

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.4496 OF 2017

Urmila Dadabhai Bariya]
Aged 45 years, residing at]
104, Bhavanijyot Tower,]
Chandan Park, Jesal Park Road]
Bhyander, Dist. Thane]..... Petitioner.

Versus

- | | | |
|----|--|---------------------|
| 1] | State of Maharashtra |] |
| | through its Secretary, Social |] |
| | Justice Department, Mantralaya, |] |
| | Mumbai – 400 032 |] |
| | |] |
| 2] | Divisional Caste Certificate |] |
| | Scrutiny Committee No.3, |] |
| | through its Member Secretary, |] |
| | having its office at Collector |] |
| | office, 5 th floor, Bandra (E), |] |
| | Mumbai – 400 051 |] |
| | |] |
| 3] | Brihanmumbai Municipal |] |
| | Corporation through its |] |
| | Education Officer, having its |] |
| | Office at BMC School Building |] |
| | Lakhamsy Road, Hindu Colony, |] |
| | Dadar (E), Mumbai – 400 014 |] |
| | |] |
| 4] | Tahsildar and Executive Magistrate |] |
| | Borivli, Dist. Mumbai Suburban |] |
| | District Mumbai. |]..... Respondents. |

Mr. C K Bhangoji for the Petitioner.

Mr. V M Mali, AGP for Respondents/State Nos.1, 2 and 4.

Mrs. Aarti Bhide a/w Mr. Santosh Parad for Respondent No.3/MCGM

CORAM : S. S. SHINDE,
V. G. BISHT, JJ

Reserved on : 26th February 2020
Pronounced on : 04th March 2020

JUDGMENT : (PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2 By way of this Petition filed under Article 226 of the Constitution of India, the Petitioner has challenged the order dated 04/04/2016 passed by Respondent No.2 herein i.e. the Divisional Caste Certificate Scrutiny Committee No.3, Mumbai by which order Respondent No.2 - Caste Certificate Scrutiny Committee has invalidated and cancelled the caste certificate of the Petitioner as belonging to Vankar Scheduled Caste, issued to the Petitioner by Respondent No.4 dated 29/08/1986, with further direction to Respondent No.2 to consider the caste claim of the Petitioner de-novo. The Petitioner also seeks to challenge the order dated 18/08/2017 passed by Respondent No.3 terminating the services of Petitioner.

3 The factual matrix involved in this Petition, can in brief be stated thus:-

The Petitioner claims to be belonging to Vankar Caste which is recognized as Scheduled Caste in the State of Maharashtra. Her caste certificate was invalidated and cancelled by Respondent No.2 Committee on the ground that the Petitioner failed to prove her residence in the State of

Maharashtra prior to 10/08/1950. It is the case of the Petitioner that she came to be appointed on the post of Trained Teacher at the hands of Respondent No.3 Corporation on 22/01/1990. Respondent No.4 has granted caste certificate to the Petitioner as belonging to Vankar, Scheduled Caste. It is further the case of the Petitioner that she originally hails from Taredi village which comes in Bhavanagar District in Gujarat State, however, the ancestrals of the Petitioner has been residing in the State of Maharashtra prior to 1950. Her father was born at village Taredi in Bhavanagar District of Gujarat State on 09/10/1944 and he left the school on 01/05/1967. Thereafter her father shifted to the State of Maharashtra for residing permanently in the State of Maharashtra. In the school leaving certificate of her father, religion of her father is mentioned as Hindu Harijan. The Petitioner was also born at village Taredi on 15/02/1965 and her school leaving certificate her caste is recorded as Harijan Vankar. The cousin grandfather namely Desa Arjun Bariya was the resident of State of Maharashtra prior to 10/08/1950 and he was working with Brihanmumbai Municipal Corporation since 01/08/1949. According to the Petitioner she obtained caste certificate from Respondent No.4 by producing all the necessary documents on 29/08/1986. Thereafter she came to be appointed as Trained Teacher on the establishment of Respondent No.3 Corporation on 22/01/1990. The Respondent No.3 Corporation forwarded the caste certificate of the Petitioner along with necessary documents filed by the Petitioner in support of her claim to Respondent No.2 for verification.

Respondent No.2 forwarded the case of the Petitioner to vigilance cell for enquiry. According to the Petitioner, the vigilance cell officer without visiting the place of residence of the Petitioner and recording statements of persons from the locality simply recorded the statement of the Petitioner by calling the petitioner in his office. The vigilance cell submitted its report to Respondent No.2. Thereafter Respondent No.2 issued show cause notice to the Petitioner with direction to file reply on enquiry report. On 01/12/2015, the Petitioner filed her reply along with genealogy tree and documents. However, Respondent No.2 without considering the documentary evidence in support of the Petitioner's caste claim invalidated and cancelled the caste certificate of the Petitioner by the impugned order dated 04/04/2016. In view of the impugned order, Respondent No.3 issued show cause notice to the Petitioner on 24/05/2016 as to why her services should not be terminated. On 26/05/2016 the Petitioner filed a short reply to the said show cause notice and requested Respondent No.3 not to take any adverse action as she is going to challenge the impugned order passed by Respondent No.2. It appears that during pendency of this Writ Petition, the services of the Petitioner came to be terminated by Respondent No.3 by order dated 18/08/2017. Hence this Petition.

4 We have heard the learned counsel for the Petitioner, Shri Bhangoji, and the learned Assistant Government Pleader Shri V M Mali for the

Respondents. With their able assistance, we have perused the pleadings and grounds taken in the Petition and annexures thereto.

5 On behalf of the Petitioner, the principal contention of Shri Bhangoji is that prior to 01/05/1960 Bhavanagar District was part of old Bombay State and it has become part of State of Gujarat after formation of State of Maharashtra. It is submitted that the caste Vankar is notified as Scheduled Caste in the State of Maharashtra as well as in the State of Gujarat and therefore the Petitioner is entitled for grant of reservation benefits in the State of Maharashtra. It is further submitted that if the same caste i.e. Vankar is notified in both the States then reservation benefits cannot be denied to the Petitioner. He submits that the vigilance cell did not make proper inquiry, and therefore, the report based on the said inquiry is not sustainable. It is also submitted that as the Petitioner joined the services of Respondent No.3 on 22/01/1990 i.e. prior to 28/11/2000, her services are required to be protected in the light of the ratio laid down in the full Bench judgment of this Court in the case of Arun Vishwanath Sonone v/s. State of Maharashtra and others. He submits that Respondent No.2 has not considered the relationship of the Petitioner with her cousin grandfather Desa Bariya, the genealogy tree and the material produced before it in proper perspective. In support of his submissions, the learned counsel appearing for the Petitioner sought to rely upon the judgment of this Court in Writ petition No.2479 of 2013 in the case

of Shaila Baban Ranjane @ Shaila Balkrishna Kharat v/s. State of Maharashtra dated 12/03/2019 (Coram B R Gavai & Sandeep K Shinde, JJ). He lastly submits that this Petition may be allowed.

6 On the other hand the learned Assistant Government Pleader supports the impugned order passed by Respondent No.2. It is submitted that the Petitioner having failed to prove that she had been permanent resident of the Maharashtra since prior to 1950, she is not entitled to avail the benefits as a Scheduled Caste Certificate. It is submitted that Respondent No.2, after considering the Vigilance Report, the reply filed by the Petitioner as well as the material placed before it, has passed the impugned order. It is a well reasoned order and needs no interference at the hands of this Court in writ jurisdiction. The learned AGP lastly submits that the Petition may be rejected.

7 We have given our anxious consideration to the submissions made by the learned counsel for the parties. Though the learned counsel appearing on behalf of the Petitioner advanced argument on merits, nevertheless it appears from perusal of the additional affidavit filed on behalf of the Petitioner that after the impugned decision was taken by Respondent No.2, the Petitioner could get a school leaving certificate of his real grand-father namely Madha Deva Bariya issued by the Primary School, Bvrihanmumbai Municipal Corporation, Tardeo, Mumbai and as per the said school leaving certificate, her

grand-father was admitted in the school on 20/08/1932 and his caste is recorded as "Vankar Harijan". Since the copy of the said document i.e. the school leaving certificate of her grand-father is obtained by the Petitioner after the impugned decision was pronounced by Respondent No.2, in our opinion, an opportunity needs to be given to the Petitioner to appear before Respondent No.2 to place the said document on record. Admittedly the document which we have adverted to here in above was not before Respondent No.2 for consideration while dealing with the caste claim of the Petitioner. We have to bear in mind that the proceedings before Respondent No.2 have a serious impact on the social status of a person. In that view of the matter the impugned order dated 04/04/2016 passed by Respondent No.2 would have to be quashed and set aside, and is accordingly quashed and set aside and the following directions are issued :-

- A] The caste claim of the Petitioner as belonging to "Vankar" Scheduled Caste is remanded back to Respondent No.2 for a denovo consideration.
- B] Respondent No.2 to re-consider the caste claim of the Petitioner after giving an opportunity to the Petitioner to place the said document i.e. the school leaving certificate of her grand-father on record and Respondent No.2 shall consider the probative value of

the said document which is of pre-independence, and record a finding in accordance with law.

- C] In addition to the document adverted herein above, Respondent No.2 would proceed on the basis of the material which is already on record.
- D] In the light of the instant judgment, Respondent No.2 would be well advised to issue show cause notice to the Petitioner in respect of the document which we have referred to in the instant order or any other document of which the notice has not been given.
- E] The parties to appear before Respondent No.2 on 16/03/2020. Thereafter the caste claim of the Petitioner shall be adjudicated latest by 31/05/2020.
- F] Since the services of the Petitioner have been terminated during pendency of this Writ Petition, on remand, Respondent No.2 to see that the decision shall be rendered within the period stipulated herein above.

- G] The Registry shall return back the Original School Leaving Certificate of the grand-father of the Petitioner to the learned counsel for the Petitioner on furnishing photo-copy of the same for keeping on record.
- H] Ad-interim order dated 11/10/2017 passed by this Court would continue to operate till the decision of Respondent No.2 on remand.
- I] The above Writ Petition is accordingly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs of the Petition. The Writ Petition is accordingly disposed of.

[V. G. BISHT, J]

[S. S. SHINDE , J]

Laxmikant
G.
Chandan

Digitally signed
by Laxmikant G.
Chandan
Date: 2020.03.04
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