

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7486 OF 2014

Devidas Laxman Pithe
residing at Plot No.42,
Sector 19, Kamothe, Taluka:Panvel
District: Raigad

..... Petitioner

V/s

1.State of Maharashtra
2. Schedule Tribe Certificate
Scrutiny Committee
3.Mumbai Port Trust

..... Respondents

Mr. R.K. Mendadkar for Petitioner.

Mr. V.N. Sagare, AGP for Respondent Nos.1 and 2.

Mr. Rakesh Singh i/b M/s. M.V. Kini & Co. for Respondent No.3.

CORAM : ANOOP V. MOHTA &

A.A. SAYED, JJ.

DATED : 30 MARCH 2016

ORAL JUDGMENT: *(Per Anoop V.Mohta, J.)*

1 Rule, returnable forthwith. By consent, heard learned Counsel for the parties forthwith finally.

2 The Petitioner has challenged the order dated 19 November 2011 passed by the Respondent No.2-Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane, whereby his caste claim “Koli Mahadeo” was not accepted.

3 Based upon the decision of the said Respondent No.2-Scrutiny

Committee, prior to filing of the present Petition, Respondent No.3-Mumbai Port Trust, Mumbai terminated the services of the Petitioner by an order dated 2 August 2014. The Petitioner therefore filed present Petition on 7 August 2014. The Respondents have filed their Reply.

4 After going through the submissions and the reasons given by the Respondent No.2-Scrutiny Committee, we have noted that the basic submission of Petitioner as recorded specifically in Ground no.3 to the Petition which is reproduced as under:

“(iii) It is respectfully submitted that the documents submitted by the petitioner alongwith his application dated 19.7.2013 in nature of Village Extract No.6 and 7/12 Extracts in respect of great grandfather viz. Nagya Hari Pithya, grandfather viz. Gopal Nagya Pithya, father viz. Laxman Gopal Pithya, real uncle viz. Mahadev Gopal Pithya which shows that these persons holding adivasi land among other members of the community and further in the said record it has specifically mentioned that these land belongs to Katkari, Thakar, Mahadev Koli and Dongar Koli which proves that grandfather of the petitioner belongs to Mahadev Koli, this record pertains to the year 1948, after the death of the grandfather of the petitioner, in the land record names of the father and real uncle of the petitioner are recorded as heirs of the grandfather. Considering these Pre-Constitutional documents the tribe claim of the petitioner is required to be reconsidered in view of principal of natural justice.”

5 This goes to the root of the matter so far as the claim of the Petitioner that he belongs to “Koli Mahadeo” caste. Even one or two supporting documents to support the caste claim of the Petitioner are relevant. It is necessary for the Respondent No.2-Scrutiny Committee to take into consideration those documents before rejecting said claim.

6 In view of the submission so raised alongwith the documents which are placed on record, we are inclined to observe that those documents need specific attention before coming to the conclusion as done in the present case and as the same is missing, therefore, according to us, a case is made out for remand of the matter to Respondent No.2- Scrutiny Committee. In the interest of justice, to give one more opportunity to the Petitioner and by considering the service of the Petitioner since 2006 as Safaiwala, therefore, we are inclined to remand the matter for reconsideration. The impugned order dated 19 November 2011 is required to be quashed with a direction to Respondent No.2-Scrutiny Committee to deal with the case of the Petitioner afresh by considering the documents so recorded in the submissions/grounds so raised.

7 Liberty is granted to the Petitioner to place additional documents, if any, within four weeks. The Respondent No.2-Scrutiny Committee to decide the caste claim of the Petitioner afresh in accordance with law as early as possible preferably within six months. To facilitate a fresh

hearing, the impugned order of Respondent No.2-Scrutiny Committee is set aside.

8 Having quashed and set aside the order which was the basis for terminating the service of the Petitioner, we are inclined to quash and set aside the termination order dated 2 August 2014 passed by Respondent No.3-Mumbai Port Trust. However, it is made clear that as the Petitioner is admittedly not working since 2 August 2014, therefore, there is no question of granting any back-wages. However, subject to the final decision of Respondent No.2-Scrutiny Committee and as the Petitioner was in service since 2006 as Safaiwala, the other benefit including continuity of service shall be granted to the Petitioner in the event the order of the Respondent No.2-Scrutiny Committee favourable to the Petitioner is passed.

9 This Court in the matter of **Saraswati Rajnikant Mayekar vs. State of Maharashtra & Ors.** in **Writ Petition No.8788 of 2013** in similar situation had passed the consequential order dt.19 -11-2015 after setting aside the order passed by the Caste Scrutiny Committee.

10 It is made clear that if adverse order is passed by the Respondent No.2-Scrutiny Committee against the Petitioner after remand of the matter, the same should not be implemented for two weeks from the date of communication of such order to the Petitioner.

11 Rule is made absolute in the aforesaid terms. The Writ Petition is accordingly disposed of with liberty. No order as to costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)

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