

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2603 OF 2013

Vasanti D. Khopte	.. Petitioner
Vs.	
The Union of India and ors.	.. Respondents

Mr.S.R.Nargolkar a/w Ms.Sherrie Rebello I/b Mr.Parag Shelke,
for the Petitioner.
Mrs.Rupali M. Shinde, AGP for Respondent No.5 - State.
Mr.Nitin V.Gangal, for Respondents No. 2 to 4.

**CORAM : R.M.SAVANT &
M.S.KARNIK, JJ.**
RESERVED ON : 19th SEPTEMBER, 2018
PRONOUNCED ON : 01st OCTOBER, 2018

JUDGMENT (PER M.S.KARNIK, J) :

. The Petitioner by filing this Petition under Article 226 of the Constitution of India prays for a writ of Mandamus or any other appropriate writ, order, directions thereby restraining the Respondents from taking any coercive action terminating the services of the Petitioner on the ground of invalidation of the caste certificate by the Caste Scrutiny Committee.

The facts of the case in a nutshell are as under - :

2. The Petitioner was appointed on 09/12/1991 as a Typist on probation for one year in the office of Respondent No.4 – The General Manager Food Corporation of India. The Petitioner was made permanent on the said post with effect from 25/02/1993. At the time of appointment the Petitioner produced caste certificate issued by the Executive Magistrate, Uran dated 11/03/1980 certifying the caste of the Petitioner as 'Hindu Mahadeo Koli' which is Scheduled Tribe. The Petitioner was promoted from Assistant Grade III (General) Typist to Assistant Grade II (General) by an order dated 18/12/1997. The Petitioner was thereafter promoted in the year 2009-10 as Assistant Grade I (General) by an order dated 01/10/2010. It is the case of the Petitioner that she has worked with utmost sincerity and has an unblemished service record.

3. Vide communication dated 30/04/2010, the Respondent No.4 called upon the Petitioner to furnish the

documents and papers regarding the Petitioner's caste claim. The same were forwarded to the Scrutiny Committee viz. the Respondent No.5. By an order dated 16/01/2013, the claim of the Petitioner as belonging to Hindu Mahadeo Koli- Scheduled Tribe was invalidated.

4. The Petitioner by letter dated 06/02/2013 informed the Respondent No.4 that she had no intention to challenge the order invalidating her caste claim. She however requested protection of her services. Apprehending that her services are likely to be terminated by the Respondent No.4 in view of invalidation of the caste claim, the Petitioner has approached this Court for protection of her services.

5. The learned Counsel appearing on behalf of the Petitioner Shri Nargolkar placed reliance on the decision of the Apex Court in the case of **Kavita Solunke Vs. State of Maharashtra & ors. 2012 AIR SCW 4472** in support of his contention that those employees who are in settled employment,

their services should not be disturbed on the ground of invalidation of their caste claim. The learned Counsel also placed reliance on the decision of **this Court (Nagpur Bench) dated 04/10/2012 in Writ Petition No. 2477 of 2012 in the case of Ganesh s/o Bhimrao Kale Vs. The Divisional Controller** wherein similar protection was granted.

6. Shri Nargolkar learned Counsel for the Petitioner submitted that in any case, the Petitioner's initial appointment was not on the basis that she belongs to the reserved category. The learned Counsel would submit that at the highest, the decision of the Apex Court may have a bearing on her promotions as she is promoted on the basis that she belongs to a reserved category. However, her initial entry into the services was not on the basis that she belongs to the reserved category. In his submission it was against an open category post. Her services as a Typist therefore needs to be protected. In support of his contention the learned Counsel Shri Nargolkar submitted that the advertisement pursuant to which she applied did not

stipulate that post of Typist is a reserved post. He submits that even appointment order dated 09/12/1991 only mentions that the Petitioner belongs to Scheduled Tribe, but nowhere it is mentioned that her appointment is against the reserved post. He therefore submits that unless the advertisement clearly stipulates that the appointment is to be in a post meant for the reserved category and the appointment order also so indicates, it would not be appropriate for the Respondent No.4 to proceed on the footing that the initial appointment of the Petitioner is against the post meant for the reserved category.

7. The learned Counsel for the Respondent No.4 on the other hand invited our attention to the decision of the Apex Court in the case of **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others reported in (2017) 8 Supreme Court Cases 670** in support of his contention that where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is

meant, and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions.

8. The learned Counsel for the Respondent No.4 relying upon the observations made by the Apex Court in the case of **Food Corporation of India** (*supra*) submits that protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to the statutory mandate. He submits that protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of an appointment to an ineligible person.

9. The learned Counsel for the Respondent No.4 has also invited our attention to the additional affidavit filed on behalf of the Respondents No.2 to 4 affirmed by Ms.Kalpna Rathod, Assistant General Manager (Personnel). The learned

Counsel pointed out that the original file in respect of service record of the Petitioner was produced before this Court on 08/09/2017. Upon perusal of the said file and having regard to the contentions raised by the Petitioner, the Respondent – FCI was directed to file additional affidavit annexing the relevant documents on record which would be indicative of the Petitioner's selection and appointment in the Scheduled Tribe (ST) category. Pursuant thereto, the additional affidavit annexing the relevant documents is filed.

10. Heard learned Counsel for the parties. We have perused the copies of the service record which have been annexed to the affidavit. We would first deal with the contention as to whether initial appointment of the Petitioner as a Typist on 09/12/1991 was on an open post. The order of appointment dated 09/12/1991 indicates that Ms. Vasanti B. Chovri (ST) an employment exchange candidate is offered a post of Typist with the Respondent No.4. The office order dated 25/02/1993 mentions that on satisfactory completion of the

probation, the Petitioner is confirmed in the post of Typist. At the footnote of the order dated 25/02/1993 there is a mention that necessary entries are to be made in the service book of the officials. The caste certificate dated 11/03/1980 produced by the Petitioner states that she belongs to the Hindu Mahadeo Koli, Scheduled Tribe.

11. Vide communication dated 30/04/2010, as per the directions of the Competent Authority the caste certificate of the ST employees who are recruited or taking the benefit of the caste under the ST category were to be verified. The Petitioner therefore was directed to submit her original caste certificate along with required details for submitting the same to the Caste Scrutiny Committee. The learned Counsel for the Petitioner however submitted that though the Petitioner was appointed against the open category, nevertheless since she has availed the benefit of her status of the ST category for the purpose of promotion, she submitted herself to the validation process.

12. It is pertinent to note that the Petitioner herself vide her communication dated 14/05/2010 submitted the original documents relied upon by her at the time of appointment which included the caste certificate also. The Petitioner does not dispute that her promotion was on the basis that she belongs to ST category.

13. The Respondent No.4 relied upon the documents which are annexed along with the additional affidavit to substantiate the contention that the Petitioner's selection and appointment is in Scheduled Tribe (ST) category. In the affidavit filed by the Respondent No.4 it is pointed out that for the purpose of selection of ST candidates for the post of Typist (English), a committee consisting of 4 high level officers which included Chairman/Regional Manager, Maharashtra was constituted on 31/07/1991. In all 20 applicants from Employment Exchange opted for the said post in the ST category. The Petitioner was amongst the three persons who were shortlisted. The Respondent No.4 has produced the

statement showing the names of the candidates called for English typing test on 13/07/1991. All these candidates are from the ST category. Even the Minutes of the meeting of the Committee constituted clearly reflects that the Committee has been constituted for selection of the ST candidates for the post of Typist (English) on 31/07/1991. Accordingly, the Petitioner was amongst the three persons who were short listed for appointment subject to acquiring the required speed within 6 months from the date of joining the post, if appointed.

14. It is further seen that on 31/07/1991, three shortlisted candidates including the Petitioner were called for interview for the post of Typist. Amongst all three ST candidates, the Petitioner having secured the highest marks came to be selected and appointed. The appointment order dated 09/12/1991 so records that the Petitioner (ST) Employment Exchange candidate offered the post of Typist. The record further indicates that at the time of appointment, the Petitioner filled up the attestation form which indicates that her

religion and caste as Hindu Mahadeo Koli. Along with attestation form, the Petitioner submitted the documents such as identification card of Employment Exchange which indicates the caste of the Petitioner as Scheduled Tribe (ST). She also submitted the caste certificate dated 11/03/1980. The Proforma of Service Book prepared after the appointment of the Petitioner also indicates the caste of the Petitioner as Hindu Mahadeo Koli, ST.

15. The office order dated 08/12/1997 by which the Petitioner was promoted to the post of AG II Typist clearly indicates that she was promoted as against the post meant for ST category. The Petitioner has thus derived the benefit in service on the footing that she belongs to the reserved category.

16. Though in the Petition, the Petitioner has mentioned that her initial appointment is against the open category, it would be very material to consider the communication of February 2013 addressed by the Petitioner to the Respondent

No.4 which is at Exhibit 'G' to the Petition. The said communication addressed by the Petitioner which has been produced by the Petitioner herself clearly records that she was appointed as a Typist on 09/12/1991 against ST candidate through Employment Exchange. We have already noticed that the Petitioner has availed the benefit of promotion also by projecting her caste as Hindu Mahadeo Koli Scheduled Tribe. This being the position, we have no hesitation in coming to the conclusion that the Petitioner's initial appointment was on the basis that she is a Scheduled Tribe candidate on the post meant for reserved category. We therefore reject the contention of the Petitioner that she was appointed in the post meant for open category.

17. In view of the authoritative pronouncement of the Apex Court in the case of **Food Corporation of India** (*supra*) the issue as to whether the Petitioner is entitled to protection of her services upon invalidation of her caste claim by the Scrutiny Committee is no more res integra.

In this light of the matter, the Petitioner is not entitled for protection of her services. The learned Counsel for the Respondent No.4 also invited our attention to the order passed by the Nagpur Bench of this Court on 13/04/2018 whereby this Court had directed the Respondents therein to initiate necessary steps within next two months to discontinue and terminate the void recruitment of all those on its roll who have given up their castes and continuing in service on the basis of “protection”.

18. In these circumstances, we do not find any merit in the Petition and the same is accordingly dismissed. Rule discharged with no order as to costs.

(M.S.KARNIK, J.)

(R.M.SAVANT, J.)

After Pronouncement of the Judgment

Date : 01/10/2018

At this stage, the learned Counsel seeks continuation

of the ad-interim relief which is already in the above Writ Petition. In view of the judgment of the Apex Court in the case of **Food Corporation of India** (*supra*), it is not possible to accede to the said request. Hence, the said prayer is rejected.

(M.S.KARNIK, J.)

(R.M.SAVANT, J.)