

P.C. :

The Petitioner herein is challenging the order dated 28 November 2017 passed by the Maharashtra Administrative Tribunal, Bombay, in Original Application No. 935 of 2016. The Petitioner had filed the Original Application challenging the order of termination issued by Respondent No. 3 on 1 October 2014.

2 The Petitioner who was working as an 'Enumerator' during the census of 1991, was recruited as Talathi. A policy decision was taken by the State Government vide Government Resolutions dated 12 March 1998 and 27 May 1998 to absorb the census workers. According to the Petitioner, on the basis of her service as 'Enumerator' during the census of 1991, she was called for interview in the selection process. She was interviewed and, thereafter, she came to be selected and an appointment order came to be issued in her favour as a Talathi vide order dated 8 November 2000. The said appointment order did not have any stipulation that she has been appointed as a candidate from reserved category. The Petitioner was holding Caste Certificate issued by the Tahasildar, Alibag, Raigad, as a person belonging to Mahadev Koli (Scheduled Tribe). The said Caste Certificate was forwarded to the Scheduled Tribe Caste Certificate Scrutiny Committee, Konkan Division, Thane, in the year 2008.

According to the Petitioner, though her appointment was not against the post reserved for Scheduled Tribe Category, her caste

claim was referred to the Scrutiny Committee. All of a sudden on 12 October 2011, the services of the Petitioner came to be terminated since she could not produce the Caste Validity Certificate. The Petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No. 870 of 2011 on 20 October 2011. Notice has been issued by the Tribunal observing that as to why stay should not be granted and the applicant should not be allowed to resume her duty. On the returnable date, the Tribunal has been pleased to grant stay to the termination order and, as a result, the Petitioner came to be reinstated in service. In view of the said order, Original Application No. 870 of 2011 was finally disposed of by the Tribunal.

3 In the meanwhile, the tribe claim pending before the Scrutiny Committee was invalidated by the Committee by order dated 17 July 2014 holding that the Petitioner has failed to establish her claim to have been belonging to Mahadev Koli (Scheduled Tribe). On the basis of the said order of invalidation, Respondent No. 3 has been pleased to terminate the services of the Petitioner on the ground that her caste claim has been invalidated. The said termination order was challenged by the Petitioner by filing Writ Petition No. 10111 of 2014. The Petitioner has also simultaneously made representations to the concerned Authorities contending that she was appointed from open category and, therefore, her service could not have been terminated on the ground of invalidation of caste claim.

The Petitioner withdrew the said writ petition with liberty to approach appropriate forum. Accordingly, by order dated 6 September 2016 the said writ petition was disposed of with liberty.

4 The Petitioner filed Original Application 935 of 2016 before the Maharashtra Administrative Tribunal, Bombay, challenging the her termination order. After issuance of notice, affidavit in reply was filed by the Respondents. The Petitioner filed additional affidavit and placed on record her representations and other documents relied by her. On 26 September 2017 the Tribunal passed order in the said Original Application and directed the Respondents to file Additional affidavit. The presenting officer had informed the Court that, the officers in office of the Collector, Thane, have communicated new fact about the appointment of the applicant and that the applicant was appointed from Scheduled Tribe Category, therefore, it was necessary to have her caste claim scrutinized. After considering the said submission, the Tribunal had passed an order directing the Collector to file an additional affidavit answering the question framed by the Court apart from other aspects. Two weeks time was granted for filing affidavit. The matter was adjourned to 12 October 2017.

5 The Petitioner contends that, on 28 November 2017, the Maharashtra Administrative Tribunal has been pleased to dismiss the Original Application without taking into consideration its own earlier order passed on 26 September 2017. It has been observed in

the impugned order that, though affidavit filed by the Respondents says otherwise, record shows that the applicant was absorbed on a vacancy meant for reserve category referring to order of the Collector dated 12 October 2000. The reference to the order dated 12 October 2000 quoted in the impugned order at reference No. 3 was produced on the said day. The Tribunal further records that, the P.O. requests for withdrawal of affidavit and direction to strike off the affidavit filed by the State from Page 82 onwards. On the background of the said facts it was observed that, the applicant was absorbed against reserved vacancy and it was not open for the applicant to argue contrary to her absorption. Therefore, since the tribe certificate of the Petitioner is invalidated, all her claims have perished and the applicant has no right, therefore, the Original Application was dismissed.

6 We have heard the learned Counsel for the Petitioner and the learned AGP for the Respondents- State.

7 The Petitioner has taken us through the two orders, dated 26 September 2017, whereby the Collector was directed to file affidavit on the question framed by the Tribunal, so also the impugned order dated 28 November 2017, whereby the Original Application has been dismissed. It is apparent that, though by the order dated 26 September 2017 the Tribunal has categorically directed the Collector to file an affidavit in response to the question framed about the status of the applicant before the Tribunal. As regards her status as a census

employee and whether in absence of her status as a person belonging to Mahadev Koli she could have been appointed. It is the contention of the Petitioner that without filing any affidavit in response to the said order some documents were produced by the Respondent-Authorities through the P.O. and on the basis of the said document which was not made available to the Petitioner, the earlier affidavit was withdrawn/ struck off and it was observed that the applicant was absorbed against the reserved vacancy and on the basis of the same, the Original Application has been dismissed.

8 After going through both the orders, we find that there is a substance in the contention of the Petitioner and that the said order has been passed by the Tribunal without affording an opportunity of going through the concerned document to the Petitioner, the impugned order has been passed violating the principles of natural justice to defend herself. The Petitioner has not been shown the said document which the Court had occasion to go through and on the basis of which impugned order has been passed. The Tribunal should have granted an opportunity to the Petitioner to go through the said documents but no opportunity of inspecting the said record which was produced before the Tribunal was given to the Petitioner, therefore, the Petitioner was not aware about the contents of the said document.

9 It was incumbent upon the Respondent to file an additional affidavit when the Petitioner had come with a specific case that she

has been appointed from open category and not from reserved category. The said record was available with the Respondents alone, therefore, the additional affidavit as directed by the Tribunal should have been filed by the Respondents and, only thereafter, the order could have been passed by the Tribunal. Unless such additional affidavit was filed by the Respondents, the Tribunal should not have proceeded and dismissed the Original Application filed by the Petitioner herein. It is only the Tribunal which had occasion to go through the record, therefore, it is totally in violation of principles of natural justice hence the said order stands vitiated as no reasonable opportunity was given to the Petitioner.

10 Hence, the matter is required to be remanded back to the Tribunal in order to pass appropriate orders by granting an opportunity to the Petitioner to go through the record or by directing the Respondents to file affidavit as per the order passed by the Tribunal dated 26 September 2017, and thereafter decide the Original Application on its own merits.

11 Hence, in view of the abovementioned facts and circumstances of the case, the matter is remanded back to the Tribunal to pass a fresh order by following the principles of natural justice.

The Writ Petition is accordingly disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)