
(2015) 01 BOM CK 0202
In the Bombay High Court
Case No : Writ Petition No. 6372 of 2013

Ganeshsingh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 5 ALLMR 582 : (2016) 1 BomCR 553 : (2015) 3 MhLj 519

Hon'ble Judges : B.P. Dharmadhikari, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : A.S. Mardikar, Senior Advocate and S.G. Joshi, for the Appellant;
A.S. Fulzele, Additional Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Mardikar, learned Senior Advocate with Shri Joshi, Advocate for the petitioner, Shri Fulzele, learned Additional GP for respondent No. 1 and Shri Kakani, learned counsel for respondent Nos. 2 to 4. Shri Mardikar, learned counsel for the petitioner, at the outset, submits that erroneously and as per guidance received, the petitioner on 11-6-2014 made a statement, not pressing prayer clause (i). He states that prayer clause (i) is the bone of contention and even today he is required to seek relief in terms of that prayer only.

2. Shri Kakani, learned counsel and learned AGP have strongly opposed this change in stand. According to them, after proper application of mind, the petitioner had decided to give up prayer clause (i) and accordingly the petition has been amended to delete that prayer. They, therefore, oppose restoration of that prayer and consideration by this Court.

3. The facts show that the petitioner was recruited as a Scheduled Tribe candidate (Thakur Tribe) on 7-6-1985. He was promoted on 30-6-1995 as Assistant Draftsman from the post of Tracer. As caste certificate was invalidated by the Scrutiny Committee on 2-3-2001, challenge to that invalidation was made

in writ petition which was dismissed on 3-10-2002. Thereafter, the petitioner was treated as Open category employee and was also reverted from the post of Assistant Draftsman to the post of Tracer i.e. the post from which he was promoted on 30-6-1995. The communication dated 30-9-2009 sent by the Executive Engineer to the Superintendent Engineer shows that accordingly an entry as open category candidate has been taken in his service book. The petitioner thereafter received a show cause notice dated 18-11-2013 calling upon him to show cause as to why for producing false certificate, he should not be departmentally proceeded against. The petitioner approached this Court in present matter and on 2-12-2013 this Court directed him to file a reply to that notice. The respondents were permitted to proceed further after receipt of that reply, but passing of any order to the prejudice of present petitioner was stayed. That interim order continues to operate even today.

4. Shri Mardikar, learned counsel submits that as per reply filed by Respondent Nos. 2 to 4, show cause notice was given because of complaint made by one Shri Gajanan Kisanrao Bhadke to the office of the Lok-Ayukta. He is relying upon the judgment of the Hon'ble Apex Court in the case of Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, (2013)1 ABR 454 : AIR 2013 SC 58 : (2013) 136 FLR 574 : (2012) 11 SCALE 39 : (2013) 4 SCC 465 , to show that such stranger has got no locus to file any proceedings. In the alternative, he also submits that once with full knowledge, the petitioner was treated as open category candidate, issuance of show cause notice is unwarranted as the petitioner had already been punished therefor and he was brought back to his original post.

5. Shri Kakani, learned counsel submits that the respondents received a communication from the office of Lokayukta because of complaint made by one Shri Bhadke. The respondents were duty bound to proceed further in the matter in accordance with law. He argues that as the caste certificate was invalidated, the question whether the appointment was secured by producing false certificate or not, needed to be gone into and for that purpose, show cause notice was issued.

6. The learned AGP adopts the arguments of Shri Kakani, learned counsel for respondent Nos. 2 to 4.

7. Taking over all view of the matter, we find that the relief as claimed in prayer clause (i) was erroneously given on 11-6-2014. We accordingly grant request made by the learned Senior Advocate and permit the amendment to be carried out to restore the prayer clause (i) to file. The necessary amendment be carried out forthwith.

8. In the light of arguments heard, it is clear that after invalidation of caste claim, the employer with conscious application of mind found it necessary to revert the petitioner back to his original post. Accordingly he was brought back to the post of Tracer on which he was recruited on 3-6-1985. As of today, the

period of about 29 1/2 years has expired after the petitioner joined the employer. The Full Bench of this Court in the case of Arun Vishwanath Sonone vs. State of Maharashtra and ors., 2015(1) Mh.L.J. 457 (FB), in somewhat similar situation found the holders of such invalidated caste certificates, entitled to protection. In the present matter, that protection was already given by the employer.

9. A perusal of judgment of the Hon''ble Apex Court in the case of Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra, (supra) clearly shows a finding that a stranger cannot raise any objection to the caste certificate obtained by an employee for the purposes of procuring employment. We accordingly allow this writ petition. The show cause notice is quashed and set aside. Rule is made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.