically unfit. The copy of the appointment order is placed on record by the petitioner annexed to the petitioner's affidavit dated 2 September, 2016.

3. A perusal of the appointment order clearly indicates that the petitioner has not been appointed on the basis of reservation viz. being a candidate belonging to a reserved category. If that be the position then surely respondent no.3 would not be justified in taking any action to terminate the services of the petitioner on the ground that the validity of the Caste Certificate has been rejected by the Caste Scrutiny Committee.

4. The learned counsel for the petitioner has appropriately relied on the decision of the Division Bench of this Court (Nagpur Bench) in the case of ***Vinodkumar Singh Rajkumar Singh Thakur Vs. State of Maharashtra (Writ Petition No.4185 of 2015) decided on 14 January, 2016*** wherein considering the case of the petitioner, who claim to be appointed on compassionate ground, the court has protected the services of the petitioner observing that once the appointment is made on compassionate ground and there is nothing on record to show that the reservation policy was applied in making such an appointment on compassionate ground then in that case, the respondent – employer would not be justified to direct the employee to produce caste validity certificate. The following observations of the Division Bench are relevant in the context of the present case;

“On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal it appears that the Tribunal was not justified in directing the respondents to refer the caste claim of the petitioner to the Scrutiny Committee for verification. Admittedly, the petitioner was appointed as a Constable in the year 2005 on compassionate ground. We do not find anything on record to show that the reservation policy was followed by the State Government while making the appointments on compassionate ground in the year 2005. In the absence of any policy of the State Government for making appointments on compassionate ground by adhering to the reservation policy, the appointment on the petitioner could not

have been made on a post earmarked for the Scheduled Tribes. No material was placed before the Tribunal in regard to any State policy for applying reservation policy while making appointments on compassionate ground. No such material is placed in this Court despite grant of time to the respondents to point out whether any such material is available. Since the petitioner was appointed on compassionate ground, we find that the respondents were not justified in directing the petitioner to produce the caste validity certificate. The Tribunal was not justified in directing the respondents to refer the caste claim of the petitioner to the Scrutiny Committee for verification.”

5. In the present case, also Mr. Sagare, learned Asstt. Govt. Pleader has not disputed that the petitioner was appointed on compassionate appointment and that no reservation policy was applied in making appointment of the petitioner and in issuing appointment order dated 2 January, 2009.

6. In view of the above clear factual position, the petitioner becomes entitled to the relief of protection of his services despite his claim being rejected by the Caste Scrutiny Committee. Ordered accordingly.

7. In view of the above observations, we accept the submission of the learned counsel for the petitioner that the prayers in the Writ Petition pertaining to the challenge to the decision of the Caste Scrutiny Committee has become academic and would not require adjudication.

8. The writ petition is disposed of in the above terms, no order as to costs.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)