

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2982 OF 2016

IN

WRIT PETITION NO. 3756 OF 2013

Deepak Govind Bhamare

..Applicant / Petitioner

Vs.

State of Maharashtra and Others

..Respondents

Mr. R. K. Mendadkar, for the Applicant in CAW.2982/16, for the
Petitioner in WP.3756/13.

Mr. C. P. Yadav, AGP, for the Respondent Nos.1 and 2.

Mr. Mandar Limaye, for the Respondent No.4.

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

DATE :- DECEMBER 8, 2016.

P. C.:

By this Civil Application, the original Petitioner seeks
the following reliefs:-

“a):-That this Hon'ble Court be pleased to direct the
Respondent No.4 not to take any adverse action against the
applicant based on Notice dated 16.11.2016 as well as Clause
No.2 of the appointment order dated 12.1.2016 issued by the
Respondent No.4.

b):-Pending hearing and final disposal of this writ petition, the

Notice dated 16.11.2016 issued by the Respondent No.4 kindly ordered to be stayed.

c):-Pending hearing and final disposal of this writ petition, the Respondent No.4 be restrained by an order of injunction from taking any adverse action against the applicant on the ground of non submission of Caste Validity Certificate.”

2 The Petitioner-Applicant has filed Writ Petition No.3756 of 2013. That challenges the legality, validity and propriety of an order dated 7th May, 2012 passed by the 2nd Respondent Committee. The Committee invalidated the caste certificate of the Petitioner certifying him to be Thakur Scheduled Tribe.

3 This Writ Petition was placed for admission on 14th June, 2013 and after hearing both sides, this Court passed the following order:-

“1. Heard the learned counsel appearing for the petitioner and the learned A. G. P. for the first and second respondents. A prima facie case is made out.

2. Rule.

3. The learned A. G. P. waives service on behalf of the first and second respondents. Rule on interim relief is made returnable on 29th July, 2013. The learned counsel appearing for the petitioner states that even as of today, the petitioner

continues to be in the employment of the third respondent in the post of Fireman. In view of this statement, we direct that on the basis of the impugned order, the employment of the petitioner shall not be terminated till the returnable date. In addition to service through Court, private service to third respondent is also permitted.”

4 The ad-interim order that is relied upon by the Petitioner protected the employment of the Petitioner with a distinct employer. The employer at the relevant time and who threatened the Petitioner with termination of services, was the 3rd Respondent to that Writ Petition, namely, the Mumbai Municipal Corporation. The Competent Authority was the Chief Fire Brigade Officer (Additional), Mumbai Fire Brigade, Mumbai. In view of the invalidation of the caste claim, the Petitioner's employment was in jeopardy but with the Mumbai Municipal Corporation.

5 Mr. Mendadkar submits that the Civil Application is taken out in such a Writ Petition after bringing on record the subsequent development. The Petitioner and after going through the entire process of selection, was selected by the Thane Municipal Corporation as a Driver (Fire Brigade). It is stated that this was pursuant to an appointment order dated 12th January, 2016. The Petitioner by a letter dated 19th January, 2016 pointed

out to the 4th Respondent that his caste certificate as belonging to Thakur Scheduled Tribe has already been invalidated by the 2nd Respondent Committee but the matter is subjudice before this Court. Reliance is placed on page 62A of the Writ Petition.

6 With all these defects and shortcomings, Mr. Mendadkar claims that the Petitioner was still offered employment and appointed as a Driver (Fire Brigade). This was an appointment against the reserved post (Scheduled Tribe). The Petitioner was called upon to produce the caste validity certificate within six months from the date of his appointment. However, having failed to produce such certificate, the Thane Municipal Corporation relying upon the terms and conditions in the appointment order is seeking to terminate the Petitioner's services, that is on failure to obtain a caste validity certificate.

7 Mr. Mendadkar, therefore, submits that in the teeth of the pendency of this Writ Petition, this Court should protect the employment of the Petitioner-Applicant with that of this distinct employer, namely, Thane Municipal Corporation. That is because with open eyes and knowingly, that there is a case pending in this Court filed by the Petitioner, Respondent No.4 appointed him. If

that is so, then, the benefit of the interim order passed in the Writ Petition and which in any event raises arguable questions, should be extended.

8 Mr. Limaye appearing on behalf of Respondent No.4 upon a notice, opposes this request. He would submit that the Petitioner was duly informed by the communication, copy of which is annexed at page 12 of the application paper book that though the appointment was offered and was made against a reserved post that was on the specific condition that within six months from the date of joining duties, the Petitioner should obtain a caste validity certificate. The order very clearly stated vide condition no.2 that in the event such a certificate is not forwarded and submitted within six months from the date of joining the service, the appointment will come to an end automatically. The Petitioner accepted this term while joining services. That term and condition binds him. The Petitioner-Applicant cannot in the teeth of such a clear condition, argue to the contrary. It is the Petitioner's own doing, namely, that his caste validity certificate having been refused, the claim invalidated, the Writ Petition filed challenging that order is pending, the interim order therein not protecting him against any coercive measure by the Thane Municipal Corporation

but a distinct employer, the Mumbai Municipal Corporation, still takes a chance and joins the instant service. He cannot thrust or foist upon this distinct employer some legal proceedings. No interim order passed by this Court can come to the Petitioner's help and when the Petitioner does not have a caste validity certificate. That is admittedly refused. Therefore, no relief can be granted in his favour.

9 After perusing the entire record, including the present Civil Application and its Annexures, we find much substance in the objection of Mr. Limaye. As is rightly urged by him that for the state in which the Applicant-Petitioner presently is, he alone should be blamed. He has chosen to demit the earlier office and do away with his services with Mumbai Municipal Corporation. That service was protected by the interim order. The Petitioner thereafter applied for a job with the Thane Municipal Corporation and in a reserved post. He was aware that once such employment is sought and the position or post offered, he would have to comply with the condition of obtaining a caste validity certificate. That he admittedly does not possess. He did not possess it on the date of joining of the services with Respondent No.4, yet,

he accepted the conditional employment. Once he has voluntarily accepted such a conditional appointment, he cannot blame anybody else much less the Thane Municipal Corporation. The Thane Municipal Corporation has now been impleaded in the proceedings, namely, the Writ Petition as Respondent No.4. However, *prima facie*, the entire cause of action in the Writ Petition is against the Mumbai Municipal Corporation and principally the caste scrutiny committee. It is the State and that Committee which is proceeded against for refusing the caste validity certificate. In such circumstances, we do not think that the Petitioner can obtain any benefit of the interim order passed in the Writ Petition and seek its extension Qua Respondent No.4. The interim relief as prayed in the Civil Application is refused. The Civil Application is dismissed.

10 It is open for the Petitioner to seek an urgent hearing of the Writ Petition.

11 At this stage, Mr Mendadkar submits that earlier order on this Civil Application recording a statement of Respondent No.4, be continued, as the Petitioner wants to

challenge this Court's order in a Higher Court. This request is opposed by Mr. Limaye. The learned counsel points out that in public employment and when the mandate of Article 16 (1) cannot be diluted, this Court may not pass any order as sought or continue the statement which was in any event made at the stage when the matter was not ready for final hearing.

12 Having heard both sides on this limited point, we do not see how we can continue any order and when Respondent No.4 is unwilling to make the statement which would protect the Petitioner's service. We cannot prevent Respondent No.4 from acting in accordance with law. All the more, when the Petitioner is responsible for inviting all coercive steps including termination from service. Hence, the request is refused.

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