

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2356 OF 2011
WITH
CIVIL APPLICATION NO. 2577 OF 2014

Nirmala Dattaram Padelwar	}	
@ Asmita Charuhas Chopdekar	}	
Age 55 years, Occ: service	}	
R/at. 45/7, Kamathipura, 6 th Gali,	}	
Mumbai 400 008	}	Petitioner
versus		
1. The State of Maharashtra	}	
(Summons to be served upon the	}	
Ld. Additional Government	}	
Pleader appearing for the	}	
State of Maharashtra)	}	
	}	
2. Scheduled Tribe Certificate	}	
Scrutiny Committee,	}	
Konkan Division, Thane.	}	
(Summons to be served upon the	}	
Ld. Additional Government	}	
Pleader appearing for the	}	
State of Maharashtra)	}	
	}	
3. Brihanmumbai Municipal	}	
Corporation,	}	
a Corporation established under	}	
the provisions of the Mumbai	}	
Municipal Corporation Act.	}	Respondents

Mr. Sanjay Kshirsagar for the petitioner.

Ms. M. S. Bane - 'B' Panel Counsel for
respondent nos. 1 and 2.

Ms. S. S. Pakale with Mr. Vinod Mahadik
for respondent no. 3.

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

**Reserved on 10th March, 2017
Pronounced on 25th April, 2017**

Judgment :- (Per S. C. Dharmadhikari, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner is challenging an order passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane.

2. It is common ground that the petitioner is an Indian citizen and working with the Municipal Corporation of Greater Mumbai (respondent no. 3).

3. The petitioner has served as a Superintendent at the Municipal School at Hindu Colony, Dadar. She was appointed against a reserved seat. She claims to be belonging to Hindu Mannervarlu Scheduled Tribe.

4. It is incumbent upon the State of Maharashtra-first respondent State to set up the committees in terms of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2001 (for short "the Act

XXIII of 2001”) so as to verify and scrutinise the claims of Scheduled Caste and Scheduled Tribe candidates and particularly those seeking employment against a reserved seat. The third respondent having employed the petitioner in its establishment, by appointing her against a reserved seat, it was incumbent upon it to forward this Scheduled Tribe certificate for verification and scrutiny to a competent scrutiny committee. Accordingly, it was forwarded to the second respondent.

5. The petitioner claims that such certificate, which was forwarded on 3rd July, 2003, was accompanied by several documents, such as the school leaving certificate, the certified copy of the caste certificate of the petitioner's brother and the first page of her service book, in which the caste is recorded as Mannervarlu. In terms of the provisions of the Act XXIII of 2001, the documents were forwarded by the second respondent committee to the Vigilance Cell so as to place a vigilance report. The Vigilance Cell submitted its report on 6th June, 2005. The petitioner corresponded with the second respondent committee and requested for forwarding a copy of this report. A copy of application dated 11th August, 2009 in that behalf is annexed as Annexure 'C' to the petition.

6. The petitioner has also annexed a copy of the Vigilance Cell report at Annexure 'D'. Thereafter, the petitioner was summoned by the scrutiny committee to remain present for personal hearing. The petitioner also pointed out, during the course of inquiry, that there is an additional document. One Prakash Vankatrao Padelwar is petitioner's second cousin from the paternal side. The certificate of validity was issued by the Scheduled Tribe Scrutiny Committee, Aurangabad to the said Prakash Padelwar. A copy of the affidavit of the cousin brother and certificate of validity issued by that committee was annexed as Annexure 'F'. There were other circumstances brought on record. However, the scrutiny committee, in the impugned order dated 6th April, 2010 held that considering the totality of the case, the claim of the petitioner cannot be accepted. It is not sustainable. That is how the tribe certificate issued to the petitioner was directed to be cancelled and confiscated.

7. It is such an order which is challenged before us in writ jurisdiction.

8. There is an affidavit, which has been filed in reply to this writ petition. In that affidavit filed by the Research Officer of the second respondent, it is stated that the committee has considered the entire record. The committee has found from the record that

the documents submitted by the petitioner do not depict and show her tribe. If the petitioner's grandfather came to Mumbai in 1915 and is stated to have taken education in Mumbai, no documentary evidence pertaining to that, namely, extract of School Education Register, School Leaving Certificate, Birth Certificate have been produced. If the petitioner relies upon the fact that her grandfather came to Mumbai, then, it is incumbent upon her to substantiate the claim as above by producing documentary evidence. Secondly, the committee found that the petitioner herself submitted an affidavit dated 20th October, 2009 of one Prakash Padelwar along with genealogy. Though the said Prakash mentioned his father's name as Vankatrao, still, how Prakash is a relative from the paternal side has not been substantiated at all. No material is produced on record to establish the relation with Mr. Prakash Padelwar. Secondly, there is overwhelming evidence to indicate that the petitioner is not aware of the local traditions, customs, traits and characteristics of the Tribe.

9. Then, there is an affidavit in reply of the Deputy Secretary of the Government of Maharashtra, in which, the reference is made to an affidavit filed by the State of Maharashtra in Special Leave Petition (Civil) No. 25516 of 2010. The Government

Resolution dated 22nd August, 2007 is not at all applicable in respect of Scheduled Tribe persons/applicants. This statement is made in the State's affidavit on the basis that the petitioner may claim benefit of Government Resolution dated 22nd August, 2007 issued by the Social Justice and Special Assistance Department, Government of Maharashtra. That Government Resolution, copy of which is annexed at page 50 of the paper book, sets out the guidelines for scrutiny and verification of the claims of the Scheduled Tribe and Special Backward category candidates.

10. The petitioner has filed an affidavit in rejoinder, in which, she states that it is incorrect to state that Mr. Prakash Padelwar is not her relative. She has stated that an affidavit of Prakash Padelwar was filed and on 17th November, 2009. The petitioner also furnished an explanation that her cousin Mr. Prakash does not have any land. Therefore, the 7X12 Extract cannot be submitted. It is, therefore, submitted that the statement in the affidavit in reply that the petitioner did not succeed in establishing her relationship or affinity with the Tribe is incorrect. In fact, the Government Resolution dated 22nd August, 2007 clearly states that if any person in the father's family (paternal side) has been issued a validity certificate, then, the petitioner is justified in relying upon it. Then, there is no necessity for any independent proof by the petitioner.

11. Then, there is another affidavit in rejoinder filed by the petitioner on 7th March, 2017. That was filed because this court had passed an order way back on 6th February, 2013 and which reads as under:-

“1. Learned AGP is not in a position to make statement as to whether the validity certificate issued in favour of the close relations of the petitioner would be challenged by the Department. We cannot keep in adjourning the matter for this purpose, as enough time was given to the respondents to consider that aspect.

2. As arguable questions are raised, Rule.

3. Mr. Sonawane, AGP, waives notice on behalf of Respondent Nos. 1 and 2.

4. The relief claimed in this petition is to stay the operation of the impugned order. We fail to understand as to how that relief, even if granted, will be of any avail to the petitioner because the caste claim has not been validated by the Scrutiny Committee so far. Hence, no order on interim relief.

5. Counsel for the petitioner submits that the petitioner be given liberty to approach this Court if and when the employer decides to discontinue or terminate the services of the petitioner for non-production of caste validity certificate. That liberty is granted.”

12. Thereafter, on 9th October, 2013, this court has passed the following order:-

“1. The applicant is the writ petitioner. The challenge in this writ petition is to the order of the Caste Scrutiny Committee by which the claim of the applicant that she belongs to Mannervarlu caste has been negated. By this Civil Application, the applicant has pointed out the Government Circular dated 18th May, 2013 which records a government decision to terminate the employment of those government employees whose caste certificates have been invalidated. The present Civil Application is filed by pointing out that a show-cause-notice has been served to

the applicant on the basis of the said Government Resolution.

2. As Rule has been issued in the main Writ Petition, the employment of the applicant cannot be allowed to be terminated on the basis of the order impugned in the main Writ Petition. Hence, we dispose of the Application by passing the following order:-

ORDER

(i) Till the final disposal of the main Writ Petition, the employment of the applicant shall not be terminated only on the basis of the impugned order dated 8th December, 2009, by which the caste claim of the applicant has been invalidated;

(ii) We make it clear that by virtue of this order, the applicant shall not be entitled to claim any equity and promotion to any higher post in the reserved category.”

13. Thus, the petitioner's services were protected after admission of the petition by the above order. Since the petitioner, in the meanwhile, stood retired on attaining the age of superannuation, she has filed this further affidavit and copy of which has been served on all parties. We have also directed production of the original records.

14. In the affidavit in rejoinder, the petitioner has pointed out that there is a circular issued on 18th May, 2013 by the General Administration Department, Government of Maharashtra. Vide clause (6) of that circular, such of the Government servants, who have joined the service, but have failed to obtain caste validity certificates should not be deprived of their employment. In other

words, this circular provides for termination of service for not submitting caste certificate. There is difference between submission of caste certificate and caste validity certificate. The petitioner has submitted the caste/tribe certificate. Though the petitioner was served with a show cause notice dated 26th August, 2013, in reply to that, the petitioner relied upon the pendency of this petition and the date of her retirement, namely, 31st January, 2014. Then, she has relied upon another circular, which is issued on 30th July, 2013, modifying the earlier circular and dispensing with the requirement of those persons, who are retiring on 30th July, 2013 of producing a caste validity certificate. The petitioner then relies upon the date of appointment and which is dated 1st July, 1977. On 19th February, 1990, she was promoted as Beat Officer/School Inspector. In the month of April, 2001, she was promoted as an Administrative Officer and finally, in April, 2009, she was promoted as the Superintendent of Schools. She has retired, on attaining the age of superannuation, on 31st January, 2014. However, her pension papers were not processed and later on, the petitioner stated that she has served for 36 years. The scrutiny committee has also observed that the caste certificate is not obtained fraudulently. Her source of income is pension. Even the husband of the petitioner is due for retirement. The petitioner is entitled to, therefore, receive the terminal

benefits and which she has computed in para 16 of the affidavit at page 77 of the paper book. We have also on record a Government Resolution dated 21st October, 2015 and which states that those candidates who are in service after 15th June, 1996, but up to 17th October, 2001 and belonging to Scheduled Tribe so also their caste certificates having not validated or they have failed to produce the caste validity certificates, their services be protected.

15. Upon perusal of all the materials and finding that no useful purpose will be served by now ascertaining the legality and propriety of the impugned order, but the services of such employees like the petitioner being protected, we are of the view that the Municipal Corporation of Greater Mumbai should be directed to release the pensionary benefits. It is true that the petitioner's claim is invalidated by the respondent committee. However, the finding of fact does not indicate that the petitioner has committed any fraudulent act or had deliberately misled the scrutiny committee. In these circumstances, on par with such employees, who are in the services of the State and who are protected by the above Government Resolutions, interest of justice would be served if in the petitioner's case we issue the above direction. The direction to release all terminal benefits, including pension is peculiar to the case of the petitioner. That is

also because her services have been protected by this court after the writ petition was admitted. Hence, we dispose of the petition with a direction that all the papers relating to the petitioner's terminal/retiral benefits, including pension be processed, if not already processed and the amounts be released. They be released as expeditiously as possible and within a period of four months from the date of receipt of a copy of this order.

16. The writ petition is disposed of with the above directions. Rule is made absolute in the aforesaid terms. There would be no order as to costs.

17. In the light of the disposal of the writ petition, the civil application does not survive and stands disposed of as such.

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