

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9147 OF 2013

Sachin Ramchandra Koli ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

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Mr. R. K. Mendadkar for the Petitioner.
Mrs. M. S. Bane, 'B' Panel Counsel for Respondent Nos. 1 to 3.

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

DATE : MARCH 22, 2017.

P.C. :

1. While challenging the order passed by the Scrutiny Committee invalidating his tribe certificate certifying him as belonging to 'Koli Mahadev' Schedule Tribe, the petitioner has raised two contentions. Firstly, it is submitted that the Inspector of the Vigilance Cell attached to the 2nd respondent-Committee, examined the school records of the father and other blood relatives of the petitioner from the paternal side and submitted its report to the 2nd respondent-Committee. The Police Inspector of this cell also recorded the statement of the father of the petitioner. A copy of the inquiry report submitted by the vigilance cell in the year 2010 was forwarded to the petitioner. While it is true that the petitioner filed his detailed reply to the inquiry report on 15th July, 2013, but the proceedings before the Scrutiny Committee were closed for orders prior to that date. The Scrutiny Committee could have very well, later on, stated that it is ready and willing to hear

the petitioner again. The Committee, by not adopting such a reasonable and fair stand and maintaining that its order passed and impugned in the Writ Petition is correct, according to the petitioner, compounds the matter. The petitioner's reply to the report should have been considered only because the statute requires the Committee to consider it. The Committee is not bound by the recommendations in the report of the Vigilance Cell. The Committee can take a different view. Hence, the petitioner has been denied a reasonable and fair opportunity to defend himself.

2. This Court had noted this submission not once, but twice. On 29th October, 2013, it passed a detailed order after hearing both sides. That order reads as under”

“1. Heard the learned counsel appearing for the Petitioner. The learned AGP represents all the Respondents. Apart from other submissions, learned counsel appearing for the Petitioner stated that the Petitioner filed a reply dealing with the report of the Vigilance Cell. Though the Petitioner has filed a reply on 15th July 2013, the Caste Scrutiny Committee proceeded on the footing that no such reply is filed.

2. The learned AGP pointed out that on 31st August 2013, an order was passed removing the Petitioner from the employment with effect from 3rd September 2013. He states that the said order was dispatched to the Petitioner on 25th September 2013 by registered post. He states that the order was served to the Petitioner on 30th September 2013.

3. In view of the controversy as regards the non-consideration of the reply to report of the Vigilance Cell, we direct the learned AGP to produce on record the case

papers of the caste claim of the Petitioner for perusal of the Court.

4. The ad-interim relief was granted on 27th September 2013. The order of termination of the employment of the Petitioner was not served to the Petitioner till then. Hence, the Petitioner continues to be in the employment.

5. Stand over till 19th November 2013. Record to be produced by the State Government on the next date. The ad-interim relief granted earlier to continue till then. We direct the Petitioner to annex a true copy of the report of the vigilance Cell as well as a copy of the order of termination. Amendment to be carried out within a period of three weeks from today.”

3. The Committee, as also the State, strangely even after this order, filed an affidavit. The statements in the affidavit are based on record. The affidavit of the Committee seeks to justify the non-consideration of the reply furnished by the petitioner. The reasons for such non-consideration are that the findings were communicated to the petitioner well in advance. The Vigilance Cell's report was handed over to the Committee on 26th February, 2010. The petitioner was forwarded a copy of this report and called upon to submit his reply on or before 6th April, 2010. However, the petitioner failed to furnish his reply or explanation. Then, the petitioner has taken time from 6th April, 2010 to 15th July, 2013 to forward the reply. That is why it was not considered. The last hearing in this matter was held by the Committee on 21st June, 2013. Hence, the Committee faults the petitioner for this enormous delay.

4. We are unable to sustain this approach of the Committee for the simple reason that if the committee closed its proceedings on 21st June, 2013, it took time till 31st August, 2013 to pass the impugned order. So it has been passed after more than two months from the date of the last hearing. During this period, the petitioner's reply was received. Nothing was lost if this reply to the report of the vigilance cell was noted and considered by the Committee. However, the Committee, instead of taking such a reasonable and fair approach, compounds the situation, as rightly noted by Mr. Mendadkar, in a sense that for last nearly four years, this matter remains pending in this Court only on this small issue.

5. Once we cannot sustain the above approach of the Committee, we are constrained to quash and set aside the impugned order. We proceed to quash and set aside the same. The Committee shall now consider the claim of the petitioner afresh on merits and in accordance with law. It shall pass a fresh order uninfluenced by the earlier conclusions. Till the Committee passes a fresh order and for a period of two (02) months thereafter, the employment of the petitioner with the employer, namely, respondent no.3, shall not be terminated, if not already terminated. However, this protection is confined and restrained to the claim of the petitioner raised in the Petition and for protecting it. His Services can be done away with, in accordance with law on another grounds.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)