

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.6177 OF 2016**

Sudarshan Virswami Chenna Petitioner

vs

Divisional Caste Scrutiny Committee no.1 & anr... .. Respondents

Mr.A.B.Tajane for Petitioner

Mr.V.N.Sagare AGP for State

...
**CORAM: ANOOP V.MOHTA &
G.S.KULKARNI, JJ**
DATE: 24 OCTOBER 2016

ORDER

1. Heard Mr.Tajane learned counsel for the petitioner and Mr.Sagare learned Assistant Government Pleader for the State.

2. The challenge in the petition is to the order dated 22 January 2016 passed by the Divisional Caste Scrutiny Committee, Solapur whereby the petitioner's claim for validity of the caste certificate that he belongs to Hindu Nhavi (OBC) has been rejected. It is not in dispute that the petitioner was appointed as a Talathi vide appointment order dated 16 October 2000 on a compassionate ground. On a perusal of the said appointment order, it does not indicate that the State Government has appointed the petitioner as a reserved candidate by operating any roaster for appointment to the said post. If that be the position, then the State

Government cannot resort to an action of terminating the services of the petitioner on the ground that validity of the caste certificate has been invalidated by the Divisional Caste Scrutiny Committee. The issue in our opinion, is squarely covered by 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 of 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 AGP 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.”

3. This Bench has also followed the said decision of the Division Bench in deciding Writ Petition No.2687 of 2014. In the light of the above observations, petition needs to succeed in as much as the petitioner is entitled for protection of his service as the same cannot be terminated on the ground that the validity of caste certificate has been rejected by the Caste Scrutiny Committee.

4. Petition is accordingly allowed in terms of prayer clause (d) (i) which reads thus:

d-1: “The appointment of the petitioner is on compassionate ground

therefore it be declared that the validity of the caste of petitioner is not necessary and a direction to that effect be issued to Respondent nos.3 and 4.”

5. As we have examined only a limited issue in regard to protection of the petitioner’s service, challenge to the decision of the Caste Scrutiny Committee as prayed in the petition has become academic.

6. Needless to observe that if any member of the family of the petitioner is asserting a claim on the basis of their caste in question, the authority shall consider the said issue on its own merits.

G.S.KULKARNI, J

ANOOP V.MOHTA, J

