

(2015) 09 BOM CK 0192
In the Bombay High Court
Case No : Writ Petition No. 5315 of 2005

Ganesh	Vs	APPELLANT
Deputy General Manager (P), Syndicate Bank and Others		RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0192

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : R.S. Parsodkar, Advocate, for the Appellant; Anil Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

B.P. Dharmadhikari, J.—Heard Shri Parsodkar, learned counsel for the petitioner and Shri Anil Kumar, learned counsel for respondent No. 1.

2. The petitioner questions the order dated 24.09.2005 passed by his employer, rejecting his representation for extending him the benefit of protection in employment though his caste claim is invalidated.

3. According to Shri Parsodkar, learned counsel, the Scrutiny Committee has not found the petitioner guilty of any fraud while procuring the caste certificate dated 17.09.1978. The certificate mentions caste of the petitioner as Chattri - Scheduled Tribe and on the basis of that certificate, the petitioner joined the employment of Respondent No. 1, a Nationalized Bank on 10.04.1985. The order of Scrutiny Committee dated 24.06.2004 invalidating his caste certificate was not questioned but apprehending loss of employment, Writ Petition No. 3487 of 2004 came to be filed. In that petition, by placing reliance upon the judgment of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Milind and Others, , the relief of protection in employment was sought. This Court issued notice on 06.08.2004 and directed the employer to maintain status quo. The petition came to be disposed of on 16.06.2005 as withdrawn with liberty to the petitioner to

move the representation seeking protection and directing the employer to decide the same. Accordingly, representation was moved on 11.07.2005 and it has been rejected by the impugned communication dated 24.09.2005. Inviting attention to the facts of the case, Shri Parsodkar, learned counsel, has submitted that the petitioner cannot be said to be guilty of any fraud, the employment needed to be protected. He has invited our attention to the judgment of the Hon''ble Apex Court in the case of Punjab National Bank and Another Vs. Vilas Bokade and Another--> and submitted that the facts here are identical. The judgment of Full Bench of this Court in the case of Arun s/o Vishwanath Sonone v. State of Maharashtra & Ors., reported at 2015 (1) Mh. L.J. 457, is relied upon to show that the petitioner needs to be reinstated back in service. He contends that the reinstatement has to be with continuity and the Court may consider the question of grant of back wages as per law.

4. Shri Anil Kumar, learned counsel, on behalf of Respondent No. 1 - employer relies upon the findings recorded in the order dated 24.06.2004 to urge that the documents of father and other relatives on paternal side expressly mention the caste as Darji and, therefore, the claim for caste Chattri by the petitioner was apparently bogus. He has taken us through the said order in order to demonstrate that though the words like fraud, dishonesty, cheating or misleading etc. are not used therein, the order conveys that the petitioner did not act honestly while procuring either certificate or employment. He contends that the order dated 24.06.2004 has attained finality and was not questioned in Writ Petition No. 3487 of 2004. The issue of protection also came to an end on 16.06.2005 when his Writ Petition No. 3487 of 2004 was allowed to be withdrawn. The representation made by the petitioner was decided on 24.09.2005 and after noticing the facts and after noticing law as explained by the Hon''ble Apex Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, the representation has been turned down. Thereafter the accounts of the petitioner were settled and hence that order has become final. In this situation, the said order cannot be upset after more than 10 years and the public revenue with Respondent No. 1 - Bank cannot be burdened with liability of either back wages or by granting continuity. He contends that as the matter has already attained finality, writ petition as filed is itself misconceived. The learned counsel also adds that various policy decisions which the Full Bench of this Court has looked into, are not applicable to the employment of Respondent No. 1.

5. A perusal of judgment of Full Bench of this Court in the case of Arun s/o Vishwanath Sonone v. State of Maharashtra & Ors., (supra) shows that there, after considering all judgments delivered by this Court and by the Hon''ble Apex Court in this controversy, the holder of certificate is found entitled to protection, if he has not obtained the certificate dishonestly by playing fraud. In para 74 of this judgment of Full Bench in the case of Arun s/o Vishwanath Sonone v. State of Maharashtra & Ors., (supra) indicates that the order of Scrutiny Committee must be read in entirety to find out whether the petitioner has played any fraud while procuring the certificate. The judgment in the case of Punjab National Bank

& Anr. v. Vilas s/o Govindrao Bokade & Anr., (supra), on which the counsel for the petitioner has placed reliance is also looked into there by the Full Bench. In that judgment, though the Hon''ble two Judges of the Hon''ble Apex Court have delivered separate judgments but then they have found the employee Vilas entitled to grant of protection. Even in recent judgment in the case of Rajeshwar Baburao Bone v. State of Maharashtra & Anr., decided on 29.07.2015, the Hon''ble Apex Court has after noticing in para 13 false statement made by Rajesh and false affidavit submitted by him, protected his employment with Zilla Parishad because of inordinate delay in considering the certificate.

6. In present facts, the petitioner is born on 04.09.1960 and has obtained caste certificate from the Executive Engineer, Nagpur, on 17.09.1978 when he was hardly 18 years of age. Thereafter he got employment on 10.04.1985. He has continued to serve Respondent No. 1 till his termination on 24.09.2005. Had he continued in employment, he was due to retire sometime in the year 2020. The perusal of order of Scrutiny Committee dated 24.06.2004 does not show any fraud or dishonesty committed by him while procuring the certificate. The Committee has relied upon Police Vigilance Cell report which shows that caste of his relative on paternal side was recorded as Darji. In para 5, the effort made by the petitioner to disown some relatives has been looked into and the Scrutiny Committee has found that the effort was incorrect. However, there also the petitioner had accepted the relationship with his father and, therefore, caste certificate issued to his father.

7. In Writ Petition No. 3437 of 2004, which was filed before termination and immediately after invalidation of caste claim, the petitioner had restricted the challenge only to continuation in employment by extending him protection in service in the light of Constitution Bench judgment of the Hon''ble Apex Court in the case of State of Maharashtra v. Milind Katware (supra). It is no doubt true that his writ petition was disposed of as withdrawn on 16.06.2005 but then this Court gave him an opportunity to make a representation to his employer seeking protection in his employment. Then representation was made on 11.07.2005 and has been turned down on 24.09.2005. The order turning down the representation again looks into all facts. The contention that the issue which has attained finality is being reopened, therefore, is erroneous. The demand for protection after adverse order of the Scrutiny Committee was made in Writ Petition No. 3487 of 2004 and as per liberty granted by this Court, then it was agitated before the employer. The rejection of that protection by the impugned order dated 24.09.2005 has been questioned in this petition which came to be filed on 05.10.2005 i.e. within one month of rejection of the representation and passing of impugned order. Thus, the denial of protection is subject matter of present petition and it cannot be accepted that this issue has attained finality. The settlement of accounts and payment made to the petitioner by Respondent No. 1 is, therefore, subject to outcome of present petition.

8. The petitioner has remained out of employment for over about 10 years. The

employer (Respondent No. 1) cannot be blamed for this position. The facts looked into by the Scrutiny Committee show that all relatives on paternal side have certificate which recorded the caste as Darji. In this situation, though we find the petitioner entitled to grant of protection in the light of Full Bench judgment of this Court mentioned supra, he cannot be given any back wages. The continuity granted shall only be for the purposes of computing his terminal benefits and not for any other purposes. The petitioner shall file an undertaking with the Registry of this Court that neither he nor his progeny shall claim to be of Chattri - Schedule Tribe, within a period of four weeks from today. Subject to this, the impugned order dated 24.09.2005 is hereby quashed and set aside and the petitioner is reinstated back in employment of Respondent No. 1 with continuity but without any back wages. This order shall be implemented within a period of three months from today.

9. Writ Petition is disposed of accordingly. Rule is made absolute partly. However, in the facts and circumstances of the case, there shall be no order as to costs.