

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2675 OF 2013

Shalvi Shantaram Kamble.

..Petitioner.

Versus

Bhrihanmumbai Municipal Corporation
and Another.

..Respondents.

Mr. R. K. Mendadkar for the Petitioner.

Mr. S. S. Pakale and Mr. Vinod Mahadik for Respondents.

Coram : Ranjit More &

Dr.(Smt) S. S. Phansalkar-Joshi, JJ.

Date : **March 11, 2016.**

P. C. :

1. Heard Mr. Mendadkar, learned Counsel appearing for the Petitioner and Mr. Pakale, learned Counsel appearing for the Respondents.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the order passed by the Education Officer of the Respondents on 5th January 2013 by which the Petitioner was demoted to the post of trained graduate teacher from the post of Headmistress. The Petitioner has also challenged the order passed by the appellate

authority on 21st February 2013, confirming the Petitioner's demotion.

3. There is no dispute that the Petitioner was appointed on 10th January 1992 as a trained graduate teacher against the reserved category post of Scheduled Tribe [for short "ST"]. The Petitioner was thereafter promoted to the post of Dy. Headmistress w.e.f. 14th December 2000. This promotion was made from the category of ST. Thereafter w.e.f. 19th January 2009, the Petitioner was further promoted to the post of Headmistress but this time from the category of Special Backward Class [for short "SBC"].

4. Before the caste certificate of the Petitioner as to her claim to be belonging to ST category, was to be sent to the Caste Scrutiny Committee for verification, she made a declaration that she belongs to SBC category and produced a certificate to that effect.

5. Mr. Mendadkar, learned Counsel appearing for the

Petitioner submitted that since the Petitioner was promoted as headmistress on the basis that she belongs to SBC, she could at the most have been demoted to the post of Dy. Headmistress and her demotion to the post of trained graduate teacher is erroneous and against the law.

6. Mr. Pakale, learned Counsel appearing for the Respondent, on the contrary, submitted that the first promotion of the Petitioner to the post of Dy. Headmistress in the year 2000 was on the basis of her seniority in ST category. He further submitted that by virtue of GR of 15th June 1995, the Petitioner's services came to be protected w.e.f. 1995 as if she has been appointed in the year 1995 at an entry level post – trained graduate teacher.

7. We find merit in the contention of Mr. Pakale. The 1st promotion of the Petitioner to the post of Dy. HM is undoubtedly on the basis of her seniority in the ST category. The Petitioner's seniority was counted from the year 1992, i.e., from the date of her first appointment. There is no dispute that the

Petitioner is not entitled to the benefits of ST category, however, her services are protected by virtue of the GR of 1995 and she is deemed to have been entered into services as a trained graduate teacher in the year 1995 and her seniority is required to be counted from 1995. If that be so, the Petitioner could not have been promoted to the post of Dy. HM in the year 2000.

8. Mr. Pakale also made a statement that if the Petitioner's seniority in SBC category is reckoned from the year 1995, then also the Petitioner would not have become entitled for promotion to the post of Dy.HM in the year 2000. Mr. Pakale also submitted that the Petitioner was promoted to the post of HM taking into consideration her seniority on the post of Dy.HM from the year 2000.

9. Having considered the submissions, we find that the Petitioner was not entitled to the first promotion itself, which was to the post of Dy.HM, given in the year 2000. *A priori*, it was given on the basis of the Petitioner's seniority reckoned in the ST category. The subsequent promotion of the Petitioner to the post

of headmistress is on the basis of her seniority on the post of Dy.HM. If the Petitioner is not entitled to the promotion to the post of Dy.HM, obviously, she is not entitled for the promotion to the post of Headmistress. Mr. Pakale, in this regard makes a specific statement that even if the Petitioner's seniority in the SBC category is reckoned from the year 1995, she would not be entitled to the promotion to the post of Headmistress.

10. Mr. Mendadkar, learned Counsel appearing for the Petitioner relied upon the Full Bench decision of this Court in Arun vs. State of Maharashtra [2015(1) Mh.L.J. 457]. He drew our attention to paragraph 75(ii) thereof. He produced the Petitioner's promotion order and submitted that in the absence of any "term" specifically incorporated in the said promotion order, the benefit of promotion given to the Petitioner cannot be withdrawn. Having gone through the decision pressed into service, we are unable to agree with the submission. Clause (ii) of paragraph 75 of the said decision talks about withdrawal or cancellation of benefits obtained or appointment secured between the period 28.11.2000 and 18.10.2001 upon invalidation

of the caste claim by the Scrutiny Committee. The Petitioner was promoted to the post of Dy.HM on 14th December 2000, i.e., between the said period of 28.11.2000 and 18.10.2011. In the present case, the Petitioner's caste certificate is not invalidated by the Scrutiny Committee. On the contrary, the Petitioner herself made a declaration that she belongs to SBC category and produced the certificate to that effect. Clause (ii) of paragraph 75, therefore, has no application to the facts and circumstances of the present case.

11. Mr. Mendadkar, learned Counsel appearing for the Petitioner lastly submitted that one Kalpana Chitre who was similarly situated with the Petitioner was however promoted from time to time and promotions given to her from incorrect reservation category have not been withdrawn. The scope of the instant writ petition cannot be enlarged by taking each and every case of promotion. Be that as it may, in our view, merely because the promotion has been erroneously given to Kalpana Chitre, that would not bestow the Petitioner with a right to seek similar benefits. It is trite legal position that the Petitioner cannot claim parity in illegality. In this regard, reference can be made to Fuljit

Kaur vs. State of Punjab [(2010) 11 SCC 485] and Laxmi Rattan Cotton Mills Ltd. Vs. State of U.P. [2009(1) SCC 565]. The case of the alleged discrimination has been for the first time put forth by the Petitioner in her affidavit-in-rejoinder. There is no whisper about the same in her writ petition. On this count also, we do not feel that this submission deserves any consideration.

12. We do not find any error in the impugned orders so as to warrant any interference with the same at the hands of this Court. Writ petition is without any substance and the same is therefore dismissed.

[Dr. (Smt.) S. S. Phansalkar-Joshi, J.]

[RANJIT MORE, J.]