

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7599 OF 2017

1. Kum. Rajeshri Parmeshwar Gampalwad
2. Ramchandra Pandurang Jadhav
3. Tukaram Eknath Gavli
4. Kirankumar Bhagwan Suradkar
5. Subhash Yashwant Jadhav .. Petitioners

Versus

1. State of Maharashtra and ors. .. Respondents

**ALONG WITH
WRIT PETITION NO. 7940 OF 2017**

1. Kum. Jaymala Shenfad Chandol
2. Gajanan Shamrao Chandol
3. Kashinath Ramesh Jadhav
4. Kalpana Kisan Sonone .. Petitioners

Versus

1. State of Maharashtra and ors. .. Respondents

Mr. Chintamani K. Bhangoji with Mr. Tanaji V. Jadhav i/by Mr. R.K. Mendadkar for petitioners.

Mr. A. B. Vagyani, Govt. Pleader a/w Mr. Prashant More, AGP for State.

CORAM: NARESH H. PATIL &
Z. A. HAQ, JJ.

DATE : SEPTEMBER 08, 2017.

ORAL JUDGMENT [Per Naresh H. Patil, J.]

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

2. The petitioners were appointed on 28/10/2015 as Clerk under reserved category and they joined services of respondent no.3 –Collector, Thane on the respective dates mentioned in the petitions. It is submitted that as the petitioners were appointed against the vacancies reserved for backward class candidates, they were directed to submit the Caste Validity Certificate within six months from the date of resuming their duties as per Clause 8 of the appointment order dated 28/10/2015. Another option given to the petitioners was to submit an application addressed to the Scheduled Tribe Certificate Scrutiny Committee – respondent no.2 for verifying the caste claim of the employee concerned.

3. The learned counsel appearing for the petitioners submitted that as the petitioners could not submit Caste Validity Certificate within six months from the date of resuming their duties, the Collector, Thane i.e. respondent no.3, terminated the services of the petitioners by passing impugned orders. The learned counsel submits that some of the employees had submitted their validity

claim before respondent no.2 – Scrutiny Committee, but it is not under their control to secure final order from respondent no.2. In view of the heavy pendency before respondent no.2, it takes longer time for getting final order from respondent no.2. The learned counsel further submitted that respondent no.3 passed order by giving reference to the conditions of appointment order and under the provisions of Section 10 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, 2000 (for short “the Act”). The counsel submits that the Collector is not empowered to pass order of termination by resorting to the provisions of Section 10 of the Act.

4. The learned counsel for the petitioners places reliance on the following judgments:

- (a) Shrikant Chandrakant Saidane & Ors. vs. State of Maharashtra & ors. **[2012 (4) Bom. C.R. 295]**.
- (b) Mrs. Ruchira Manoj Bende @ Kum. Meena Ramchandra Sonkusare vs. State of Maharashtra and ors. **[Writ Petition No. 9473 of 2014 decided on 13/1/2015]**.

5. On behalf of the respondents, learned Government Pleader Mr. A. B. Vagyani submitted that inspite of best efforts, it is noticed that the candidates appointed on the reserved posts fail to produce Caste Validity Certificate within six months or within reasonable time. In some cases, the employees even fail to submit appropriate application to be forwarded to the concerned Scrutiny Committee. This was noticed in several cases in the State. With a view that the employees shall submit final order passed by the concerned Scrutiny Committee in respect of their caste claim in time, as a last resort, the Collector had to pass order of termination as the employees failed to submit Caste Validity Certificate or application after assuming charge.

6. We have perused the record placed before us and considered the submissions advanced by the learned counsel appearing for the parties. Section 10 of the Act reads as under :-

“10. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes of Special Backward Category secures admission in any educational institution against

a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or corporation, owned or controlled by the Government or in any Government aided institution or co-operative society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for

being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.”

7. A bare perusal of the provisions of Section 10 of the Act indicates that the Collector is not empowered to terminate services of employees, who failed to produce Caste Validity Certificate or failed to submit an application to be forwarded to the concerned Scrutiny Committee after resuming their duties.

8. The learned Government Pleader has not been able to point out any provision under the Act which enables the Collector to terminate the services of the employee for not submitting Caste Validity Certificate within stipulated time.

9. The next question raised is as to whether the Collector could terminate the services of the employees in case one of the conditions of the appointment order was violated. The said condition relates to employees submitting an application for verification of their caste claim. We find that in the absence of any statutory Rules / Regulations or service conditions, the Collector would not be empowered to pass a drastic order of terminating the services of the employees.

10. In any case, the impugned orders have far reaching civil consequences and in our view the Collector should have caused inquiry before resorting to the drastic step of terminating the services of the petitioners. Admittedly no inquiry is conducted by the Collector and for this reason also the impugned termination orders are unsustainable.

11. We find substance in the submission of the learned Government Pleader that there are number of cases pending before the concerned Scrutiny Committee. The State Government, its departments and officers are facing difficulties as compliances are not made by the employees in respect of their caste verification claim. The orders of the Scrutiny Committee are not placed before

the employer and the consequences are that the employee continues to be in service for months and years together. There is no dispute that we are dealing with constitutional reservation and deserving person alone is entitled to get benefit of the said reservation. It is necessary that within reasonable time verification of caste claim needs to be decided.

12. It is, therefore, necessary that at the highest level of the State the issue is discussed and appropriate instructions are issued to all the departments in this regard so that unnecessary litigation on such issue gets curtailed and in a systematic manner State would streamline the process of recruitment for reserved posts.

13. Needless to mention that disruption of services abruptly by way of termination causes lot of embarrassment to the employees, which affects their life, career. By adopting suitable method, such situation could be avoided. The State, its departments, officers would certainly follow some reasonable procedure in this regard.

14. One such suggestion could be to get the pro-forma form filled in from the candidate, who is to be appointed in a reserved post, for forwarding the same to the concerned Scrutiny Committee

while the candidate is being handed over an order of appointment so that simultaneously both the steps could be taken i.e. (1) issuance of appointment order and (2) obtaining an application from the candidate along with copy of caste certificate to be forwarded to the concerned Scrutiny Committee. Respective offices shall be entitled to maintain the record and would correspond with the respective Caste Scrutiny Committee regarding the progress of the caste verification claim. In case the candidate / employee does not cooperate in the final outcome of the caste verification claim pending before the Scrutiny Committee, the Committee would be in a position to inform the Collectorate or head of the department. Instead of fastening the responsibility totally on the employees to secure Caste Validity Certificate within six months, the State and its departments shall also take the responsibility to supervise the process of forwarding the applications to the concerned Caste Scrutiny Committee and maintain the record of further progress in the matters relating to caste scrutiny of respective candidates/employees. A designated officer shall be entrusted with such job who shall be maintaining the record. It is for the State to devise and explore any other better solution, if any.

15. We, therefore, direct the Chief Secretary to take stock of

the situation and issue appropriate instructions to the concerned departments through General Administration Department of the State. The State shall also make endeavour to expedite the process of scrutiny of caste claim of such employees on priority basis.

ORDER

- (a) The impugned orders terminating services of the petitioners are quashed and set aside.
- (b) We direct that the petitioners shall be reinstated in the employment of respondent no.3 with consequential benefits forthwith.
- (c) We direct the concerned Caste Scrutiny Committee to expedite the caste verification claim of the petitioner pending before it and decide the same finally as expeditiously as possible but not later than six months from the date of receipt of copy of this order. In case any of the petitioners /employees do not extend cooperation to the Scrutiny Committee, we direct the Scrutiny Committee to proceed on the available record and pass a reasoned order.

- (d) The State to intimate this order to all the concerned departments.

16. Rule is made absolute in the above terms. No costs.

17. Registry to forward copy of this order to the Chief Secretary, Government of Maharashtra, the Principal Secretary, Law and Judiciary, Mantralaya, Mumbai and the Collector, Thane forthwith.

(Z. A. HAQ,J.)

(NARESH H. PATIL)