

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1240 OF 2022

Zilla Parishad of Sindhudurga,
Through Dr. Mahesh Mahaling Khalipe,
District Health Officer, Zilla Parishad Sindhudurg
Ground Floor, District Administrative Building,
Sindhudurg Nagari, Kudal, Dist. Sindhudurg,
Maharashtra-416812. **...PETITIONER**

VERSUS

1. Suman Shankar Benadi
R/o. Poip, Tal. Malva,
Dist. Sindhudurga.
2. The State of Maharashtra
Through the Office of the
Government Pleader, Appellate
Side, High Court, Mumbai. **...RESPONDENTS**

Mr. Neel Helekar, for Petitioner.

Mr. Pradeep D. Dalvi, for Respondent No. 1.

Mr. C. D. Mali, AGP for State.

CORAM:- N. J. JAMADAR, J.

DATED:- 27th JUNE, 2023

JUDGMENT:-

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

2) This Petition calls in question the legality, propriety and correctness of a judgment and order dated 18th March, 2020, passed by the learned Member, Industrial court at Kolhapur in Revision Application (ULP) No. 49 of 2017, whereby the learned Member was persuaded to allow the revision preferred by the respondent No .1- complainant and set aside the judgment and order passed by the Labour Court, Ratnagiri, in complaint (ULP) No. 28 of 2013 dated 18th April, 2017, and direct the petitioner to reinstate the complainant in service with continuity of service, fully backwages and consequential benefits with effect from 21st August, 2013.

3) Background facts leading to this Petition can be summarised as under:-

(a) Petitioner had issued an advertisement for the post of Aarogya Sevika in its Health Department. Petitioner claims respondent No. 1 applied for the said post reserved for Nomadic Tribe category. Respondent No. 1 came to be appointed against the said reserved post on 23rd August, 1996.

(b) In view of the provisions contained in 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 (“the Act, 2000”) any person desirous of availing the benefits or concession provided to the reserved categories is enjoined to obtain a validity certificate. The respondent No. 1 made an application for scrutiny of her caste claim on 6th October, 2008. By an order dated 23rd May, 2011, the cast scrutiny committee Ratnagiri invalidated the caste claim of respondent No. 1 and the certificate came to be cancelled.

(c) In view of the invalidation of the caste claim of respondent No. 1, by an order dated 21st August, 2013, invoking the provisions contained in Section 10 of the Act, 2000, the respondent No. 1 was terminated from service.

(d) Being aggrieved the respondent No. 1 filed a complaint of unfair labour practice under Item 1 (a) (b) (d) (e) (f) and (g) of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act, 1971”), being complaint (ULP) No. 28 of 2013.

(e) The learned Presiding Officer Labour Court Ratnagiri, after appraisal of the pleadings and the evidence adduced by the parties, was persuaded to dismiss the complaint holding, *inter alia*, that the action of termination of the respondent No. 1 was based upon, and consequential to, invalidation of her caste claim and under the provisions of Section 10 of the Act, 2000, the employer was obligated to discharge an employee, who had obtained the employment by producing a false caste certificate.

(f) Respondent No. 1 carried the matter in revision before the Industrial Court at Kolhapur in Revision Application (ULP) No. 49 of 2017. By the impugned judgment and order, the learned Member Industrial Court set aside the order passed by the Labour Court and held that the petitioner had indulged in unfair labour practices under Item 1 (a) (b) and (d) of Schedule IV of the Act, 1971, and, consequently, directed the reinstatement of the respondent No. 1 with continuity of service, full backwages and consequential benefits with effect from the date of the termination.

(g) The learned Member, Industrial Court, was of the view that the petitioner could establish neither that the respondent No. 1 was appointed against a reserved post nor that the respondent

No. 1 had submitted a false caste certificate. Thus, in the view of the learned Member Industrial Court, the Labour court had committed an error, which warranted interference in revisional jurisdiction.

4) Being aggrieved the petitioner – employer has invoked the writ jurisdiction.

5) I have heard Mr. Neel Helekar, the learned Counsel for the petitioner, Mr. Pradeep Dalvi, the learned Counsel for the respondent No. 1 – complainant and Mr. C. D. Mali, the learned AGP at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record including the judgments delivered by the Courts below.

6) Mr. Helekar submitted that the finding that the petitioner indulged in unfair labour practice is wholly unsustainable. Sole cause for the termination of the service of the petitioner was invalidation of her caste claim. Under Section 10 of the Act, 2000, according to Mr. Helekar, the employer has no option but to terminate the service of an employee whose caste claim is invalidated by the caste scrutiny committee. The learned Member, Industrial Court, according to Mr. Helekar was clearly in error in returning the finding that the petitioner indulged in

unfair labour practice and directing the reinstatement of the respondent No. 1. It was further submitted that, in any event, the finding recorded by the Labour Court could not have been overturned in exercise of a limited revisional jurisdiction.

7) In opposition to this, Mr. Dalvi stoutly submitted that there is no material to show that the respondent No. 1 was appointed against a reserved post. On the contrary, the documents show that the respondent No. 1 was appointed under open category. Nor there is material to show that there was either a false representation or material suppression on the part of respondent No. 1 to secure the employment.

8) Mr. Dalvi would further urge that even the scrutiny committee did not find that the claim of respondent No. 1 of being a member of Vadar, a Nomadic Tribe, false and incorrect. The scrutiny committee declined to issue the validity certificate on the ground that the petitioner and her father had their permanent abode in the State of Karnataka.

9) I have given anxious consideration to the aforesaid submissions.

10) The question of validation of the caste claim would arise where a benefit is derived on the strength of the caste claim. The

provisions contained in Section 10 of the Act, 2000, undoubtedly mandate withdrawal of the benefits availed on the basis of a caste claim upon such claim being invalidated by scrutiny committee. The learned Member Industrial Court thus correctly posed unto herself the question as to whether the respondent No. 1 was appointed against a reserved post on the basis of her caste claim. The learned Member upon appraisal of the material answered the said question in the negative. Whether this finding is justifiable?

11) First and foremost, the appointment order dated 23rd August, 1996, under which the respondent No. 1, along with six others, came to be appointed does not indicate that the respondent No. 1 was appointed against a reserved post. Though it is the claim of the petitioner that the respondent No. 1 had applied against a post reserved for Nomadic Tribe, yet no material could be placed before the Courts below to substantiate the said claim.

12) Advertisement inviting applications for the post for which the respondent No. 1 came to be appointed would have thrown light on this aspect of the matter. It was not produced. The service book maintained by the petitioner, wherein the

respondent No. 1 is shown to belong to Hindu (Vadar) (NT) does not indicate that the respondent No. 1 was appointed against the reserved post.

13) Faced with the aforesaid difficulty, Mr. Helekar placed on record a copy of the roster maintained by the District Health Officer, Zilha Parishad, Singhudurga, wherein the respondent No. 1 was shown to have been appointed against the post ear marked for (NT) (D). I am afraid the aforesaid document, even if taken into account at this stage also, is of any assistance to the petitioner. Unless the petitioner succeeds in establishing that the initial appointment was against a reserved post, the fact that in the roster, the respondent No. 1 was shown against a post ear marked for a particular reserved category is of no avail. It is trite a candidate belonging to a reserved category is not precluded from being appointed against open category posts.

14) In the case at hand, there is no material to show that either there was a false representation or deliberate suppression on the part of the respondent No. 1. Moreover, the claim of the respondent No. 1 that she belongs to Hindu Vadar (NT), as such, was not found to be incorrect by the caste scrutiny committee. It is true the benefit was declined on the ground that the

respondent No.1 and her father had their permanent abode in Karnataka. But that does not reflect upon the truthfulness of the claim of respondent No. 1.

15) In the totality of the circumstances, the learned Member Industrial Court was justified in returning a finding that the respondent No. 1 was not appointed against reserved post and, thus, could not have visited with the consequence of termination upon invalidation of her claim to avail the benefits provided to the members of her tribe in the State of Maharashtra.

16) For the foregoing reasons, the impugned order does not warrant any interference in exercise of extraordinary writ jurisdiction.

17) Hence, the following order.

ORDER

- i) The Petition stands dismissed.
- ii) Rule discharged.
- iii) No costs.

[N. J. JAMADAR, J.]