

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9972 OF 2017

Pruthavirajsing Bhagwansing Rajput,
Age : 54 years, Occupation Service,
R/o Ganesh Nagar, Malkapur Road,
Buldhana Tq. and Dist. Buldhana.

...Petitioner

Versus

- 1) The State of Maharashtra
Through its Secretary,
Social Welfare and Special Assistance
Department, Mantralaya, Mumbai
400032.
- 2) The Scheduled Caste Certificate
Scrutiny Committee No.2,
Aurangabad Division, Aurangabad
(Through its Member- Secretary)
- 3) The Tahsildar and Executive Magistrate,
Gangapur Tq. Gangapur Dist. Aurangabad.
- 4) The Vice President / Managing Director,
maharashtra State Transport Corporation,
Vahatuk Bhawan, Anand Nayar Marg,
Mumbai Central.
- 5) The Divisional Controller,
Maharashtra State Transport Corporation,
Buldhana.
- 6) Kailas Totaram Bahekar,
Age 54 years, Occup. Service,
R/o Hanuman Mandir, Near Rane

Floor Mill, Buldhana Tq. and Dist.
Buldhana.

7) Vijay Pratap Pawar,
Age 43 years, Occup. Service,
R/o Shivshankar Nagar, Chikhali Road,
Buldhana Tq. and Dist. Buldhana.

8) Ramesh Sampat Sakhare,
Age 54 years, Occup. Service,
R/o Tambulwadi, Post Sakegaon,
Tq. Chikhali Dist. Buldhana.

...Respondents

Mr. U. R. Aute, Advocate holding for Talekar and Associates for
petitioner

Mr. K. D. Mundhe, AGP for respondents / State

Mr. D. S. Bagul, Advocate for respondent No.5,

Mr. A.D. Shinde, Advocate for respondent No.6 to 8

**CORAM : S. V. GANGAPURWALA &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 31-10-2017

PER COURT :

1. The petitioner assails the order of the Scrutiny Committee invalidating the caste claim of the petitioner as belonging to 'Rajput Bhamta' (NT). The petitioner by way of amendment has also challenged the order of termination issued to him on account of invalidation of the post of his caste.

2. Mr. U. R. Aute, learned counsel for the petitioner strenuously contends that, the Judgment of the committee invalidating

the caste claim of the petitioner is erroneous. The voluminous documents on record had not been considered by the committee. The committee ought to have considered that the old record in the name of the grandfather of the petitioner supports the case of the petitioner. The Birth and Death Register Record pertaining to grandfather of the petitioner Shri Gendusing Hirasing Bundheli also records the caste as "Rajput Bhamta". The said document is dated 23-07-1937 Fasli.

3. The learned counsel further submits that, even the school record of the petitioner's father namely Bhagwansing Gendusing Rajput dated 28-06-1946 records the caste as 'Rajput Bhamta'. The documents pertaining to pre-independence era have more probative value. Learned counsel submits that, even criminal case was registered against the grandfather of the petitioner which shows indulgence in criminal activities and it is one of the characteristic of 'Rajput Bhamta' community.

4. The learned counsel further submits that, school record of the petitioner and his brother consistently records the caste as 'Rajput Bhamta'. All these aspects have been lost sight by committee while passing impugned order. The vigilance report also is in favour of the petitioner. All these aspects have been dealt with in casual manner

by the respondent committee.

5. The learned counsel in alternate submits that, the entry in service with the respondent employer was from an open category. As such the petitioner services could not have been terminated by the respondents. Only second promotion was from reserved category. At the most said benefit can be taken away by the respondent employer but could not have terminated the service of the petitioner.

6. The learned counsel Mr. D. S. Bagul for the respondents employer submits that, the entry of the petitioner in service is from open competition category and not from reserved category, but his first promotion in the year 1998 and 2nd promotion in the year 2013, is considering him to be from the reserved category.

7. We have also heard learned AGP for the committee and Mr. A. D. Shinde, learned counsel for respondents No.6 to 8.

8. We have gone through the Judgment of the committee.

9. The committee has considered each and every document produced by the petitioner on record.

10. There cannot be any matter of debate that the documents pertaining to pre-independence era will have a more evidential and

probative value. The death and birth register maintained by the competent authority in respect of grandfather of the petitioner is dated 23-07-1937 Fasli, equivalent to year 1927.

11. It has been observed by the committee in the order that, the word 'Bhamta' has been subsequently added, it is in different ink. The school record of the father of the petitioner dated 28-06-1946 shows entry as 'Rajput Bhamta'. It has been observed by the vigilance and committee that, the word 'Bhamta' is subsequently inserted and it is in bracketed portion and is in a different ink. The said document is obtained in the year 2012. All these facts are rightly considered by the committee. The documents of the father and the grandfather of the petitioner shows caste as only 'Rajput' and not 'Rajput Bhamta', the word 'Bhamta' is subsequently inserted. This aspect has been rightly considered, that would amount to contra evidence. The committee has not committed any error in invalidating the caste claim of the petitioner.

12. It has been accepted by the respondent employer that, the petitioner was appointed from open competition category and not from reserved category and for the first time in the year 1998 he was promoted giving benefit of caste. Naturally petitioner would not be

entitled for benefit obtained by him of reserved category.

13. In light of the above, we pass the following order.

ORDER

1) The Judgment of the Scrutiny committee invalidating the caste claim of the petitioner of 'Rajput Bhamta' is upheld.

2) The order of the respondent No.5 employer terminating the service of the petitioner is quashed and set aside.

3) The respondent employer shall reinstate petitioner within a period of 15 days from today.

4) The petitioner will not be entitled for backwages from the date termination till reinstatement, however will be entitled to the continuity in service.

5) The petitioner availed all the benefits of promotion from the 1998 granted to him on the basis of reservation, if any additional salaries is received by the petitioner for the said period of the promotional post, the respondent No.5 will be entitled to recover the same, however the petitioner will be entitled to the salary of post which he would be entitled to work without giving benefit of reservation.

6) In case the petitioner is entitled to promotion from open competition category, from a particular date, the respondent No.5 shall consider the same.

7) Writ petition accordingly disposed of. No cost.

[SMT. VIBHA KANKANWADI]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

vjg/-.