

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

WRIT PETITION NO.2646/2021 WITH C.A.W. NO.1055/2021

Mrs. Savita W/o Surajsingh Thakur

..Vs..

The State of Maharashtra and others

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

Court's or Judge's Order

Shri M.V. Samarth, Senior Advocate with Shri Rajendra Fating, Advocate
for the petitioner.

Shri A.A. Madiwale, A.G.P for respondent Nos.1 to 4.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED :- 6.8.2021.

We have extensively heard this matter on the question of maintainability of this petition to the extent it challenges the termination order. The petitioner having been appointed as a Staff Nurse and posted to the establishment of respondent No.3, is a government employee and, therefore, her grievance relating to issuance of the termination order pending consideration of a caste claim before respondent No.4 - Scrutiny Committee as being illegal, is a subject matter squarely falling within the scope and ambit of Section 15 of the Administrative Tribunals Act, 1985. Such grievance is one which relates to service matter of the petitioner and, therefore, the concerned Administrative Tribunal would have jurisdiction to entertain and adjudicate upon such grievance.

2. Learned Senior Counsel for the petitioner submits that the impugned termination order having been passed

without any jurisdiction, in view of the provisions made in Section 10 of 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 (for short “Act of 2000”) can be judicially reviewed by invoking writ jurisdiction of this Court in view of the law laid down in the case of **Whirlpool Corporation V/s. Registrar of Trade Marks, Mumbai and others** reported in (1998) 8 SCC1 and for this purpose, he submits that the amendment application bearing Civil Application (CAW) No.1055/2021 be allowed.

3. The amendment application of course is **allowed** and the proposed amendments are deemed to be forming part of this petition and accordingly they are considered. These amendments are in the same vein as the spirit of the argument advanced just now by the learned Senior Counsel. This argument revolves around ignoring the mandate of Section 10 of the Act of 2000 which prescribes that reservation benefits conferred on an employee cannot be taken away or withdrawn unless caste certificate produced by the employee has been held to be false by the concerned Scrutiny Committee. Learned Senior Counsel for the petitioner submits that by the termination order, benefit of reservation has been withdrawn even before any declaration having been given by the concerned Scrutiny Committee that the caste certificate on the basis of which the benefit has been claimed is false.

4. Learned Senior Counsel for the petitioner is well within his right to advance such an argument. We would never say that such an argument cannot be made. The question, however, is about the forum before which such an argument could and ought to be made. Ordinarily, the answer would be that such an argument can be made before the concerned Administrative Tribunal which is Maharashtra Administrative Tribunal in the present case and it can also be raised by invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. But, the invocation of the writ jurisdiction, as held in the case of *Whirlpool Corporation* (supra) (paragraphs 14 and 15), is a matter of discretion to be exercised sparingly and in exceptional cases like when the issue of enforcement of any of the fundamental rights is raised or whenever there is a violation of the principles of natural justice or where any order or proceedings are found to be wholly without jurisdiction or when the vires of an Act are challenged or when an exceptional case is made out. So, we have to see whether the impugned order of termination in the present case has been passed in such circumstances as would make out a special case for the petitioner.

5. In *Whirlpool Corporation* (supra) (paragraph 21), it was found that the High Court should not have dismissed the writ petition at the final stage without examining the contention that the show cause notice issued to the appellant therein was wholly without jurisdiction and that the Registrar, in the circumstances of

the case, was not justified in acting as the “Tribunal”. In the present case, reliance has been placed upon the provisions made in Section 10 of the Act of 2000 which lay down that benefits flowing from policy of reservation should not be taken away from a government employee unless there is an adjudication given by the Scrutiny Committee that the caste certificate submitted by such an employee is false. In the present case there is no adjudication given by the Scrutiny Committee that the caste certificate of the petitioner is false rather, the caste claim of the petitioner is pending for adjudication of the Scrutiny Committee. But, there is another dimension of the case which requires serious consideration by this Court.

6. This dimension is of such a nature as would give rise to a question whether or not there was any occasion for the Scrutiny Committee to make any adjudication regarding the falsity or otherwise of the caste certificate. In the present case, there was no such occasion having arisen for the Scrutiny Committee to examine the falsity of the caste certificate or otherwise till the year 2021 and, therefore, non availability of such an occasion for the Scrutiny Committee to render its adjudication at the earliest, is an issue which needs consideration. Making available such an occasion is in the hands of a person, the concerned employee, who claims benefits of reservation policy. This can be seen from the mandate of Sections 4 and 6 of Act of 2000. Section 4 (2) declares that a caste certificate shall be valid only subject to its verification

and validation by the Scrutiny Committee. Section 6(2) imposes a duty upon the claimant to make an application well within time to the Scrutiny Committee for grant of validity certificate. In case the claimant is in government service, such duty, under Section 6(3) is cast upon the employer. But, if the employer does not perform its duty, the claimant or employee cannot sit merrily in view of the hanging sword of Section 4(2) and has to take steps, simple entreaties or seeking prerogative writ, to nudge the employer into making an application. Therefore, it is for him or her, and also the employer in case the claimant is already in service to make an application to the Scrutiny Committee for validation of his or her caste claim and when such an application is made, an occasion would arise for the Scrutiny Committee to make its appropriate adjudication.

7. Here, the petitioner was appointed way back in the year 1994 but, the application seeking validation of the caste certificate was made by the petitioner in the year 2021. It is also not known, if any application in terms of Section 6(3) was made by the employer and if not, what administrative and legal steps were taken by the petitioner to compel the employer to act. So, the position is that, no occasion arose and no opportunity was available for the Scrutiny Committee to examine the validity of petitioner's caste certificate earlier. If this is the factual situation which reflects upon the conduct of the petitioner, a further question would arise - Would it be justified for this Court to examine the challenge made

to termination order when equally efficacious alternate remedy is available for the redressal of such grievance of the petitioner? By following the parameters of Whirlpool Corporation (supra), we find that this is not a fit case wherein discretion should be exercised by this Court for entertaining the grievance of the petitioner regarding validity or otherwise of the impugned termination order. The conduct of the petitioner, who was appointed in the year 1994 on a reserved seat and who applied for validation of her claim in the year 2021, after about 20 years or so, (Act of 2000 came into force in May 2001), shows that she did not do her duty so necessary to claim protection of Section 10 of the Act of 2000. To this extent, thus, we find that this petition is not maintainable and we relegate the petitioner to an equally efficacious alternate remedy which is available in law before the appropriate forum.

8. This petition also raises grievance about the pendency of caste claim of the petitioner and for this purpose, we have already issued notice to the respondents. Reply of the Caste Scrutiny Committee is important. It is still awaited. Therefore, this writ petition be put up after two weeks.

9. Liberty is granted to the petitioner to take recourse to equally efficacious alternate remedy by keeping all questions open.

10 Civil Application (CAW) No.1055/2021 is **disposed**
of. No costs.

JUDGE

JUDGE

Tambaskar.