

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No.440 OF 2018

SHRI VAIBHAV ULHAS NAIK,
son of Ulhas Naik, aged
27 years, Indian National, resident of House
No.155/3, Ghantamorod, Aquem Baixo,
Salcete, South Goa-403707.

...Petitioner.

Versus

- 1). CASTE SCRUTINY COMMITTEE,
Directorate of Social Welfare,
Government of Goa, having office at
18th June Road, Panaji-Goa.
- 2). STATE OF GOA,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez-Goa.
- 3). SHRI AMAR MANOHAR KANTAK,
of major age, Indian National.
resident of P. O.Box No.37,
Margao-Goa.

.... Respondents.

Mr. Gaurang D. Panandiker, Advocate for the Petitioner.

Mr. Sagar G. Dhargalkar, Additional Government Advocate for the
Respondents No.1 and 2.

Ms. Akshata Bhat, Advocate for Respondent No.3.

Coram : M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 07th September, 2020

ORAL JUDGMENT: (Per. M. S. Sonak, J).

Heard Mr. Gaurang Panandiker, the learned Counsel for the Petitioner and Mr. Sagar Dhargalkar, learned Additional Government Advocate for the Respondents No.1 and 2 and Ms. Akshata Bhat, learned Counsel for the Respondent No.3.

2. The challenge in this petition is to the impugned order dated 22.12.2017 made by the Caste Scrutiny Committee invalidating the Caste Certificate dated 25.06.2015 issued by the Deputy Collector and SDO of Canacona in favour of the petitioner. In pursuance of an advertisement dated 12.06.2015, the Petitioner, who claimed to belong to the OBC community, had applied for selection to the post of Junior Scale Officer, Goa Civil Service. The Petitioner was, in fact, duly selected and appointed on probation to the post of Junior Scale Officer of the Goa Civil Service on 27.01.2016.

3. The Respondent No.3 filed a complaint claiming that Caste Certificate issued to the Petitioner was a result of fraud because the Petitioner was ordinarily a resident of Margao and therefore, the Deputy Collector at Canacona had no jurisdiction to issue the same and further the Petitioner, had made patently incorrect statement regards the income of his family in the affidavit filed by the Petitioner

before the Deputy Collector, on the basis of which the Caste Certificate came to be issued by the Deputy Collector.

4. The services of the Petitioner were terminated on 04.08.2017, inter alia, on the ground that the Petitioner had made an incorrect statement in the affidavit as regards his family income at the time of seeking the Caste Certificate from the Deputy Collector of Canacona.

5. The Petitioner instituted the Writ Petition No.803 of 2017 questioning the termination of his services. However, by order dated 20.09.2017, this petition was disposed off by making the following Order:-

“PC:-

1. Heard Mr Pangam. The petitioner is present in the Court.

2. We will dispose of the petition without pronouncing on merits and keeping all contentions specifically open for decision of the Caste Scrutiny Verification Committee. The challenge to the present Writ Petitioner’s provisional Caste Certificate No 2015/2725/2/8/475 issued on 25th June 2015 will be decided by the Scrutiny Committee on merits after hearing all concerned within a period of six weeks from today. Parties will appear before the Scrutiny Committee on 26th September 2017 to obtain directions for fixing a schedule.

3. We only stress the urgency of this. We have disposed of this petition in this fashion only because the pending case

before the Scrutiny Committee has remained without decision for a long period of time. The Scrutiny Committee will not, once it fixes the schedule, grant adjournments to either side, i.e., neither to the petitioner nor to the complainant, Amar Manohar Kantak.

4. All contentions are specifically left open. It is clarified that the present petitioner will be at liberty to pursue such remedies as are available to him in law after the Scrutiny Committee renders its decision. If the decision of the Scrutiny Committee is adverse to the petitioner and directs the cancellation of his Caste Certificate, that order will not be acted on for a period of three weeks after it is communicated to the Petitioner.”

6. The Petitioner, had also applied before the Caste Scrutiny Committee for validation of his Caste Certificate dated 25.06.2015. Therefore, by the aforesaid order, this Court directed the Caste Scrutiny Committee to dispose off the issue of validation of Caste Certificate by hearing the Petitioner and the Respondent No.3, i.e., the complainant, within a time bound schedule.

7. In pursuance of the aforesaid, the Caste Scrutiny Committee, has now by the impugned order dated 22.12.2017 set aside the Caste Certificate dated 25.06.2015 but granting the Petitioner opportunity to present a fresh Caste Certificate issued by the competent authority for validation. The operative portion of the order dated 22.12.2017 reads as follows:

“ORDER

The caste certificate No.2015/2725/2/8/475/294 dt 25/06/2015 issued by the Dy. Collector & SDO stands quashed & set aside, with an opportunity to the respondent to present a fresh Caste certificate issued by competent authority for verification.

Order to be communicated.”

8. Mr. Panandiker, learned Counsel for the Petitioner submits that though it may be true that the Petitioner had made an inadvertent error in the affidavit before the Deputy Collector, the details of the correct family income of the Petitioner were available before the Caste Scrutiny Committee. Such details indicated that the Petitioner's family income for the last consecutive 3 years was less than ₹6 lakhs. He submits that the Caste Scrutiny Committee was duty bound to consider this material and thereafter decide whether the Caste Certificate issued to the Petitioner warranted validation or not. He submits that inasmuch as this has not been done, the impugned order is liable to be set aside.

9. Mr. Dhargalkar, learned Additional Government Advocate for the Respondents No.1 and 2 and Ms. Bhat, learned Advocate for the complainant, i.e. Respondent No.3, submit that the Caste Scrutiny Committee has, in fact, been quite indulgent to the

Petitioner by granting the Petitioner a fresh opportunity to obtain the Caste Certificate and to submit the same for verification/validation. They submit that the Petitioner had applied for selection to the post of Junior Scale Officer in the Goa Civil Service. This means that the Petitioner ought to be deemed to be aware of the rules and regulations relating to the issuance of Caste Certificate and the exclusion of the members of the creamy layer. They submit that despite all this, a statement was made in the affidavit that the Petitioner's family income is only ₹80,000/- when in fact, the same was far exceeding the amount stated in the affidavit. Ms. Bhat points out that the Deputy Collector of Canacona was not even the competent authority for issuance of the Caste Certificate because the material on record suggest that the Petitioner was ordinarily a resident at Margao-Goa. For all these reasons, the learned Counsel submit that the present petition is liable to be dismissed.

10. We have considered the rival contentions and we are quite satisfied that the impugned order dated 22.12.2017 made by the Caste Scrutiny Committee, warrants no interference. Our reasons for this conclusion are set out hereafter.

11. In the first place, there is no dispute and, in fact, it has been admitted by the Petitioner himself that the statements in para 4 of the affidavit dated 25.11.2014 on the basis of which, the Deputy

Collector of Canacona was persuaded to issue the Caste Certificate dated 25.06.2015 as regards the family income of the Petitioner was an incorrect statement. In para 4 of the affidavit the Petitioner, has stated, that the income of his family from all sources does not exceed ₹80,000/- annually.

12. Ultimately, the Petitioner has admitted that this was not a correct statement. At one stage, the Petitioner has contended that this was a typographical error. At another stage, the Petitioner contended that this error was a result of misinterpretation of the rules on the subject. Be that as it may, the fact that this was an error was never disputed or rather admitted by the Petitioner.

13. Accordingly, there is nothing wrong in the Caste Scrutiny Committee taking the view that the Caste Certificate dated 25.06.2015 need not have been validated, since, the same was based upon an incorrect statement in the affidavit. But at the same time, the Caste Scrutiny Committee, did not shut out the Petitioner's prospects forever. The Caste Scrutiny Committee has virtually granted the Petitioner liberty to once again secure a fresh Caste Certificate from the competent authority and, thereafter, submit the same for verification/validation. There is, according to us, no error in the approach of the Caste Scrutiny Committee in the peculiar facts of the present case.

14. Besides, we note that during the pendency of the present petition, the Petitioner, had filed Miscellaneous Civil Application No.39/2020 in this petition seeking liberty to apply for a fresh Caste Certificate again for the purpose of answering Civil Service Examination without prejudice to the rights and contentions of the Writ Petition No.440 of 2018 which was pending adjudication. This application was disposed of *vide* order dated 28.01.2020 which reads as follows:

P.C.

Heard Mr. G. Panandiker, the learned Counsel for the applicant, Mr. Dhargalkar, the learned Additional Government Advocate for the respondent nos.1 and 2 and Ms. A. Bhat, the learned Counsel for the respondent no.3.

2. Having heard the learned Counsel for the parties and having noticed that the order dated 22.12.2017 made by the Scrutiny Committee which is subject matter of challenge in the main petition had itself granted the petitioner opportunity to apply for a fresh Caste Certificate, we see no good reason to deny the petitioner the relief in terms of prayer clause A of this Civil Application.

3. Accordingly, this Civil Application is made absolute in terms of prayer clause A. This means that the petitioner is granted liberty to apply for fresh Caste Certificate for the purpose of answering the Civil Services Examination without prejudice to the rights of the petitioner in Case No.6 of 2016 which is pending

adjudication.

4. The above Civil Application is disposed off in the aforesaid terms.

5. All concerned to act on the basis of the authenticated copy of this order.

15. In para 3 of the aforesaid order dated 28.01.2020 there is a reference to Case No.6/2016, which might perhaps be a mistake since what was pending was the present Writ Petition No.440/2018. Be that as it may, in pursuance of the liberty so granted, the Petitioner, applied for Caste Certificate to the Deputy Collector & SDO, Salcete at Margao-Goa and has secured a Caste Certificate dated 10.02.2020 which is placed on record. Mr. Panandiker, learned Counsel for the Petitioner stated that this Caste Certificate will be filed before the Caste Scrutiny Committee for verification/validation in the course of time.

16. From the aforesaid, it is quite clear that there was nothing illegal in the view taken by the Caste Scrutiny Committee in the impugned order dated 22.12.2017. Besides, in pursuance of the liberty granted by the Caste Scrutiny Committee in the impugned order, the Petitioner has also availed of a fresh Caste Certificate from the competent authority and such Caste Certificate is to be submitted by the Petitioner for verification before the Caste Scrutiny

Committee in the course of time.

17. For all the aforesaid reasons, we see no ground to interfere with the impugned order dated 22.12.2017 made by the Caste Scrutiny Committee particularly, since, the impugned order, had granted liberty to the Petitioner, which liberty, has ultimately been availed of by the Petitioner.

18. This Petition is, therefore, dismissed.

19. The Rule is discharged.

20. There shall be no order as to costs.

M. S. JAWALKAR, J.

M. S. SONAK, J.

msr.