

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1862 OF 2017

Sandeep Gajanan Likhare	}	Petitioner
versus		
State of Maharashtra	}	
and Ors.	}	Respondents

Mr. R. K. Mendadkar with Ms. Komal Gaikwad for the petitioner.

Ms. Sushma Bhende – AGP for respondent nos. 1 to 5.

Mr. Rakesh R. Dhaktode – Executive Engineer, Tillari Canal Division No. 1, Sawantwadi and Mr. P. D. Mane – First Clerk, Tillari Canal Division No. 1, Sawantwadi present.

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

DATED :- FEBRUARY 24, 2017

P.C. :-

1. This writ petition challenges the final notice dated 2nd December, 2016 issued by the Executive Engineer, Tillari Canal, Division No. 1, Sawantwadi, District Sindhudurg.

2. The petitioner treats this letter as a command to produce a caste validity certificate, failing which, he apprehends that his services would be abruptly terminated. On 15th October, 1997,

the petitioner claims to have handed over what is styled as the original caste certificate issued to him by a competent authority within the meaning of section 3 of Act 23 of 2001. The authority competent to do so is defined in section 2 clause (b) of the said Act. The certificate allegedly styles the petitioner as Halba Scheduled Tribe. The petitioner says that on the strength of this certificate, he was appointed as Chief Engineer. That was against a post reserved for Scheduled Tribe. The order of appointment is dated 13th October, 1997 and the original caste certificate is stated to have been forwarded on 15th October, 1997.

3. The petitioner says that he possesses today only a xerox copy of this caste certificate. It is stated to have been issued by the Executive Magistrate, Sawantwadi.

4. We do not wish to go into the competence of this issuing authority or the manner in which the petitioner, who states that he belongs to Halba Scheduled Tribe, manages to obtain it in Sawantwadi Taluka, District Sindhudurg.

5. The petitioner apprehends his termination, because in terms of the Act 23 of 2001, this certificate is not conclusive and decisive. On the strength of this certificate alone, the petitioner cannot continue in employment, but the petitioner will have to

present himself for scrutiny and verification of his claim of being a Scheduled Tribe. That is how the competent scrutiny committee would step in and rule upon this claim.

6. The grievance of the petitioner, as initially projected, was that the original caste certificate is not with him. That is made over to the concerned department/authority and for forwarding for scrutiny by the competent committee. It is either the committee or the Social Welfare Department who has the original caste certificate. That is why his claim has not been decided is not the petitioner's fault. The committee has not been able to decide the claim as it has insisted on the production of the original caste certificate. The petitioner claims to have forwarded it to the Department of Social Welfare. This is also a Government of Maharashtra Department, which says that such a certificate is not available in its records.

7. After hearing this petition at great length, what we have found is that such cases, as are filed and instituted projecting a grievance of the above nature, engage judicial time and which is very precious. It could be a brought about situation in the sense that party like the petitioner seeks public employment, apply for appointment against a reserved seat and then a systematic ploy is adopted so that neither the party like the petitioner produces a

caste validity certificate nor the employer ever insists on it beyond addressing letters. In the same breath, we find that even when the scrutiny committee maintains complete silence and does not inform anybody about the pendency of such proceedings and that they cannot continue for want of production of the original caste certificate. It is in these circumstances and to save our precious judicial time that we called upon Mr. Mendadkar to take instructions as to whether the petitioner is interested in pressing his claim of belonging to Halba Scheduled Tribe. It is stated by Mr. Mendadkar, on instructions, that having been appointed in the year 1997, having completed 18 years of service, the petitioner is ready and willing to be treated as general category candidate for the balance service period. He would not claim any benefit of being Scheduled Tribe. Naturally, therefore, once he gives up his claim, his son and daughter will not be entitled to claim the benefit of Halba Scheduled Tribe in future. That also has been clarified by Mr. Mendadkar, on instructions and he states that the consequences of making such a statement have been duly explained to the petitioner and his family. The petitioner is present in court.

8. Mr. Mendadkar submits that in similar circumstances, even when the tribe claims as Halba have been rejected in the past by

this court, the court has protected the employment by not allowing the employer to take coercive measures, including dismissing such employees from services. The same treatment and facility be extended to the petitioner.

9. We called upon Ms. Bhende, learned AGP appearing for the State to take instructions. The Superintending Engineer, being the employer of the petitioner, has instructed her not to go into any controversy and for tracing out the tribe certificate from the custody of any competent authority. Instead, he has stated that the respondents would have no objection provided the petitioner treats himself hereafter a general category candidate and would be extended any benefit in service hereafter on par with a general category candidate. This would also include his claim for seniority etc. We again put to Mr. Mendadkar that this is a natural fallout and consequence of giving up the tribe claim and therefore, the petitioner would have to compete with the rest and all such candidates in respect of seniority etc.

10. Hence, in the peculiar facts and circumstances of the case and without this order being treated as a precedent for any future cases, we direct that the petitioner, having given up his claim as belonging to Halba Scheduled Tribe, his family and progeny being also agreed to the statements and are aware of the consequences

flowing therefrom, shall not be terminated from the services under the Superintending Engineer, as noted above only because he has failed to produce the tribe validity certificate. Even without such a certificate now he should be treated as a general category candidate and his employment be protected. He shall be continued in service till he attains the age of superannuation subject to his fulfillment of all other terms and conditions under the service rules. If the petitioner's monetary sums in the form of increment etc. are withheld only because of non production of the caste validity certificate, they shall be released on production of an authenticated copy of this order.

11. We have noted that in all such matters, irrespective of the Maharashtra Act 23 of 2001, hardly any benefit reaching the genuine Scheduled Caste or Scheduled Tribe candidates or those belonging to De-notified (Vimukta Jatis), Nomadic Tribes etc. in the State of Maharashtra. As a mechanical exercise and routinely the committee while invalidating certain claims observes that the genuine and deserving tribals and scheduled caste candidates suffer because of parties like the petitioner. Those, who are deprived of these benefits and concession meant for them have no means to approach this court, much less any court of law nearest to their place of residence or working. They

continue in subhuman conditions and virtually live an animal life. We do not see for protection of whose cause and benefits this mechanism is created and such legislations enacted. Very often those who come to this court complain that the validity certificates are refused on the ground that they are taking away benefits of genuine tribes. Therefore, it is a question mark as to for whose benefit the law is made, the committees are set up, the certificates are issued and scrutinised. It is for the State to decide as to whether it wants to continue its march towards a classless society or continue the division in the society and preserve such castes and tribes for ulterior motives.

12. With the aforesaid directions, the writ petition is disposed of.

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