

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAO) No.424 of 2018

In

Misc. Civil Application Stamp No.27035 of 2017 (for Review)

In

Writ Petition No.6162 of 2017 (D)

And

Misc. Civil Application Stamp No.27035 of 2017 (for Review)

In

Writ Petition No.6162 of 2017 (D)

Vijay s/o Pralhad Shinde, Akola

Versus

The Scheduled Tribe Caste Certificate Scrutiny Committee, Amravati, through its
Chairman/Member Secretary and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Ms P.D. Rane, Advocate for Applicant/Petitioner.

Ms H.N. Jaipurkar, Assistant Government Pleader for
Non-Applicants/Respondents.

Coram : R.K. Deshpande & Arun D. Upadhye, JJ.

Dated : 22nd February, 2019

Civil Application No.424 of 2018 filed for condonation of
58 days' delay caused in filing of the review petition is allowed
for the reasons stated therein, as we find that sufficient cause is
made out.

Civil Application No.424 of 2018 stands disposed of.

We have heard Ms Rane, the learned counsel appearing for the review petitioner on merits. The petitioner was appointed on 27-7-1994 on the post of Instructor as a candidate belonging to Scheduled Tribe category. The claim of the petitioner for verification of his caste certificate was forwarded to the Caste Certificate Scrutiny Committee on 5-12-2011. The claim was invalidated by the Scrutiny Committee on 21-11-2013.

The petitioner filed Writ Petition No.3886 of 2015 claiming the reliefs as under :

“1. Protect the services of petitioner as Instructor in the respondent no.5 Tilak Rashtriya Saraswati Mandir Secondary and Higher Secondary school during his remaining tenure of service in the interest of justice.

2. Direct the respondent to treat the petitioner from open category from date of his appointment and accordingly grant consequential benefit of service including time bound promotional pay scale by treating petitioner as open category candidate in the interest of justice.

3. Grant any other relief which deem fit and suitable as to fact and circumstances of the case.”

The aforesaid writ petition came up for hearing on 4-8-2017. None appeared for the petitioner. This Court passed an order dismissing the writ petition as under :

“ By this petition, the petitioner has only sought the protection of his services, in view of the law laid down by the Full Bench in the judgment, reported in 2015(1) Mh.L.J. 457.

*Since the judgment of the Full Bench is reversed by the Hon'ble Supreme Court in the case of **Chairman and Managing Director FCI and others...Versus...Jagdish Balaram Bahira and others** by the judgment, dated 06/07/2017 in Civil Appeal No.8928/2015, the relief sought by the petitioner cannot be granted.*

Since the caste claim of the petitioner is invalidated, the petitioner would not be entitled to the protection of his services.

Hence, we dismiss the writ petition with no order as to costs. Rule stands discharged.”

Thereafter, the petitioner filed another Writ Petition No.6162 of 2017, claiming the reliefs as under :

“(i) call for the records of case No.JC/TCSC/AMT/VPS/2013/5-ST/2013/13085 decided

on 21.11.2013 by the respondent No.1 Scrutiny Committee, Amravati and on perusal of the same be pleased to;

(ii) by issuance of appropriate writ, order or direction in the nature of mandamus thereby quash and set aside the impugned order dated 21.11.2013 (at Annexure-23) passed by the respondent No.1 Scrutiny Committee, Amravati being illegal, arbitrary, unconstitutional and in contravention to the guidelines laid down in Madhuri Patil's case;

(iii) further direct the respondent No.1 scrutiny committee to decide the caste claim of the petitioner afresh and issue caste validity certificate to the petitioner of 'Thakur' Scheduled Tribe;

(iv) hold and declare that the petitioner belongs to 'Thakur' Scheduled Tribe;

(v) grant ad-interim ex-parte stay to the effect and operation of the impugned order dated 21.11.2013 (Annexure-23) passed by the respondent No.1 Scrutiny Committee, Amravati, during the pendency of present petition;

(vi) by ad-interim ex-parte directions restrain the respondent No.2 i.e. The Regional Deputy Director of Technical Education & Training, Regional Office, Tah. Amravati, Distt. Amravati, respondent No.3 i.e. Tilak Rashtriya Saraswati Mandir, Through its President/Secretary, Umari-Akola and respondent No.4 i.e. Tilak Rashtriya Saraswati Mandir Secondary & Higher Secondary School, Through its Head-master, Mothi Umari, Tah. & Distt. Akola from terminating the services of the petitioner in pursuance of the impugned order dated 21.11.2013 (Annexure-23) and the order dated 4.8.2017 passed in W.P. No.3886/2015 passed by the respondent No.1 Scrutiny Committee, Amravati (Annexure No.28) during the pendency of the present petition;

(vii) grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”

On 19-9-2017, after hearing the learned counsel for the petitioner, this Court dismissed Writ Petition No.6162 of 2017 by rejecting the contention that the petitioner should be permitted to challenge the original order of invalidation of his caste claim passed on 21-11-2013. The present application for review seeks recall of this decision, rendered on 19-9-2017.

It is urged by Ms Rane, the learned counsel appearing for the petitioner, that in fact when Writ Petition No.3886 of 2015 was pending in this Court since 2015, the petitioner was granted protection in service, and because of the reversal of the decision of the Full Bench of this Court by the Apex Court in Civil Appeal No.8928 of 2015, the petitioner was held not entitled to protection of service. According to the learned counsel, in fact the employer had granted protection in service to the petitioner on 22-1-2016, i.e. after this Court passed an interim order in Writ Petition No.3886 of 2015. She submits that because of change in the law, the petitioner is now constrained to challenge the decision of the Scrutiny Committee invalidating his claim on 21-11-2013, solely on the ground that the petitioner was merely claiming the protection as per the decision of the Full Bench of this Court.

However, this Court has already held in Writ Petition No.6162 of 2017 that such a permission cannot be granted. Be that as it may, when Writ Petition No.3886 of 2015 was filed, the order of the Scrutiny Committee was in force, invalidating the claim of the petitioner. The learned counsel for the petitioner has urged that the validity certificates in the family of the petitioner have been issued and, therefore, the petitioner has good case on merits. We have gone through the order

dated 21-11-2013 passed by the Scrutiny Committee and we find that it is not the decision rendered on merits of the claim of the petitioner. However, the question of permitting the petitioner to challenge the order of the Scrutiny Committee is concluded by the decision rendered on 19-9-2017. To entertain this review petition, would amount to re-hearing in the matter, which we do not think is permissible for us.

Misc. Civil Application Stamp No.27035 of 2017 for review is dismissed.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)