

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

WRIT PETITION NO. 8826 OF 2013

Jyoti Ramesh Talgaonkar	}	
alias Jyoti Vasant Upalekar	}	Petitioner
versus		
State of Maharashtra	}	
and Ors.	}	Respondent

Mr. R. K. Mendadkar for the petitioner.

Mr. N. C. Walimbe – AGP for respondent
nos. 1, 2 and 4.

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

DATED :- NOVEMBER 18, 2016

P.C. :-

1. The petitioner is in the services of respondent no. 3/Zilla Parishad, Ratnagiri. She was appointed against a reserved seat. She claimed that she belongs to Sonar notified as Other Backward Class. She joined the services of respondent no. 3 on 6th September, 1982. She relied upon a caste certificate issued way back on 13th November, 1978.

2. After the promulgation of the Act of 2001, the caste certificate of the petitioner was sent for scrutiny and verification by the employer third respondent.

3. On such scrutiny and verification, the competent scrutiny committee came to a conclusion that the petitioner does not belong to this Other Backward Class notified in the State, but can safely be termed as belonging to Daivadnya Brahmin caste.

4. It is such a conclusion which is assailed before us in this writ petition.

5. On this writ petition, an order came to be passed on 23rd September, 2013 that the petitioner's employment with the third respondent shall not be terminated only on the basis of the order passed by the scrutiny committee and impugned in this writ petition. That order has been continued till date.

6. At the admission of this writ petition, we extensively heard Mr. Mendadkar appearing for the petitioner and the learned AGP. We also perused the petition and the annexures thereto, including the impugned order. We indicated to Mr. Mendadkar that we are not inclined to interfere with the findings of fact recorded in the impugned order. They are not vitiated by any perversity or error apparent on the face of the record. In these circumstances, we were inclined to dismiss this writ petition. However, Mr. Mendadkar prayed for time to take instructions from the petitioner. He sought time in the peculiar facts and

circumstances, namely, that the petitioner is employed since 1982. She is due to retire from the services on attaining the age of superannuation on 30th April, 2017. She had also applied for voluntary retirement, but that application was rejected because this writ petition is pending.

7. In the light of this peculiar situation, Mr. Mendadkar sought time to take instructions and file an affidavit-cum-undertaking of the petitioner, where she would undertake not to claim any benefit of Sonar - Other Backward Class category either for herself or for her family and relatives from the paternal side. The matter was posted today and the final orders were not passed.

8. An affidavit-cum-undertaking is tendered by the petitioner, in which, she has stated in paras 3 to 5 as under:-

“3. I, however, say that because of personal difficulties, I applied to the Respondent No. 3 Zilla Parishad to consider my case for Voluntary Retirement. However, the Chief Accounts and Finance Officer (CAFO) Zilla Parishad, Ratnagiri by a letter dated 5-8-2016 addressed to Education Officer (Secondary), Zilla Parishad, Ratnagiri was pleased to reject the said application principally on the ground that no final decision has been taken in the abovesaid Writ Petition No. 8826 of 2013 filed by me. Hereto annexed and marked as Exhibit “A” is the true and correct copy of letter dated 5-8-2016.

4. I say that I am due to retire on superannuation on 30-4-2017. In these premises set out hereinabove, I hereby pray this Hon'ble Court with folded hands to protect my services on the post of Clerk occupied by me right from the initial date of my appointment. I am ready to accept Voluntary Retirement subject to payment of pension and

pensionary benefits such as PF, Pension, Gratuity, Leave Encashment, Group Insurance etc.

5. I further undertake that henceforth neither myself nor my progeny nor any of my blood relatives from paternal side, would claim any benefits as belonging to Sonar, O. B. C. in the State of Maharashtra.”

9. Respondent no. 3 is duly served. The learned counsel, who appeared for respondent no. 3 on the earlier occasion, is absent today.

10. Having perused this affidavit and finding that the petitioner worked from 1982 in the services of the third respondent and is due to retire on attaining the age of superannuation on 30th April, 2017, we are of the view that in the peculiar facts and circumstances of this case, her service deserves to be protected. Though we are not inclined to interfere with the order under challenge, it is only on humanitarian ground and since the petitioner is due to retire from services, has given up her claim voluntarily and has undertaken not to seek any benefits or concession/relaxation meant for Sonar - Other Backward Class, either for herself or her progeny, we are inclined to allow her to continue in service till the age of superannuation.

11. We direct that her services shall not be terminated till 30th April, 2017. We take the affidavit-cum-undertaking on record. Each of the statements reproduced above are accepted as

undertakings given to this court. This order is passed in the presence of the petitioner. Though the affidavit-cum-undertaking is in English, Mr. Mendadkar states that she has been explained and interpreted the contents thereof in Marathi. She has understood them with all the legal implications and consequences. In view thereof, we dispose of this writ petition with the above directions. All consequences in the light of the undertakings given to this court shall follow as far as the claim of the petitioner is concerned.

12. Needless to clarify that in view of this order, the petitioner shall be paid or extended all retiral benefits. We also clarify that this order is passed in the peculiar facts and circumstances of this case. It shall not be treated as a precedent for any case, including any employment in the Zilla Parishads in the State.

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