

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4656 OF 2014

Pramod Shivaji Shinde,
Aged adult, residing at and post
Nangarpuri, near Dapoli S.T.Stand,
Tal. Dapoli, Dist. Ratnagiri Petitioner
vs

- 1 State of Maharashtra,
through its Secretary, Social Justice
and Special Assistance Department,
Mantralaya, Mumbai 400032
- 2 Divisional Caste Certificate Scrutiny
Committee No.2, through its
Member Secretary, having its office at
Dr. Babasaheb Samajik Nyay Bhavan,
Ratnagiri, Dist. Ratnagiri.
- 3 Maharashtra State Road Transport
Corporation, through its Divisional
Controller, having its office at
Ratnagiri, Dist. Ratnagiri. Respondents

Mr. R. K. Mendadkar with Ms. Komal Gaikwad for the petitioner.
Ms. Nisha Mehra, AGP for respondents 1 and 2.
Mr. G.S. Hegde for respondent No.3-MSRTC.

**CORAM: ANOOP V. MOHTA AND
RAVINDRA V. GHUGE,JJ.**

DATE : April 18, 2017

ORAL JUDGMENT (Per Ravindra V. Ghuge,J.):

1 Rule. Rule is made returnable forthwith. Heard finally by
the consent of the parties.

2 Leave to correct prayer (e) is granted. Correction to be
carried out forthwith.

3 The Petitioner is before us for challenging the impugned
order dated 4th April 2013 passed by Respondent No.2-Committee and
praying for further direction to Respondent No.2-Committee to issue a
certificate of validity in respect of his caste claim. He also prays for
his reinstatement.

4 The substantive prayers put forth by the Petitioner are at
clauses 21 (b) and 21(e) which reads as under :

“21(b) That this Hon'ble Court be pleased to issue
Writ of Certiorari and or any other Writ, Order or
Direction in the nature of Certiorari thereby quashing
and setting aside the impugned order dated 4-4-2013
passed by the Respondent No./2 Committee with
further direction to Respondent No.2 Committee to
issue certificate of validity in respect of caste certificate
granted by the competent authority of jurisdiction.

29 (e) That this Hon'ble Court be pleased to issue Writ of Mandamus and or any other Writ, Order or Direction in the nature of Mandamus thereby directing the Respondent No.3 employer to reinstate the Petitioner on the post of Conductor with all consequential benefits by setting aside order of termination dated 6.08.2013.”

5 The Petitioner makes a statement, on instructions, that the Petitioner is giving up his claim to the extent of seeking validity for his caste claim as being belonging to the caste “Vadar” and consequentially he does not press for prayer clause 21(b).

6 We have heard the learned counsel for the respective sides and have gone through the Petition paper-book with their assistance.

7 The impugned order of termination dated 6.08.2013 has been passed by Respondent No.3-MSRTC on the ground that the Petitioner has not produced his validation certificate with regard to his caste certificate as belonging to “Vadar” which falls under Vimukta Jati-A. There is no dispute that the impugned order of termination is issued solely for the reason that the Petitioner has failed to produce

the caste validity certificate.

8 The issue before us is no longer res integra in the light of the judgment of this Court dated 14.01.2016 delivered at the Nagpur Bench in Writ Petition No.4185/2015-*Vinodkumar Singh Rajkumar v. State of Maharashtra and ors.* This Court has specifically concluded that an appointment made on compassionate basis and in the absence of making such an appointment on a post reserved for a particular category, such an appointment would not be deemed to have been made as against a reserved post and as such, the candidate so appointed would not be required to submit a caste or tribe validity certificate.

9 It is not in dispute that the father of the Petitioner namely Shivaji Gurappa Shinde was an employee of Respondent No.3, who met with an accident out of and in the course of his employment. He was seriously injured in the said accident and subsequently he has died on account of the injuries so sustained. It is equally undisputed that the Petitioner was appointed on compassionate grounds in place of his deceased father by Respondent No.3.

10 The Petitioner had submitted his documents while being appointed on compassionate basis. One of such documents was his caste certificate. Respondent No.3 forwarded his caste certificate for validation to Respondent No.2-Committee under the assumption that the Petitioner could be continued in service only if his caste certificate was validated. By order dated 4.4.2013, the caste claim of the Petitioner was invalidated which consequently led to his termination at the hands of Respondent No.3 vide the impugned order dated 6.8.2013.

11 We are not required to deal with the caste claim of the Petitioner in the light of the specific statement made, on instructions, that the Petitioner is giving up his claim to the said caste in the peculiar facts as above and as such is not pressing prayer 21(b) reproduced as above. In this backdrop, we are not entertaining this Petition to the extent of the prayer at clause 21(b). We hasten to add that we are not deciding the caste claim of the Petitioner only to the extent of the Petitioner in the fact situation as above and as such the verdict in this Petition would be restricted only to the Petitioner.

12 In the judgment delivered by this Court in the matter of *Vinodkumar Singh* (supra), it has been concluded by this Court as under :

“Shri S. P. Bhandarkar, the learned counsel for the petitioner submitted that the petitioner was appointed on compassionate ground and hence the respondents were not justified in directing the petitioner to produce the caste validity certificate. It is stated that merely because the caste of the petitioner is Gond (Scheduled Tribes), the respondents cannot seek the caste validity certificate when the appointment of the petitioner was made on compassionate ground. It is stated that since the petitioner was appointed on compassionate ground and the reservation policy is not applied while appointing a person on compassionate ground the respondents were not justified in terminating the services of the petitioner on his failure to produce the caste validity certificate from the competent authority in the State of Maharashtra. It is submitted that the Tribunal ought to have allowed the original application and should have directed the reinstatement of the petitioner without a further direction to the respondents to forward the proposal of the petitioner to the Scrutiny Committee. It is submitted that since it is an admitted fact that the petitioner was appointed on compassionate ground and since the reservation policy was not followed while making the appointment, the Tribunal could not have been directed the respondent to forward the proposal of the petitioner to the Scrutiny Committee for verification of his caste claim.

Shri K. L. Dharmadhikari, the learned Assistant Government Pleader supported the order of the

Tribunal. It is submitted that the petitioner was appointed on compassionate ground and since the caste of the petitioner is Gond (Scheduled Tribes) it was necessary for the petitioner to produce the caste validity certificate from a competent authority in the State of Maharashtra. It is however fairly admitted that nothing was produced on behalf of the respondents before the Tribunal to point out that the reservation policy was followed while making the appointments on compassionate ground in the year 2005.

On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal it appears that the Tribunal was not justified in directing the respondents to refer the caste claim of the petitioner to the Scrutiny Committee for verification. Admittedly, the petitioner was appointed as a Constable in the year 2005 on compassionate ground. We do not find anything on record to show that the reservation policy was followed by the State Government while making the appointments on compassionate ground in the year 2005. In the absence of any policy of the State Government for making appointments on compassionate ground by adhering to the reservation policy, the appointment of the petitioner could not have been made on a post earmarked for the Scheduled Tribes. No material was placed before the Tribunal in regard to any State policy for applying reservation policy while making appointments on compassionate ground. No such material is placed in this Court despite grant of time to the respondents to point out whether any such material is available. Since the petitioner was appointed on compassionate ground, we find that the respondents were not justified in directing the petitioner to produce the caste validity certificate. The Tribunal was not justified in directing the respondents to refer the caste claim of the petitioner to the Scrutiny Committee for verification.

Hence, for the reasons aforesaid the writ petition is allowed. The order of the Maharashtra Administrative Tribunal is modified. Clauses (iii), (iv), (v) and (vi) of the operative part of the order of the Tribunal are hereby quashed and set aside.

Since we find that the respondents have wrongly issued a fresh order of appointment in favour of the petitioner after the Tribunal decided the matter, we direct the respondents to strictly comply with the order of the Tribunal and reinstate the petitioner in service with continuity but without back wages.”

13 No material is placed before us by the Respondents to indicate that the Petitioner was appointed on a post reserved for the Backward category. Respondent No.3 was therefore not justified in either referring the caste certificate of the Petitioner for validation or in demanding a validity certificate.

14 Considering the law as is laid down above and keeping in view that the Respondents have not pointed out any specific reservation policy which can be said to be made applicable even to compassionate appointments in the service of Respondent No.3, we find no hesitation in allowing this Petition.

15 To the extent of the back wages from the date of the termination and continuity is concerned, we have no hesitation in granting continuity to the Petitioner. Insofar as the back wages are concerned, the Petitioner prays for 100% back wages.

16 The learned counsel for Respondent No.3 submits that since the appointment order of the Petitioner indicated that it was subject to the validation of his caste claim, Respondent No.3 cannot be faulted and, hence, back wages are not required to be granted.

17 Keeping in view the settled position of law that unless the Rules and the Policy of the State specifically carve out or provide a reservation policy applicable to compassionate appointments, there cannot be a presumption that a compassionate appointment would be subject to the validation of a caste or a tribe claim only because the candidate belongs to a scheduled caste or a tribe. As noted above, there is no dispute that the Petitioner was not appointed as against a post reserved for any caste and hence the presumption of Respondent No.3 that his continuity in service would be subject to the validation of his caste claim, was fallacious.

18 We find, in these peculiar facts of the case that while granting reinstatement and continuity in service to the Petitioner, loss of employment and loss of earnings need to be compensated so as to reduce the rigors of litigation suffered by the Petitioner.

19 As such, this Petition is partly allowed. The order of termination dated 06.08.2013 is quashed and set aside. The Petitioner stands reinstated in service with continuity. In order to pass an equitable order, we deem it proper to grant 50% back wages to the Petitioner, which Respondent No.3 shall calculate and make the payment within three months from today, failing which the said amount would attract interest at the rate of 6% p.a from the date of his termination.

20 Rule is made partly absolute in the above terms.

21 There shall be no order as to costs.

(RAVINDRA V. GHUGE J.)

(ANOOP V. MOHTA, J.)