



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

WRIT PETITION NO. 4791 of 2019

Pallavi s/o Atmaram Rajput

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

Mr. P. K. Raulkar, Advocate for petitioner.

Mr. J. Y. Ghurde, Assistant Government Pleader for respondent nos. 1 to 3.

Mr. A. L. Deshpande, Advocate for respondent no.4.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 1st JULY, 2024

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Based on the claim of belonging to 'Thakur' Scheduled Tribe, the petitioner secured an admission to MBBS Course against a seat reserved for Scheduled Tribe category. The petitioner thereafter has cleared the said examination and presently awaiting issuance of degree certificate as she failed to produce validity.

2. The petitioner's claim as that of belonging to 'Thakur' Scheduled Tribe came to be negated by the Caste Scrutiny Committee vide order impugned dated 04.06.2019.

3. Mr. Raulkar, learned counsel appearing for the petitioner submits that the brother of the petitioner in Writ Petition No. 2179 of 2022 (*Piyush Atmaram Rajput vs. The State of Maharashtra and others*) has already filed an affidavit accepting the order of the Scrutiny Committee whereby the validity was rejected.

4. The consistent stand thereto is also disclosed during the course of hearing of the present petition and as such, it is claimed that the order of the Committee is accepted by the petitioner.

5. The counsel for the petitioner drawing support from the judgment of the Division Bench delivered in Writ Petition No. 132 of 2017(*Ms Lubna Shoukat Mujawar vs. State of Maharashtra and others*) decided on 09.05.2024 at Principal Seat (Original Side) would urge that the Court in extra ordinary jurisdiction can protect the admission of the petitioner even though she is not belonging to Scheduled Tribe category as she has failed to produce the validity certificate. According to him, at the relevant time, the petitioner was under impression that she will be able to justify the claim as that of belonging to 'Thakur' Scheduled Tribe.

6. He would further urge that so as to establish *bonafides* the petitioner has voluntarily deposited difference in the tuition fees and as such claimed that the respondent be directed to regularize the admission of the petitioner by treating it from the 'Open' category. The learned counsel for the petitioner from the judgment in *Ms Lubna* (supra) would rely upon the observations made in paragraph 19, which reads thus:

'19. However, under the interim orders of this Court which were in operation from February 2014 onwards, the Petitioner has completed the course of MBBS and therefore, it would not be proper at this stage to withdraw the qualification obtained by the Petitioner moreso when the Petitioner has qualified as a Doctor. In our country, where the ratio of the Doctors to the population is very low, any action to withdraw the qualification obtained by the Petitioner would be a national loss since the citizens of this country would be deprived of one Doctor. However as observed by us above, the means of obtaining the admission was unfair and has deprived another eligible candidate. We are conscious of high competition in admission to medical course and we are also conscious about high expenses to be incurred to enrol for the said course under the Open Category. However, that would not justify that the student should obtain the unfair means nor would it justify the action of the parents to be a part of the

unfair means for getting the admission under the OBC Category. If the medical profession is based on a foundation of false information then certainly it would be a blot on the noble profession. In our view for that matter the foundation of any student should not be built on the basis of the false information and suppression of the fact. Therefore, in our view, to balance the convenience, we propose to pass the following order..’

7. As against above, Mr. Deshpande, learned counsel appearing for the respondent no.4 and Mr. Ghurde, learned Assistant Government Pleader appearing for the respondent nos. 1 to 3, would oppose the prayer on the count that the issue has now already settled by the Apex Court in the matter of *Chairman and Managing Director, Food Corporation of India vs Jagdish Balaram Bahira and others [(2017) 8 SCC 670]* which is followed by this Court in Writ Petition No. 2653 of 2022 (*Ku. Madhuri Ramesh Talewar and another vs. The State of Maharashtra and others*) decided on 03.08.2023.

8. We have considered the said submissions.

9. The fact remains that the petitioner has given up her claim as that of belonging to ‘Thakur’ Scheduled Tribe. The only issue which warrants consideration, in our opinion, is, whether the petitioner’s admission can be protected as she having completed the MBBS degree course.

10. The petitioner has relied on two contentions namely (a) the petitioner having completed her education which seat cannot go waste and the services of the petitioner can be availed by the State Government in the larger social interest and (b) that the petitioner by showing bonafides has deposited difference in tuition fees. The fact remains that the petitioner has drawn support from the judgment of this Court in Writ Petition No. 132 of 2017 decided on 09.05.2024 [*Ms Lubna* (supra)].

11. Though this Court vide judgment delivered in the aforesaid petition observed that the admission obtained against the certificate, which was an issue for consideration in the said petition, was directed to be regularized, the ratio laid down in the aforesaid judgment cannot be made applicable to the facts of the present case.

12. The challenge in the said petition was pertaining to the cancellation of the admission on account of invalidity of Non-Creamy Layer Certificate; whereas, in the case in hand the petitioner has claimed an admission against the seat reserved for Scheduled Tribe (Thakur) category. The very admission of the petitioner against a seat reserved for Scheduled Tribe category ought not to have been claimed particularly when the Committee after having looked into the same has noticed that the petitioner nowhere can claim as that of belonging to 'Thakur' Scheduled Tribe.

13. Apart from above, the issue of Non-Creamy Layer Certificate which was looked into in the writ petition referred to above pertains to the income of the family and entitlement to avail the benefits; whereas, in the case in hand, the petitioner has invoked constitutional right of getting admission against a seat reserved for Scheduled Tribe category which otherwise she is not entitled to.

14. That being so, the judgment in Writ Petition 132 of 2017 [*Ms Lubna* (supra)] will be of hardly any assistance.

15. As far as the payment of difference of fees is concerned, the petitioner has tried to claim equity out of her voluntary act by depositing difference in fees. By paying difference in fees, the admission of the student cannot be sought to be regularized, that too, against a seat reserved for Scheduled Tribe (Thakur) Category as the genuine candidate who was entitled to have admission against the said reserved seat has been deprived of the social benefits and the

petitioner has tried to encash the same illegally having known that she is not entitled to such benefit in law.

16. In the aforesaid background, we are of the view that the relief claimed by the petitioner in this petition cannot be granted. The prayer for protection of admission is hereby rejected.

17. In support of the finding that the petitioner cannot be permitted to continue to draw benefit which she has enjoyed based on the false caste certificate, this Court can draw support from the provisions of Section 10 of the Maharashtra Scheduled Caste, Scheduled Tribes, Denotified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000. The said provision in express terms provides for the withdrawal of benefits which are drawn against such false caste certificate. The issue is no more *res integra* in view of the judgment of the Apex Court in the matter of *Chairman and Managing Director, Food Corporation of India vs Jagdish Balaram Bahira and others* (supra) which has been further followed by the Division Bench of this Court in Writ Petition No. 2653 of 2022 (*Ku. Madhuri Ramesh Talewar and another vs. The State of Maharashtra and others*) decided on 03.08.2023.

18. For the aforesaid reasons, the writ petition stands dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.