

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2336 OF 2000

Panhala Education Society Panhala and anr. .. Petitioners
Vs.
Shri Rajaram Laxman Koli and ors. .. Respondents

Ms.Shakuntala A.Mudbidri, for the Petitioners.
Mr.M.A.Patil, for Respondent No.1.
Mrs.V.S.Nimbalkar, AGP for Respondents No. 2 & 3.

CORAM : M.S.KARNIK, J.

DATE : 22nd MARCH, 2019

ORAL JUDGMENT :

. Heard learned Counsel for the parties.

2. By this Petition filed under Articles 226 & 227 of the Constitution of India, the petitioner- Management is challenging the order dated 24/02/2000 passed by the School Tribunal, Kolhapur in Appeal No. 71 of 1996.

Respondent No.1 – Shri Rajaram Laxman Koli, appellant before the School Tribunal challenged the order of termination

of his services with effect from 30/04/1996.

The facts of the case in brief are:

3. The Management issued an advertisement on 19/05/1995 for appointment for 3 posts of peon. The said posts were meant for the reserved category candidates. One post was meant for Scheduled Caste category candidate; second for Scheduled Tribe and third for Nomadic Tribe. Respondent No.1 duly applied for appointment as a peon vide his application dated 26/05/1995. In the application, it is stated by respondent No.1 that he has passed 9th standard and belongs to 'Mahadeo Koli' which is Scheduled Tribe. Along with the application, respondent No.1 enclosed caste certificate and School Leaving Certificate.

4. By an appointment order dated 23/06/1995, respondent No.1 was appointed as a peon with effect from 26/06/1995. In the said order of appointment, it is indicated that the same is on probation for a period of 2 years. It appears

that the Education Officer refused to grant approval to the appointment of the respondent No.1 as he did not have caste validity certificate as belonging to scheduled tribe category. The services of the respondent No.1 came to be terminated by the Management with effect from 30/04/1996. This order was impugned before the School Tribunal by filing Appeal No. 71/1996.

5. During the pendency of the Appeal, by letter dated 27/07/1997, claim of the respondent No.1 was referred for verification to the Committee for Scrutiny and Verification of Tribe Claims, Pune. The caste claim of the respondent No.1 was invalidated by the Scrutiny Committee by order dated 17/05/1999. By this order, caste certificate issued in favour of the respondent No.1 as belonging to Scheduled Tribe category was cancelled.

6. The respondent No.1 made a claim that he belongs to Special Backward Class. The School Tribunal by order dated

24/02/2000 allowed the Appeal. The School Tribunal granted reinstatement of the respondent No.1 along with some back-wages.

7. The School Tribunal set aside order of termination on the ground that mere objection raised by the Education Officer to the appointment of the respondent No.1 could not be the reason for termination of service. According to the School Tribunal, the objection raised by the Education Officer is for the purpose of entitling the respondent No.1 for receiving the salary grants. The other reason which the School Tribunal has given is that by virtue of G.R. dated 15/06/1995 'Koli' community is treated as Special Backward Community and the services of the persons who were appointed on the basis of previously issued certificate as belonging to Scheduled Tribe category are protected.

8. Since respondent No.1 was not reinstated, he applied for job with Chaitanya Education Society. The claim of

the respondent No.1 that he belongs to Special Backward Class was sent for verification by Chaitanya Education Society Miraj vide communication dated 22/12/2000. In the meeting that was held some time in March 2001, the claim of the respondent No.1 as belonging to Special Backward Class was validated.

9. Learned Counsel for the petitioners assailing the order of the School Tribunal submits that the respondent No.1 was appointed in the post which was meant for the Scheduled Tribe category. The advertisement clearly reveals that out of 3 posts, one post of peon belonging to Scheduled Tribe was to be filled up. Even the application made by respondent No.1 clearly indicates that he belongs to Scheduled Tribe category. Inviting my attention to page 27 of the paper-book which is the order dated 26/04/1999, learned Counsel would submit that the caste claim of the respondent No.1 as belonging to Scheduled Tribe category is invalidated. She would therefore submit that the respondent No.1 is not justified in seeking employment in the post which is meant for Scheduled Tribe. She would submit that

the termination order though does not specifically state that the respondent No.1 was terminated because he does not belong to the Scheduled Tribe category, but, according to her, from the materials on record, viz. advertisement, the application and other documents, it is apparent that respondent No.1 claimed to belong to Scheduled Tribe category and hence, on the basis of this claim he was appointed in the Post meant for the Scheduled Tribe category. She would further submit that the Tribunal was not justified in giving respondent No.1 benefit of G.R. dated 15/06/1995. According to her, admittedly, respondent No.1 was appointed after 15/06/1995 and therefore, the said G.R. had no application.

10. Learned Counsel for respondent No.1 on the other hand would submit that the Tribunal has, upon consideration of the materials on record, come to a conclusion that the action of the Management in terminating the services of the respondent No.1 is not justified. He would submit that the appointment order nowhere mentions that respondent No.1 was appointed in

a post meant for Scheduled Tribe category. He would moreover urge that even the termination order does not state that respondent No.1's services are terminated as he was appointed against the vacancy meant for reserved category candidate. According to him, the only reason why the respondent No.1's services are terminated is that the Education Officer refused to approve the appointment of respondent No.1. According to the learned Counsel, if the Education Officer has some objection for granting approval, then that cannot be a reason for the Management to terminate the services of the respondent No.1. Learned Counsel would submit that the Tribunal was justified in giving the benefit of G.R. dated 15/06/1995 to the respondent No.1. Learned Counsel invited my attention to the validity certificate of 2001 validating the claim of the respondent No.1 as belonging to Special Backward Class. He would therefore submit that as admittedly, respondent No.1 belongs to Special Backward Class, is therefore entitled to the benefit of G.R. dated 15/06/1995. According to him, the Tribunal correctly held that he is entitled to protection of his

services. Learned Counsel would invite my attention to the order of appointment to contend that the date of appointment order is 08/06/1995. He would submit that even in the appeal memo at paragraph 4, the Management themselves stated that the respondent No.1 is appointed by order dated 08/06/1995 with effect from 26/06/1995. Further inviting my attention to the paragraph 3 of the order of the School Tribunal, learned Counsel would submit that even School Tribunal has correctly understood the date of the appointment order as 08/06/1995 which it is to take effect from 26/06/1995. Learned Counsel would therefore submit that as he was appointed prior to 15/06/1995, G.R. dated 15/06/1995 squarely applies to him. In order to support his submission as regards his entitlement to the protection of services by virtue of G.R. dated 15/06/1995, learned Counsel relied upon the decision of the Division Bench of this Court in case of **Vijay Kishanrao Kurundkar and anr. Vs. State of Maharashtra and ors. 2019 (1) Bom.C.R. 455.** Learned Counsel placed emphasis on paragraphs 8 & 9 of the decision to demonstrate that in respect of those non-tribals who

have received recruitment/promotion in the government/semi government services on the reserved seats for the Scheduled Tribes prior to 15/06/1995, should not be removed from service or demoted. He would moreover submit that once the respondent No.1 is appointed on probation for two years, then, his services can only be terminated on the ground of non satisfactory completion of the probationary period. The ground on which respondent No.1 is terminated is wholly untenable.

11. Learned AGP on behalf of respondent No.3 has invited my attention to the affidavit-in-reply filed by the Deputy Education Officer (Secondary), Zilla Parishad and also affidavit of the Research Officer and Member Secretary, Divisional Caste Scrutiny Committee.

12. Heard learned Counsel for the parties. I have gone through the Petition and the relevant annextures. I have also gone through the compilation relied upon by the petitioners. Even the learned Counsel for respondent No.1 has relied upon

the compilation of G.Rs and orders passed by this Court.

13. There is no dispute that respondent no.1 is appointed with effect from 26/06/1995. There appears to be some dispute regarding date of order of appointment. The advertisement dated 19/05/1995 was issued for filling up 3 posts of which one post was reserved for Scheduled Tribe category. An application dated 26/05/1995 was made by the respondent no.1 for appointment as a peon wherein it is specifically mentioned that he belongs to 'Mahadeo Koli' Scheduled Tribe. Along with the said application, respondent No.1 enclosed a caste certificate as belonging to Mahadeo Koli Scheduled Tribe. By an order which is at Exhibit 'D' page 19 of the paper-book, respondent No.1 is appointed with effect from 26/06/1995. On the top corner of the appointment order, the date is mentioned as 08/06/1995. Below the words 'ORDER OF APPOINTMENT' next to the printed word 'Date' is written as 23/06/1995. There is no dispute that the copy of the order of appointment is received by the respondent No.1 on 23/06/1995.

Perusal of the order of appointment reveals that the date mentioned on top corner of appointment order is for record purpose and not actually the date of appointment order. In any case, one thing is clear that respondent No.1 factually started discharging his duties from 26/06/1995.

14. Later on, when certain objections were raised by Education Officer in the matter of grant of approval to appointment, respondent No.1 informed the Management that he would comply with the objection raised by Education Officer in respect of his caste claim. In my opinion, as the advertisement dated 19/05/1995 was issued for filling up of one vacancy belonging to Scheduled Tribe category and when the respondent No.1 himself in his application dated 26/05/1995, mentioned that he belongs to 'Mahadeo Koli', Scheduled Tribe, it is obvious that respondent No.1 had applied as against the post meant for Scheduled Tribe. The order of appointment with effect from 26/06/1995, though does not specifically mention that respondent No.1 is appointed as

against post meant for Scheduled Tribe, but, considering the circumstances on record, there is no manner of doubt that the appointment of respondent No.1 is in the post meant for Scheduled Tribe category. Even when the Education Officer took an objection to the approval of the respondent No.1's appointment on the ground that his caste claim is not yet validated, the respondent No.1 assured the Management that he would comply with the objection of the Education Officer regarding his caste claim. Even after termination of services of respondent No.1 with effect from 30/04/1996, pursuant to the letter dated 27/07/1997 of the Management, the claim of the respondent No.1 was verified by the Scrutiny Committee. The Scrutiny Committee came to the conclusion that the respondent No.1 does not belong to 'Mahadeo Koli' Scheduled Tribe and his caste claim came to be invalidated by order dated 17/05/1999. All these circumstances would clearly go to show that respondent No.1 was appointed as against the post meant for Scheduled Tribe category on the basis of his claim that he belongs to Scheduled Tribe.

15. Insofar as the contention of the learned Counsel for respondent No.1 that the claim of respondent No.1 needs to be protected by virtue of G.R. dated 15/06/1995, it would be material to consider the date of the appointment order and the date from which the respondent No.1 actually started discharging his duties. In the decision in the case of **Vijay Kishanrao Kurundkar and anr.** (*supra*), it has been clearly held that the protection of the Government Resolution dated 15/06/1995 applies to those candidates who are appointed prior to the said G.R.. In paragraph 1 of the appeal memo, date of appointment is mentioned as 26/06/1995 by the respondent No.1. The date of appointment order is 23/06/1995. In this view of the matter, I am of the opinion, that not only respondent No.1 actually started discharging his duties after 15/06/1995, but even the date on the order of appointment is after 15/06/1995. This Court has clearly held that only those candidates who are appointed prior to 15/06/1995 are entitled to protection. Respondent No.1 is appointed after 15/06/1995 and therefore cannot claim protection of the G.R. dated

15/06/1995. The Tribunal has proceeded on the footing that the reason for termination of the services of respondent No.1 is non approval to the respondent No.1's appointment on account of objection raised by the Education Officer that respondent No.1 does not belong to Scheduled Tribe category. There is no manner of doubt that refusal to approve an appointment can have no effect on the validity or otherwise of the order of the termination. As observed earlier, the respondent No.1 was appointed in the vacancy which was meant for Scheduled Tribe category. The respondent No.1 is not entitled for protection of the G.R. dated 15/06/1995. I do not find the action on the part of the Management terminating the services of respondent No.1 as unjustified. The Tribunal was in error in proceeding on the footing that the case of the respondent No.1 is covered by G.R.dated 15/06/1995.

16. In this view of the matter, the order passed by the Tribunal calls for interference. Accordingly, order passed by School Tribunal is quashed and set aside. Consequently, Appeal

filed by the respondent No.1 before the School Tribunal stands dismissed.

17. The Petition is accordingly allowed. Rule is made absolute in terms of prayer clause (b) with no order as to costs.

18. After the order was dictated, learned Counsel for the respondent No.1 invited my attention to the copy of the GR dated 21/10/2015 issued by the State of Maharashtra and contended that the respondent No.1 is entitled for protection of his service in terms of G.R. dated 21/10/2015. In my opinion, the protection in terms of GR dated 21/10/2015 would be applicable only to those who are in service as on 21/10/2015. Respondent No.1 was already terminated much before the issuance of G.R. dated 21/10/2015. Respondent No.1 is not entitled for any protection of the G.R. dated 21/10/2015.

(M.S.KARNIK, J.)