

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10753 OF 2018

Varsharani Ramkrishna Wagh

...Petitioner

V/s.

State of Maharashtra

Through Secretary,

Tribal Development Dept., & Ors.

...Respondents

Mr.R.K. Mendadkar a/w Ms.Tejsvini Bhamare and Ms.Priyanka Shaw for the Petitioner.

Mr.S.B. Deshmukh a/w Mr.Pawan Dhane for Respondent No.3

Mr.V.M. Mali, AGP for Respondent Nos.1 and 2-State.

Mr.L.G. Dhoke, Deputy Secretary, Tribal Department, Mantralaya present in Court.

Mr.C.D. Pawar, Research Officer, Pune Committee present in Court.

Mr.V.S. Daund, Law Officer, Pune Committee present in Court.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 17th DECEMBER 2018

P.C.:

1. In this matter the claim of the petitioner is yet to be verified. The certificate, styled as Caste Certificate, on the basis of which the petitioner has been appointed as Assistant Teacher, was forwarded for scrutiny and verification by the Scheduled Tribe Certificate Scrutiny Committee at Nandurbar.

2. The petitioner says that because the third respondent appointed her against the reserved post, it was mandatory for her to obtain a Caste Validity Certificate. Having been appointed in the year 1999, but not obtaining the Caste Validity Certificate till date has now resulted in the petitioner being served with a final notice before the period stipulated which is the outer limit for obtaining this certificate. In the event the petitioner fails her services will come to an end.

3. On this petition which was moved before this Court earlier, but could not be taken up for paucity of time, there is already an ad-interim order operating in favour of the petitioner. That order is of 15.10.2018 which reads as under:-

“Stand over to 21/11/2018. To be heard along with Writ Petition No.11493 of 2018.

Ad-interim relief granted earlier to continue until further orders.”

4. In fact that order continues the earlier order of 28.09.2018. That order also reads as under :-

“1. Issue notice to the Respondents, returnable on 12th October 2018.

2. Mr.Kalel, the learned AGP waives service for

Respondent Nos.1 and 2.

3. *Till returnable date there shall be ad-interim relief in terms of prayer clause (c).*

Thus, the petitioner's services are protected by this order.

5. Initially we thought that the petitioner is but making an excuse for she is not sure whether her claim is genuine and *bona fide*. It will be a factor in petitioner's favour in the event there is delay in scrutiny and verification of her tribe claim. If that is delayed then possibly by sheer passage of time, the employer will be forced to continue the petitioner though she is not a proven and established Tribal. There could be a vested interest and such petition might as well be a result of collusion.

6. However, Mr.Mendadkar says that such is not the position in this petition for the committee at Nandurbar is yet not scrutinizing claims which are pending much prior to that of the petitioner. In fact, matters linger before this committee for years together. It raises several issues, including lack of infrastructure, staff and that is why this scrutiny is delayed.

7. We had informed the learned AGP to convey and communicate to Scrutiny Committee that in earlier orders of this Court passed at Aurangabad and Bombay, it is this committee which was the focal point. In other words, by keeping this committee in the forefront, orders and directions were issued. That time this Court noticed and sympathetically that the Nandurbar Committee faces infrastructural and other issues. This Court, by a judicial order ensured that the vacancies are filled in. Still, in a communication addressed to Shri.Mali, the Committee says that this claim in the petition of the petitioner who is in the job for last 20 years will be scrutinized only if the Court grants 10 months' time from today.

8. We found this to be preposterous and such answers were never expected from a Statutory Committee. In fact the petition proceeds on the footing that she remained present before the Committee after the claim was forwarded to it and way back in 2015. The petitioner was informed that the Vigilance Cell has submitted its report to the Committee on 30.01.2016. After about 10 months the petitioner was informed in writing by the Committee to forward her explanation on the contents of this report. The petitioner responded by filing her explanation on 21.11.2016.

9. Thereafter, the matter is lying in cold storage.
10. We have found that the petitioner is indeed not at fault, but it is the committee which has sat over several such proposals, including that of the petitioner.
11. That is why in this matter we have taken a very serious view. Mr.Mali hands over a communication addressed to him by the Scrutiny Committee and equally by the Deputy Secretary in the Department of Tribal Development, Government of Maharashtra. It is found that the Nandurbar Committee is handicapped. It is handicapped also because it does not have an full time Vigilance Cell attached to it. The Vigilance Cell does not have an officer and of the status of Deputy Superintendent of the Police. There is vacancy in that post. Similarly, there is vacancy in the post of Inspector and Constable.
12. There are other posts which are sanctioned, but some of which are yet to be filled in. In such circumstances, we do not think that the Government of Maharashtra cannot take up the issue of the Nandurbar Committee. That is passing over its responsibilities to others. The parent department is the department of Tribal

Development. It must ensure that for a State like Maharashtra which has a wide tribal population, it should have Scrutiny Committees at least in double digits. Today, we have a pathetic scenario where there are total 8 committees through-out Maharashtra. Mr.Mendadkar, says, on instructions, that as far as Scheduled Castes' are concerned and the other Backward class, the situation is better. In fact, for some of them there is District wise Scrutiny Committee set up. Thus, in every District there is committee to scrutinize the claims of Scheduled Castes and Other Backward Class. This position may not be comparable because Tribal population is lesser than that of the Scheduled Caste and Other Backward Class, but still there is a sizable Tribal population in Thane, Nashik, Dhule, Nandurbar Districts apart from Jalgaon, Pune and Raigad. Therefore, there is scope for increasing the number of committees. In fact for entire Khandesh Region there cannot be only one committee at Nandurbar. We are not informed till date as to why a Additional Committee cannot be set up at Dhule so that Nandurbar Committee is not over burdened. Earlier, the Nashik Committee was overburdened for, infact, it's area of operation was till Nandurbar. Now, Nandurbar at least has one committee but Nashik Committee is also handling sizeable number of files and cases. The other Tribal Committees may be lacking in

infrastructure, staff etc., but they get over these problems by requesting the Government or senior level Government Officials to accommodate them by giving certain hands as a stop gap arrangement. The Nandurbar Committee seems to be doing nothing of this kind but merely sending letters to the Government Pleader's Office. Why anybody does not assist this Committee is not clarified at all. There is a Commissioner Level Officer for every Region which includes Nandurbar. That Commissioner Level Officer has not been approached by the members of the Scrutiny Committee at Nandurbar. Surely, this Committee must be having a Research Officer and a Superintendent Level Officer and equal number of clerical staff which can correspond with the Government from time to time and bring to its notice the practical and ground level difficulties. It is clear that there is lack of coordination, for the officials of Department of Tribal Department, the Department of Social Welfare, the Department of Home, Government of Maharashtra and the Department of Finance ought to meet jointly through their Principal Secretaries and they can find a solution to this issue. It may be that some tribal districts require more than one Scrutiny Committee. If the Act and the Rules do not prohibit appointing such Additional Scrutiny Committee, then, even that possibility can be explored. In any event, at their level the Principal

Secretaries can sort out these issues. The Principal Secretaries of these three Departments can meet and sort out the issues and problems.

13. In such circumstances we will not allow the Scrutiny Committee at Nandurbar to sit on this particular file endlessly. We are equally fed up and we are not now giving directions at the instance of this Nandurbar Committee to the Government, but we remind the Government that in the event the Nandurbar Committee does not adhere to the time schedule prescribed in our order and direction, we will not only hold the Nandurbar Committee members, but even the Government Officials in contempt and issue appropriate orders and directions, including initiation of disciplinary action against the erring and defaulting officials. None should be then spared and we will deprive them of their increments, promotions and seniority in the event the action is not as drastic as removal of termination from their service. Therefore, let the Committee and the officials in the Government co-ordinate with each other, in matters of lack of staff and infrastructure etc., but in no circumstances the scrutiny in the present case can be delayed beyond three months.

14. We therefore, direct the Scrutiny Committee at Nandurbar to conclude the proceedings in relation to this petitioner as expeditiously as possible and, in any event, by 30th April 2019. No extension will be granted under any circumstances, much less for the reasons above noted.

15. We clarify that the petitioner's services shall not be terminated only for want of production of a Caste Validity Certificate till the Scrutiny committee completes its Scrutiny and passes the final orders and for a period of 15 days thereafter, in the event the order of the Scrutiny Committee is adverse to the petitioner. In other words, the order of the Scrutiny Committee shall not be acted upon for a period of 15 days from the date of its communication to the petitioner to enable the petitioner to challenge it in appropriate legal proceedings. We direct that the Committee shall decide the matter uninfluenced by any previous orders as we have not expressed any opinion on the rival contentions. The Writ Petition is disposed of.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)