

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

WRIT PETITION NO.532 OF 1999

Mohd. Faheem s/o Sk. Ibrahim Quraishi, CPWD Colony, Katol Road, Nagpur

-vs-

The Caste Certificate Scrutiny Committee Thr. Divisional Social Welfare Officer, Nagpur and
anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. M. Sudame, Advocate for petitioner.

Shri N. R. Patil, Assistant Government Pleader for respondent No1.

Shri S. A. Chaudhari, Advocate for respondent Nos.2 to 5.

Dr R. S. Sundaram for Intervenor.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : July 08, 2022

Civil Application (CAW) No.452/2022

This application has been moved by the respondent No.2-employer of the petitioner who is working on the post of Auditor. By the said application the order of status-quo that was passed on 30/03/1999 and clarified on 08/01/2001 is sought to be vacated.

2. The caste-claim of the petitioner of belonging to 'Bahna' (Scheduled Caste) has been invalidated by the Scrutiny Committee on 24/11/1998. In that order it has been stated that the petitioner is a Muslim by birth and in his school records there is an entry-'Muslim-Bahna'. The Scrutiny Committee has referred to the written statement of the petitioner tendered before it on 30/09/1998 admitting that he was claiming to be 'Muslim-Bahna'. By holding that the Scheduled Caste Order, 1950 was applicable only to Hindus, Sikhs and Bouddhas,

the Scrutiny Committee proceeded to invalidate the petitioner's caste-claim. The petitioner has challenged the order of invalidation in the writ petition. Another prayer made in the writ petition is a challenge to S.R.O. 385 dated 10/08/1950 being ultra vires Articles 14 and 15(1) of the Constitution of India. On 30/03/1999 the Court passed an order directing the status-quo to be maintained. On 08/01/2001 it was clarified that the order of status-quo was restricted to the employment of the petitioner and that he would not be entitled to claim any benefit for seeking promotion in the cadre on the basis of his caste-claim.

3. The writ petition having been admitted on 23/02/1999, the same has been pending since then. With regard to the challenge to S.R.O. 385, the learned counsel for the petitioner by relying upon the order passed by the Honourable Supreme Court in *Centre For Public Interest Litigation And Anr. vs. Union of India (2011) 15 SCC 533* submitted that the question whether non-inclusion of Muslims in the Constitution (Scheduled Castes) Order, 1950 was discriminatory and violative of Articles 14, 15, 16 and 25 of Constitution of India has been referred to a larger Bench and that reference is still pending. Various orders passed by this Court in the writ petition indicate that the hearing of the writ petition has been adjourned from time to time considering pendency of the said larger issue.

4. On 14/06/2019 when the learned counsel for the respondent No.2 submitted that the petitioner's caste-claim had been rightly negated and prayed for vacation of the interim

order, this Court observed that the said request for vacating the interim order would be considered after three months or after the reference was answered by the Honourable Supreme Court, whichever was earlier. Since it is informed that the reference before the Honourable Supreme Court is still pending, the respondent No.2 has moved this civil application.

5. The learned counsel for the respondent No.2 submitted that the petitioner had voluntarily stated before the Scrutiny Committee that he was professing Muslim religion and he had claimed to belong to 'Muslim-Bahna' community. The Scheduled Caste Order as it stands therefore does not entitle the petitioner to claim any benefit thereunder. Until Muslims are held entitled to benefit of the Scheduled Caste Order, no relief can be granted to the petitioner. The petitioner has been continuing in service on the strength of the order of status-quo passed by this Court. Since the order of the Scrutiny Committee does not appear to be bad in law, the order of status-quo deserves to be vacated.

6. The learned counsel for the petitioner reiterated the contention that the larger issue regarding non-inclusion of Muslims in the Scheduled Caste Order, 1950 was pending before the larger Bench. Since the proceedings in the writ petition have been adjourned from time to time awaiting the answer to that reference, there was no reason to vacate the order of status-quo. The same has been continuing since long.

7. It is undisputed that insofar as the challenge to S.R.O.

385 dated 10/08/1950 is concerned, the hearing of the writ petition was deferred as the larger issue is pending before the Hounourable Supreme Court. Therefore presently the only question to be considered is whether on a consideration of the order passed by the Scrutiny Committee dated 24/11/1998 a case for continuing the order of status-quo is made out ? We find that the Scrutiny Committee has referred to the petitioner's own statement dated 30/09/1998 wherein he admitted that he claims to belong to 'Muslim-Bahna' community. On that premise the Scrutiny Committee has held that the claim made by the petitioner of belonging to Scheduled Caste is unjustified and not permissible in law. The petitioner has not denied making such statement before the Scrutiny Committee. We therefore find that the conclusion recorded by the Scrutiny Committee is neither contrary to law nor against the material placed before it. Since petitioner has failed to make out any case for continuation of the order of status-quo, the same stands vacated. If the petitioner ultimately succeeds in his challenge to the validity of S.R.O. 385 he can always claim consequential relief.

The Civil Application is thus allowed by vacating the order of status-quo.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita