

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 5609 OF 2015

Sou. Sayyad Gajala Praveen Asif Khan .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Mr. S. S. Kanetkar for the Petitioner.
Ms. Nisha Mehra, AGP for Respondent Nos.1, 2 & 4.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.
DATE : 11th JUNE, 2019.

P. C. :

1. In spite of opportunities granted, counter-affidavits have not been filed by the Respondents.
2. Case pleaded by the Petitioner is that she belongs to the caste 'Kasab' (OBC) but never claimed appointment under Respondent No.3 on a post reserved for OBC. As per Petitioner, she was appointed as an Assistant Teacher by 3rd Respondent-School in unreserved category. The appointment was approved by the Education Officer on 23.03.2001. For reasons unknown, the 3rd Respondent sent Caste Certificate of the Petitioner to the Caste Scrutiny Committee which sought a report from the Vigilance Cell. On 07.11.2013 the Vigilance Cell found that the Certificate to the effect that the Petitioner belongs to Caste Kasab was

genuine. Without supplying the report of the Vigilance Cell, the Caste Scrutiny Committee opined that the Certificate of the Petitioner certifying that she is a member of OBC Kasab was invalid. Based on the said order dated 22.04.2015, the 3rd Respondent issued a show cause notice to the Petitioner as to why her services be not terminated on 30.04.2015. The Petitioner submitted a response on 02.05.2015. The 3rd Respondent issued another notice on 08.05.2015 calling upon the Petitioner to show cause as to why the benefits she had obtained from the 3rd Respondent be not withdrawn. The Petitioner submitted a response on 15.05.2015 and without awaiting a decision taken by Respondent No.3 pursuant to the show cause notices approached this Court praying that the order dated 22.04.2015 passed by the Caste Scrutiny Committee be quashed and the two show cause notices issued by the 3rd Respondent to the Petitioner be also quashed.

3. At the hearing today, learned Counsel for the Petitioner states that since the Petitioner was given appointment as an Assistant Teacher in the unreserved category and she did not take the benefits of reservation, it hardly matters whether the Caste Certificate available in the record of the school is valid or not and thus, challenge in the Writ Petition to the order passed by the Caste Scrutiny Committee is given up.

4. Since the show cause notices issued by 3rd Respondent which have been challenged by the Petitioner on the premise of the underlying fact that the Petitioner took appointment as an Assistant Teacher in the reserved category, a fact which the Petitioner denies, we dispose of the Petition directing the 3rd Respondent to pass orders pursuant to show causes notices issued and while passing the order to look into the record. If the Petitioner was appointed as an Assistant Teacher in the unreserved category no penal action can be taken against her. If, it is found that the appointment is in the reserved category, then alone a penal order can be passed. It is directed that the Respondents would, while passing necessary order, deal with this factual aspect of the matter.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]