



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 CIVIL APPLICATION NO. 9376 OF 2024
IN CA/1363/2021

MOHANISH NANDAKISHOR SAPKALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. C. R. Thorat, Advocate for Applicant
Mr. V. M. Kagne, AGP for Respondent Nos. 1 and 4/State
Mr. A. G. Talhar, Advocate for Respondent No.3 in WP
Mr. Sandesh Patil, Advocate for Respondent No.2.

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 2nd September, 2024

ORDER:

1. Heard the learned Advocates for the respective sides at length.

Perused the record with their assistance.

2. The Writ Petition has been preferred by the Petitioner for challenging the invalidation of his claim of belonging to 'Tokre Koli' Scheduled Tribe category. By the first order dated 8th April, 2015, the Petitioner has been granted a limited protection on the condition that he would continue to pay the fees as that of a regular student from the open category. We are informed that the Petitioner has now been selected as a Clerk with the Department of Prison, from the 'Open-Sportsman' category.

3. It is undisputed that the Petitioner has taken education by paying fees of the College as per the fee schedule of the University, as applicable to a candidate from the open category. This was in pursuance to the order dated 8th April, 2015. The Petitioner has now passed out and is no longer taking education from the said College/ University. He needs a degree certificate in order to fetch an appointment order in view of his selection. An affidavit undertaking dated 02.09.2024 (4 pages), is tendered across the Bar and copies of the same are delivered to the learned AGP and the learned Advocates for the Respondents. The same is marked as 'X-1' for identification, wherein, the Petitioner submits that he would not seek any advantage of reservation, of belonging to 'Tokre Koli' Scheduled Tribe Category, until his claim is validated by this Court.

4. The learned AGP submits that the law laid down in **Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670, Vijay Kishanrao Kurundkar vs. State of Maharashtra and others, 2020 AIR (SC) 3715 : 2020 SCC Online SC 834 and Chandrabhan vs. State of Maharashtra and others, 2021 (9) SCC 804 : 2021 (5) ALL M.R. 418**, clearly indicates that if the Petitioner's claim is invalidated, he has to lose all the benefits that he has acquired on the basis of his claim of belonging to the reserved category.

5. We find that the submission of the learned AGP to the extent of the law laid down by the Honourable Supreme Court, is well placed. If eventually, the present Petitioner's claim is invalidated in this litigation journey, the law laid down in **FCI (supra)**, **Kurundkar (supra)** and **Chandrabhan (supra)**, would squarely apply to him. He may then lose all the benefits, he will have to return his degree and will no longer be eligible to take education/employment.

6. The learned Advocate for the University opposes the grant of a degree certificate, by relying upon the order of the Honourable Supreme Court dated 31.01.2022, passed in the Petition for Special Leave to Appeal (Civil) No.866-867/2022 filed by the **Maharashtra University of Health Sciences vs. Madhavi Ramrao Thakur and others**, wherein, the Honourable Supreme Court stayed the order dated 04.02.2020, passed by this Court in Writ Petition No.326/2019, wherein, this Court had directed the release of the degree certificate.

7. The learned Advocate has relied upon the recent order passed by the Honourable Supreme Court dated 14.09.2022, in Petition for Special Leave to Appeal (Civil) No.17179-17180 of 2021 filed by **Saurabh Vs. The State of Maharashtra and others**, wherein, the Honourable Supreme Court concluded that "However, it is directed that the petitioner shall not claim any benefit as 'Halba' in the reserved

category for any other purposes in future and that the present order is confined to his completion of study in BDS course only.”

8. The learned Advocate for the Petitioner submits on instructions that no person amongst the close blood relatives of the Petitioner from the paternal side, has received a validity certificate of ‘Tokre Koli’ Scheduled Tribe. However, the Petitioner desires to substantiate his claim on the basis of Pre-Constitutional documents.

9. In matters of education, this Court would not be granting release of degree certificates. However, in the present case, it is undisputed that though the Petitioner secured admission as a student from the reserved quota, he has paid entire fees as if he is a candidate from the open category. The law laid down in the case of **Jagdish Balaram Bahira (supra)**, would still be applicable, if the claim of the Petitioner is invalidated by this Court, since, such invalidation would mean that the very admission of the Petitioner to the graduation course would be rendered unsustainable.

10. However, we cannot ignore that the Petitioner has secured employment from the open category and needs a degree certificate. Taking into account the peculiar facts that, the Petitioner has paid his entire fees as being an open category candidate taking education and has secured the selection in employment, from the open category, we

direct the University to release his degree certificate, within a period of 15 days from today. A similar order of this Court dated 11th November, 2022 passed in Writ Petition No.6740 of 2022, is said to be confirmed by the Hon'ble Supreme Court vide order dated 23.01.2023, passed in Special Leave to Appeal (C) No.953 of 2023.

11. We direct the prospective employer/Department of Prisons/ State Government, not to cancel the selection of the Petitioner and await the filing of the degree certificate within a period of 21 days from today. Thereafter, an appointment would be issued to the Petitioner.

12. Needless to state, if the claim of the Petitioner is invalidated, thereby resulting in the cancellation of his admission to the graduation course, he would lose his degree as well as his employment. This order of granting him employment would not create any equities in his favour.

13. With the above direction the **Civil Application is disposed off.**

14. All contentions of the parties while deciding the Writ Petition are kept open.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan