

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3647 OF 2019

Deccan College Post Graduate and
Research Institute, Pune 411 006

.... Petitioner

Vs.

The State of Maharashtra & Others

.... Respondents

Mr. S.A. Rajeshirke for the Petitioner.

Mr. V.M. Mali, AGP, for Respondent Nos.1 & 2.

Mr. S.R. Nargolkar i/by Mr. Ashraf Ahmed Shaikh
for Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : DECEMBER 09, 2019

P.C:

1. By this writ petition under Article 226 of the Constitution of India, the petitioner/Deccan College Post Graduate and Research Institute, Pune, challenges the Caste Validity Certificate dated 16-7-2014, copy of which is at Exhibit "K" to the petition.

2. The petitioner says that the Caste Validity Certificate has been issued by the Competent Scrutiny Committee at Pune in favour of respondent No.3.

3. The respondent No.3 is the petitioner in Civil Writ

Petition No.7225 of 2017. She says that she is an employee of the petitioner-Institute. She was appointed by the petitioner-Institute after it was satisfied about her qualifications and that she was otherwise eligible.

4. The petitioner-Institute, in this petition, says that in the year 2003 a special drive was launched by the State Government so that the teaching faculty backlog of reserved seats can be cleared. As part of that, the petitioner-Institute issued an advertisement dated 12-3-2003 inviting applications for various posts reserved for various backward categories. The post of Lecturer-cum-Keeper in Museology was reserved for candidate belonging to the Other Backward Class (“**OBC**”). The petitioner states that the essential qualifications were Master’s Degree in this subject. The candidate should also have cleared the National Eligibility Test/State Eligibility Test Examination in the respective subject or should have completed M. Phil Degree course by 31-12-1993 or should have submitted Ph.D. Thesis to the University in the above subject on or before 31-12-2002. There was a requirement of three years’ experience of working in a responsible position in a reputed Archaeological Museum. Then there are other qualifications and eligibility criteria set out in para 5 of this petition. It is said that respondent No.3 applied for this post. It is alleged that respondent No.3 migrated from the State of Uttar Pradesh. She

submitted a Caste Certificate stating that she belongs to OBC (Momin Ansar) and produced a certificate to that effect, issued by the District Magistrate of Mau in the State of Uttar Pradesh. A copy of this certificate is annexed as Exhibit "C" to the petition. It is dated 4-4-1997. It is alleged that respondent No.3 has not submitted, along with her application form or thereafter, any Domicile Certificate. She did not submit a Caste Validity Certificate either. In the normal circumstances and when respondent No.3 was otherwise not qualified, she could not have been called for the interview, interviewed or her application could have been otherwise considered. In these circumstances, the Selection Committee could not have recommended the 3rd respondent. Be that as it may, she was recommended, appointed and now the grievance is that the Caste Certificate which was forwarded is not enough. A Caste Validity Certificate was required. It is stated that "Ansari" is the OBC mentioned at serial No.191 of the OBC List of the State of Maharashtra. The Caste Certificate of the petitioner does not tally. It is stated that there was a Civil Suit filed in the District Court at Pune. The Suit was dismissed. Then even after the decision in the Suit, the Certificate of Validity was not submitted nor the Domicile Certificate. It only means that the 3rd respondent was, and continued in the service of this petitioner despite she allegedly not forwarding her Caste Validity Certificate.

5. In three paragraphs of the petition, which are very crucial for our purpose, the petitioner alleges as under:-

"10) The Petitioner states that the Respondent no.3 not only continued in service but appointed as a Member of the Management Council. The Petitioner had never shown any kind of discrimination. The Petitioner states that but shockingly Respondent no.3 with view to cover up these various deficiencies in her eligibility to hold the post, purposefully adopted new and wrong method and approached the Minority Commission by making false allegations of discrimination on the ground of religion, caste and gender. If Respondent no.3 had any grievance regarding her service matter she had Grievance Redressal Forum available at University Level. The Petitioner is reputed institute. The Petitioner states that historical University is having various employees and the scholars from the various religion and caste and diversity and very high quality and standard are maintained and there is no place for any kind of discrimination at any point of time. Merely because documents of Caste validity certificate were asked to submit Respondent approached Minority Commission. Hereto annexed and marked as Exhibit F is the copy of the complaint dated 8/11/2010 made before the Minority Commission. If one considers her claim before Minority commission by the Respondent no.3, it clearly shows that Respondent no.3 approached therein to cover deficiencies in holding her post. In aforesaid facts and circumstances the Petitioner by letter dated 16.12.2010 sought Legal Opinion from the Advocate about the appointment of Respondent no.3 and Advocate Shri P. Narayan submitted the Legal Opinion. Hereto annexed and marked as Exhibit-G is the copy of the said Legal Opinion submitted by Advocate. In the aforesaid certificate it is specifically mentioned that as the Respondent no.3 had not submitted the required documents therefore, she should be treated as the Open Category candidate. Further it is opinion that the Respondent no.3 has not submitted Domicile Certificate of the year 2003 nor submitted the Non Creamy Layer Certificate.

11) The Petitioner states that Petitioner helplessly urged before Minority Commission for directing Respondent no.3 to submit aforesaid necessary documents about Caste validity and domicile certificate and to complete basic qualification by granting time for

compliance. But surprisingly Hon Minority Commission without having any jurisdiction by order dated 21.12.2010 directed the Petitioner to issue the confirmation letter on the post of Lecturer and also the CAS promotion to the post of the Respondent no.3. The Petitioner states that in view of aforesaid order though Respondent no.3 had not submitted the document and completed necessary qualification, on 27.12.2010 the Management Council had remained with no option but to grant approval of CAS promotion to the Respondent no.3 regarding her services already rendered.

12) The Petitioner states that the Minority Commission ought to have rejected such reckless and baseless allegation made against reputed University made for personal purpose of Respondent no.3. Order of Hon Minority Commission that it was special drive for Backward Class category and therefore Respondent no.3 is entitled to the appointment is ex facie erroneous. Further aspect of non production of the Caste Validity Certificate and issue of migration and her status was also not considered. Hereto annexed and marked as Exhibit H is the copy of the Note dated 25/02/2011 of hearing of the Hon'ble Minority Commission."

6. It is in the above circumstances, it is claimed that the petitioner was pressurised by the 3rd respondent after approaching the Minority Commission. She has thereafter produced a Caste Validity Certificate as well. That Caste Validity Certificate, copy of which is at Exhibit "K", according to the petitioner, is not valid simply because that fails to take note of the reasons and grounds set out in the petition.

7. It is clear from a perusal of the petition that it is not directed against the Caste Validity Certificate. The Management/petitioner before us is agitated, disturbed and frustrated because the 3rd respondent approached the Minority

Commission and asserted her rights. She had to be continued by the petitioner and they could not have terminated her service otherwise. That is why questioning her initial qualification, her subsequent acts, this bogey of her Caste Certificate is raised more than 5 years of the said Certificate.

8. The certificate is stated to be invalid. It is alleged that respondent No.3 migrated from the State of Uttar Pradesh and produced two different Caste Certificates, one dated 4-4-1997, issued by the District Magistrate, Mau, mentioning the caste as "Momin Ansar" and another dated 17-5-2003, issued by the Deputy Collector, Pune, mentioning her caste as "Ansari". That is why it is alleged that Momin Ansar caste is different from the caste Ansari. Then it is alleged that the 3rd respondent is a migrant and therefore could not have been treated as a OBC in the State of Maharashtra.

9. From a perusal of the documents, copies of which are annexed to the petition, it is evident that there was a certificate issued by the District Magistrate/Collector, District Mau. That says that respondent No.3 belongs to Momin Ansar caste, which is recognised as a Backward Class under the Government of India, Ministry of Welfare Regulation dated 10-9-1993. Reliance was placed upon the Government of India Gazette dated 13-9-1993. This certificate, copy of which is at

Exhibit “C” (page 23 of the paper-book), says that she does not belong to the Creamy Layer as well.

10. Thereafter, at page 26 is the Caste Certificate issued by the Deputy Collector, Pune. He is the Competent Authority. However, this is issued on 17-5-2003, by relying upon the OBC List of the State of Maharashtra, published by Government Resolution dated 16-8-1977 and as amended from time to time. Now, it is evident that a battle started between the petitioner and respondent No.3, leading to respondent No.3 approaching several Forums, including the Minority Commission. That is an aspect dealt with in the 3rd respondent's petition. Apart therefrom, what we find is that Exhibit “K” (page 38 of the paper-book) is a copy of the Caste Validity Certificate issued by the Caste Scrutiny Committee, Pune Division, Pune. Pertinently, the Pune Committee verified the caste claim under the Caste Certificate dated 17-5-2003, copy of which is at Exhibit “E” to the petition. After verifying the claim, the Committee observed that the said Certificate was issued by the Competent Authority. The 3rd respondent appeared before the Scrutiny Committee with all documents and satisfied that Committee that she indeed belongs to OBC Ansari listed at Serial No.191. Now this Validity Certificate has been issued by the Competent Scrutiny Committee. It has verified the claim. The burden was on the claimant and she indeed discharged it.

11. The petitioner could not bring before us any materials to say that this Caste Validity Certificate was not issued in accordance with law. Pertinently, Exhibit “M” is the copy of the letter dated 20-4-2018, addressed by the petitioner to the 3rd respondent. They direct her to produce a copy of the reasoned order of the Scrutiny Committee.

12. This communication has been replied by the petitioner by pointing out that she approached the Scrutiny Committee and she was informed that the Committee is constituted under The Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. (the Maharashtra Act No.23 of 2001). It is a Quasi Judicial Committee. The Committee members are qualified and they have passed the order in accordance with law. The 3rd respondent could not have insisted or asked for a reasoned order from that Committee. If that Committee has issued a certificate based on its satisfaction necessitated in law, then, the petitioner/Management could have approached that Committee with an appropriate application, pointing out that there was a fraud perpetrated on the Committee by the 3rd respondent or that the 3rd respondent has obtained the

Certificate of Validity by suppression of relevant and material facts. Thus, on two permissible counts the petitioner could have approached the Committee. The petitioner does not complain to the Committee at all.

13. In these circumstances, we do not think that the petitioner/Management is justified in belatedly questioning the Certificate of Caste dated 17-5-2003 and the Caste Validity Certificate. All the more when there is an affidavit filed by the State Government. The Joint Director, Higher Education, Pune Region, Pune, has stated on oath that this Caste Validity Certificate, produced by respondent No.3, is valid. The respondent No.2-Scrutiny Committee was empowered to issue this Certificate of Validity after respondent No.3 satisfied that Committee about the genuineness and *bona fides* of her claim. To our mind, in the teeth of this material, all the more we are not inclined to interfere in writ jurisdiction. In fact the petition projects several issues and mixes them with the issuance of the Caste Validity Certificate. The petitioner/Management also questions the qualifications of respondent No.3. It not only says that the Caste Certificate was invalid but goes on to allege as to how the 3rd respondent was not permitted in law to approach the Minority Commission. It is thus clear that this is not a case where the petitioner/Management before us is aggrieved by the Caste Validity Certificate.

14. Reliance placed by the Advocate appearing for the petitioner on the decision of the Hon'ble Supreme Court in the case of **Sanjeev Kumar and Another Vs. State of Bihar and Others**, reported in (2016) 13 SCC 105, is totally misplaced.

15. There the issue raised was, whether the High Court (Patna High Court) was justified in directing the Bihar Public Service Commission to recommend the case of persons placed below the appellants in the merit list and belonging to the Scheduled Caste category for appointment against the vacancies occupied by the appellants? The directions of the High Court were challenged on several grounds. There, the Scheduled Caste/Scheduled Tribe could not have claimed the benefit and concession meant for this Scheduled Caste/Scheduled Tribe in a State other than the State from which they have migrated. The Supreme Court, therefore, was concerned with a totally distinct controversy. The appellants who are originally from the State of Uttar Pradesh were not entitled to the benefit of reservation as Scheduled Caste candidates in the State of Bihar even when the caste to which they belonged was found to be recognised as Scheduled Caste in both the States. The Supreme Court held that the Judgment of the High Court in that case is not erroneous on this count.

16. However, the other argument was that the

appellants may have originally belonged to the State of Uttar Pradesh and may not be entitled to the benefit of reservation for the Scheduled Caste in the State of Bihar but there was no legal impediment to their appearing for selection and appointment in the State of Bihar as general category candidates. As far as that aspect is concerned, the Hon'ble Supreme Court considered all the contentions and issued the directions which are to be found in para 15. Thus, on the main question the Judgment of the High Court was upheld. The other question, whether the appellants could have continued as general category candidates is concerned, their appointments were protected.

17. To our mind, this was a case of Scheduled Caste and not a OBC. In the case at hand, the State of Maharashtra was specifically satisfied that the 3rd respondent, though a migrant from the State of Uttar Pradesh, is entitled to the benefit of OBC in the State of Maharashtra on the strength of her Caste Certificate dated 17-5-2003. All the more, when she has proved the genuineness and *bona fides* of her claim by appearing before the Competent Scrutiny Committee and subjecting herself to scrutiny under the Maharashtra Act No.23 of 2001. This Judgment is, therefore, of no assistance to the petitioner.

18. As a result of the above discussion, on the ground of enormous and unexplained delay so also merits, we do not find any reason to interfere with the Caste Validity Certificate on the strength of which the 3rd respondent was appointed by the petitioner. The petition is, therefore, dismissed.

19. Ordinarily, we would have been justified in imposing heavy costs but since the petitioner says that it is an educational institution of repute, established in the year 1939 in the State of Maharashtra, we refrain from imposing costs.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

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