

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2571 OF 2019

Mane Leena Baban }
@ Mrs. Pawar Leena Rajendra } Petitioner

Vs

State of Maharashtra and Ors. } Respondents

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

Mr.S.B.Kalel, AGP for the Respondent-
State.

CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.

DATE :- FEBRUARY 27, 2019

P.C. :-

1. We have heard Shri Mendadkar appearing for the petitioner.
2. With his assistance, we have perused the writ petition and all annexures thereto.
3. The petitioner is aggrieved and dissatisfied by the fact that Scrutiny Committee has invalidated her claim belonging to "Koli Mahadev" Scheduled Tribe.

4. Shri Mendadkar, learned advocate appearing for the petitioner would submit that this order of the Scrutiny Committee was passed on 9th January, 2019. However, without a copy of the same being served on the petitioner or the order communicated, its consequences have been visited on the petitioner, in the sense, the petitioner's services are terminated. This is directly contrary to the protection granted by this Court in a judicial order, copy of which is to be found at pages 37 and 38 of the paper-book. The petitioner's appointment was protected by the order in Civil Application No.2498 of 2018 in the previous writ petition being writ petition No.5921 of 2018. Now by the impugned order, the services are terminated and this is a clear breach of the direction issued by this Court in the above referred order.

5. The second contention is that despite such an order, the consequences could not have been suffered by on the petitioner as this Court at its Bench at Nagpur has protected the services of the similar student/candidate like the petitioner. It is evident that the State policy is to protect the services of such candidate on whom injustice has been inflicted merely because the Government was itself in doubt as to whether the certificate issued as "Hindu Koli" would mean that no claim can be made belonging to "Koli Mahadev" Scheduled Tribe. Mr.Mendadkar relies upon the order

passed on 28th September, 2018 by a Bench at Nagpur in writ petition No.3140 of 2018.

6. On merits, Mr.Mendadkar submits that the Committee has failed to consider the evidentiary value of several documents and, particularly, the petitioner had relied on the validity certificate issued to persons in the community. Though the entries in their documents as against the column caste are 'Koli', yet, they obtained the benefit of “Koli Mahadev” Scheduled Tribe. Hence, this writ petition be entertained and the relief be granted is the prayer of Shri Mendadkar.

7. We take the other submissions of Shri Mendadkar as in alternative to the first submission. We do not find that the petitioner can raise any grievance for the simple reason that the claim was pending before the Scrutiny Committee. The Civil Application was moved in writ petition No.5921 of 2018 apprehending termination of the petitioner's service. The other grievance was that the claim before Scrutiny Committee was pending. Now, in this writ petition the Scrutiny Committee was directed to dispose of the proceedings and its order, if adverse, was not to take effect for a period of fifteen days.

8. The Scrutiny Committee's order is dated 9th January, 2019. After it was made known to the employer, it is the employer who has terminated the services of the petitioner. It is the employer, namely, respondent No.3 who is stated to have overreached and gone beyond this order. We are considering in this petition, the challenge to the order of the Scrutiny Committee. We do not think that the termination, which has been effected allegedly by respondent No.3 and post 12th February, 2019, can be said to be violating the order of this court. The petitioner may have obtained the copy of the order of the Scrutiny Committee belatedly, but that does not mean that the services have been terminated within the period stipulated in the order, copy of which is at pages 37 and 38 of the paper-book. In such circumstances, the first contention has no merit.

9. As far as the second contention is concerned, the Supreme Court judgment is very clear. The order passed on 28th September, 2018 can, by no stretch, be said to be contrary to the judgment of the Hon'ble Supreme Court of India which binds all concerned. In that, the Court took note of these contentions and the stand and said that the scheme should be worked out so as to fill the posts which are rendered vacant after the consequences of the Supreme Court's order have fallen on all the appointees/

candidates. In fact, it vacated the order passed on 11th June, 2018. That order granted the blanket protection. Now, no protection can be granted and services of the petitioner with the employer cannot be continued after the claim is invalidated.

10. Additionally, we find, on merits as well that the petitioner does not deserve any relief. The petitioner laid a claim as belonging to "Koli Mahadev" Scheduled Tribe. However, the oldest documents produced on record and in relation to the family members from the paternal side revealed that the caste column of Sakharam Krishna Koli - great grandfather, Shreerang Bapu Mane- uncle, Shamji Bapu Mane-uncle from the paternal side and Baban Bapu Mane- father, contains the entries "Hindu Koli". It is in these circumstances another entry of 1933 to the similar effect is rightly relied upon to hold that the petitioner has failed to discharge the burden placed on her by law. She has failed to show and demonstrate that the entries in the caste column of her relatives from the paternal side are in any way vitiated or they do not reflect the correct position. In fact, the petitioner relied upon certain certificates of validity granted to late Govind Moghaji Gare and Shri Madhukar Kashinath Pichad despite their caste column reflecting the entire as "Hindu Koli". But the overwhelming documentary evidence to the contrary and in the

petitioner's own case is enough to invalidate the claim of the petitioner. The reasons assigned by the Scrutiny Committee in paras 6 and 7 of the impugned order can no way be termed as perverse or vitiated by any error of law apparent on the face of the record.

11. As a result of the above discussion, this writ petition fails. It is dismissed, but without any order as to costs.

12. It is open for the petitioner to approach the employer and request it to recall the termination order and instead allow the petitioner to take voluntary retirement. In the event, the employer is approached, it is open for it take a suitable decision and in accordance with law.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)