

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

WRIT PETITION NO. 1427 OF 2013

Dagdu Fula Koli

... Petitioner

Vs

1. State of Maharashtra & Ors.

... Respondents

Mr. R.K. Mendadkar for the Petitioner.

Ms. Sushma Bhende, AGP, for the Respondent Nos.1, 2 & 4.

Mr. A.M. Vernekar for the Respondent No.3.

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

THURSDAY, 09TH MARCH, 2017

P.C. :

1 The petitioner, during the course of his arguments and while challenging the order of the Scrutiny Committee invalidating his claim, restricted his submissions to only one aspect, namely, accepting the order as it is, can the petitioner's appointment against the reserved post be protected. On 25th June, 2013, this Court passed the following order :

“1. The learned counsel appearing for the petitioner, on instructions, states that the petitioner is accepting the impugned judgment and order which holds that he has failed to prove that he belongs to Koli Mahadeo - a Scheduled Tribe. The learned counsel appearing for the petitioner submits that based on various judgments including the judgment of the Apex Court in the case of Kavita Solunke Vs. State of Maharashtra and Ors. (2012 AIR SCW 4472), the petitioner is claiming reinstatement on the footing that he belongs to Koli Caste which is notified as Other Backward Class.

2. We accept the aforesaid statement. In view of the statement, issue notice to the respondents, returnable on 6th August, 2013. The learned A.G.P waives service for first, second and fourth respondents. Parties are put to notice that an endeavour shall be made to decide the petition finally at admission stage. In addition to service through Court, private service to third respondent is permitted.”

2 The petitioner's service has already been terminated, relying on the Scrutiny Committee's order and impugned in this writ petition. Does the petitioner deserve reinstatement in service is the only question.

3 Mr. Mendadkar appearing in support of this petition would argue that the petitioner's claim has not been invalidated on the ground that there was any fraud or the claim was utterly false. The petitioner could not substantiate and prove his claim

and, therefore, it was held to be invalid. Such an order of the Scrutiny Committee, therefore, does not result in the petitioner's termination from service and automatically.

4 In any event, and without prejudice, the petitioner's appointment is final. In that, Mr. Mendadkar invites our attention to the compilation of documents handed over by Mr. Vernekar appearing for the employer - Hindustan Aeronautics Limited. Mr. Mendadkar would submit that on 5th October, 2006, the petitioner was appointed as a Technician Trainee (Fitter) in the HAL's Aircraft Division at Nashik. The terms and conditions, *inter alia*, include condition No.iv which reads as under :

(iv) In case you belong to Scheduled Caste / Scheduled Tribe, your appointment is provisional and is subject to the caste / tribe certificate being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste / Scheduled Tribe, as the case may be, is false, your services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false caste certificate.

In case you belong to Other Backward Class, your appointment is provisional and is subject to the community certificate being verified through the proper channels and if the verification reveals that the claim to belong to Other Backward Classes or not to belong Creamy Layer is false, your services will be

terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate.”

5 Mr. Mendadkar would submit that the petitioner successfully completed the initial period of probation. The petitioner has, therefore, been absorbed in the Aircraft Division of HAL. He produces a copy of the office order dated 21st November, 2007, wherein at Sr. No.12, the name of the petitioner appears. Mr. Mendadkar does not dispute that the absorption is subject to the terms and conditions mentioned in the original offer of appointment, rules and regulations of the company as applicable from time to time. However, that does not mean that the petitioner's subsequent confirmation in service on 26th June, 2008 would be provisional or can be treated as provisional. The mere use of the word 'provisional' in the confirmation order does not mean that the petitioner's services are not final. Hence, the petitioner submits that both judgments, namely in the case of *State of Maharashtra Vs. Milind & Ors. (2001) 1 SCC 4* and *Kavita Solunke vs. Government of Maharashtra (2012) 8 SCC 431* would apply.

6 Mr. Vernekar appearing on behalf of the employer, on the other hand, would submit that it is incorrect to urge that the caste certificate has not been invalidated because the claim is false. It is expressly held to be false. It is held to be false on the footing that the claim was sought to be substantiated by relying upon the records such as the School Leaving Certificate. With regard to that, there is a finding of fact that the same was manipulated. If, on the strength of such manipulated and tampered record, the claim is laid, then, it is bound to be treated as false. Hence, there is no question of the petitioner obtaining any relief in this Court's equitable and discretionary jurisdiction.

7 Mr. Vernekar would submit that even the second contention has no merit. If, on successful completion of the probation period, the employees are confirmed, but provisionally, and the order in that regard clearly states that the other terms and conditions of the appointment remain unchanged, then, Mr. Vernekar would submit that the order of absorption which clarifies that it is governed by the terms and conditions as mentioned in the original offer of appointment and rules and regulations of the company as applicable from time to time, the

termination cannot be faulted. The petitioner has failed to produce a certificate of validity. He has not produced any certificate validating the claim.

8 With the assistance of both the advocates we have perused the petition, its annexures and the documents relied upon from the compilation.

9 We have reproduced the condition No.(iv) in the offer of appointment. The condition says that in case the petitioner belongs to Scheduled Caste / Scheduled Tribe the appointment is provisional and is subject to caste / tribe certificate being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste / Scheduled Tribe, as the case may be, is false, the services would be terminated without assigning any reasons and without prejudice to such further action under the provisions of the Indian Penal Code for production of false caste certificate.

10 In that regard, the Committee has framed the two points / issues, one of which is whether the petitioner is able to

prove his tribe claim by way of documentary evidence. In that behalf, the discussion from paragraph 9 is relevant. The petitioner furnished the birth extract in respect of his father wherein the caste is recorded as "Koli". That record pertains to the year 1934. The petitioner also furnished the school records in respect of his real brother and real sister. The Scrutiny Committee, on perusal of these records, found that the petitioner's real brother and sister are Hindu Koli. Therefore, these records maintained in the ordinary course of business by public authority had probative value. Then, the Committee found that the School Leaving Certificate in respect of the petitioner wherein his caste is recorded as 'Mahadev Koli' are pertaining to the years 1981 and 1986. In comparison to that, the birth record of the petitioner's father and school records of his brother and sister are more reliable being old documents. Then, the petitioner relied upon certain other documents in relation to which the Committee expressed an opinion that the petitioner is not able to substantiate and prove his claim. The birth record in respect of the petitioner's father and school records in respect of his brother and sister are older than the record of the petitioner. The caste status is 'Koli'. The petitioner's school records have been

intentionally changed from Koli to Mahadev Koli to grab the concession meant for the Scheduled Tribe community.

11 We are not in agreement with Mr. Mendadkar for the Scrutiny Committee's order must be read as a whole. Merely reading the operative conclusion therefrom is not proper. If all the paragraphs preceding the operating comments have to be read together, then, they are indicative of the fact that the petitioner indulged in an act which was found to be objectionable. There was an intentional alteration and effected in the school records pertaining to the petitioner. Therefore, if the real brother and real sister are Hindu Koli and equally the petitioner's father's school records did not reflect in the caste column his caste as Mahadev Koli. Mahadev Koli is a Scheduled Tribe. The petitioner is laying claim towards that tribe. He relied upon a document which was of the nature stated above. This clearly indicates that a false claim was raised. It was found to be such. The employer, therefore, cannot be faulted for relying upon the appointment letter.

12 Once the condition of appointment is that in the event

the claim is proved to be false, then, the appointment comes to an end automatically. The other contention need not be examined. In the peculiar facts and circumstances, we do not think that any finality can be attached to the petitioner's appointment so as to draw support from either *State of Maharashtra vs. Milind* or *Kavita Solunke's* case.

13 As a result of the above discussion, the writ petition fails and it is dismissed.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***