

(2020) 03 BOM CK 0036
In the Bombay High Court
Case No : Civil Writ Petition No. 5368 Of 2015

Hasina Siraj Shaikh

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 09-03-2020

Acts Referred:

Citation : (2020) 03 BOM CK 0036

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : S.S. Kanetkar, M.M. Pabale

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. By way of this Petition, the Petitioner takes exception to the order dated 22/04/2015 passed by Respondent No.4 herein i.e. Caste Scrutiny

Committee, Solapur by which order Respondent No.4 - Caste Scrutiny Committee has invalidated the caste claim of the Petitioner as belonging to

â??Jullahâ?? (OBC). The Petitioner also seeks to challenge the order dated 23/05/2015 issued by Respondent No.3 School by which order the services

of the Petitioner has been terminated with effect from 01/06/2015 in view of the impugned order passed by Respondent No.4 Committee.

3. The factual matrix involved in this Petition, can in brief be stated thus:-

The Petitioner claims to be belonging to â??Jullahâ? caste which is notified as Other Backward Classes (OBC) in the State of Maharashtra. It is the

case of the Petitioner that on 26/02/1999 the Sub Divisional Officer and

Competent Authority issued a caste certificate in favour of the Petitioner. The Petitioner had applied for the post of Assistant Teacher in Respondent No.3 School. On 11/06/199 Respondent No.3 School called upon the Petitioner for interview. The Petitioner appeared for the said interview. Thereafter, on 15/06/2000 the Petitioner was appointed as Assistant Teacher in Respondent No.3 School and her appointment was approved by the Education Officer and accordingly issued order on 26/04/2006 granting approval to the appointment of the Petitioner as an Assistant Teacher with effect from her date of appointment. It is the case of the Petitioner that the Petitioner was never informed that her appointment was made against the reserved category. Respondent No.3 School sent the caste certificate of the Petitioner to Respondent No.4 - Committee for verification. Before Respondent No.4 the Petitioner submitted various documents. Respondent No.4 thereafter forwarded the said documents to vigilance cell for inquiry. Accordingly the vigilance cell conducted inquiry and submitted its report. Thereafter Respondent No.4 rejected the claim of the Petitioner as belonging to OBC on 22/04/2015 and accordingly Respondent No.4 informed Respondent No.3. By letter/order dated 23/05/2015 the Petitioner was informed that in view of the impugned order dated 22/04/2015 the services of the Petitioner came to be terminated with effect from 01/06/2015. Hence this Petition.

4. After filing the Writ Petition, this Court by order dated 17/06/2015 granted ad interim relief in terms of prayer clause (d) of the Petition which is in respect of staying the termination order/letter dated 23/05/2015 passed by Respondent No.3 School.

5. We have heard the learned counsel for the Petitioner, Shri S S Kanetkar and the learned Assistant Government Pleader Shri M M Pabale for the Respondents. With their able assistance, we have perused the pleadings and grounds taken in the Petition and annexures thereto.

6. The learned counsel for the Petitioner submits that the Petitioner was appointed against the permanent vacancy and she was not informed that she was appointed as against the reserved category. It is submitted on behalf of the Petitioner that the impugned order passed by Respondent No.4 suffers from non-application of mind and contrary to the report of the vigilance cell. The learned counsel for the Petitioner submits that there is nothing in the

report of vigilance cell to indicate that the claim of the Petitioner was false. He submits that Respondent No.4 Committee did not consider the

documents produced by the Petitioner before it and there is no justifiable reason given by Respondent No.4 while discarding the said documents. In

support of his aforesaid contentions, the learned counsel for the Petitioner sought to place reliance on the judgment dated 16/12/2016 delivered by this

Court in the case of Jamadar Mehaboob Ghudubai v/s. State of Maharashtra and ors in Writ Petition No.11394 of 2016, and another judgment of this

Court dated 21/02/2014 in the case of Smt. Bismilla Mohammedsab Sayyed (Mujawar) v/s. Divisional Caste Certificate Committee No.1, Solapur in

Writ Petition No.10577 of 2013.

7. On the other hand, learned Assistant Government Pleader invites attention of this Court to the findings/reasons assigned in the impugned order by

Respondent No.4 and submits that Respondent No.4 Committee has elaborately dealt with the material placed on record and reached to a correct

conclusion. He submits that the material placed on record is not sufficient to establish the caste claim of the Petitioner. It is submitted that Respondent

No.4 has rightly invalidated the caste claim of the Petitioner by the impugned order which is a well reasoned order. The learned AGP lastly submits

that the Petition may be rejected.

8. We have given anxious consideration to the submissions made by the learned counsel for the parties. We have also perused the vigilance cell report

and the impugned order passed by Respondent No.4. Respondent No.4 committee referred the caste claim of the Petitioner to vigilance cell. The

vigilance cell thereafter conducted an inquiry and submitted a report dated 07/12/2013. It is specifically mentioned in the vigilance cell report that

during the course of home inquiry it is revealed that the family of the Petitioner has been residing in Solapur District since 1957. The vigilance cell

report concluded that the traditional occupation of the family of the Petitioner is weaving and they are known as belonging to Musalman Jullah caste.

9. Respondent No.4 thereafter issued a show cause notice dated 27/10/2014 to the Petitioner stating therein that the Petitioner has not submitted any

document to prove her caste claim and traditional occupation. Respondent No.4 Committee therefore called upon the Petitioner to show cause as to

why her caste certificate should not be invalidated. It is required to be mentioned

at this stage that in the said show cause notice Respondent No.4 has stated that the Committee is in agreement with the report of vigilance cell dated 07/12/2013.

10. Now coming to the impugned order dated 22/04/2015. It can be seen from introductory paragraph 2 of the impugned order that the Committee is

not in agreement with the vigilance cell report, and therefore, show cause notice has been issued to the Petitioner as to why her caste claim should not

be invalidated. The Committee discarded the documents produced by the Petitioner on the ground that in support of her case that the traditional

occupation of the family of the Petitioner is weaving means Jullah, the Petitioner did not adduce concrete evidence before Respondent No.4

Committee. Respondent No.4 has also observed that the Petitioner did not adduce satisfactory explanation to the show cause notice issued to her.

However, in the concluding part of the impugned order it is stated that the Committee is in agreement with the vigilance cell report.

11. It is required to be noted that the show cause notice issued to the Petitioner discloses that the Committee is not in agreement with the vigilance cell

report. As stated herein above, in the introductory paragraph 2 of the impugned order, the Committee stated that it is not in agreement with the

vigilance cell report, however in the observation/reasoning, it is stated that the Committee is in agreement with the vigilance cell report. Therefore

there are contradictory views expressed by the Committee about the vigilance cell report while invalidating the caste claim of the Petitioner. It is not

clear whether the Committee is in agreement with the vigilance cell report or not?

12. In the present case the Petitioner is claiming to be belonging to caste Jullah (OBC). It is required to be noted that in muslim community, there are

few cases in which the caste is recorded regularly and/or properly in government record and, therefore, the documents produced by the Petitioner

before Respondent No.4 - The Committee do not disclose caste â??Jullahâ??. It appears from the record that the affinity test of the Petitioner was not

conducted by Respondent No.4 - The Committee which was necessary in the facts of the present case.

13. A useful reference could be made to the judgment of this Court in the case of Imram Ajiz Shaikh V/s. State of Maharashtra & ors. (Coram :

Anoop V Mohata & A A Sayed, JJ) dated 27/02/2014, wherein in paragraphs 6

and 7 it is observed as under :-

6 There is nothing on record to show any contra material and/or any objection by any one on record. The inquiry report itself supports the case of the Petitioner based on all the traits, traditions, characteristics and customs of his caste. There is nothing to disbelieve the inquiry conducted by the Vigilance Cell. Respondent no.2 wrongly rejected the documents placed by the Petitioner as caste is mentioned only as Musalman. In the Muslim community, there are few cases in which the caste is recorded regularly and/or properly in any Government record. Therefore, the Committee ought to have considered the Vigilance Cell report instead of relying solely upon the documents placed on record by treating it to be unreliable. The Committee must consider in such situation that unless contrary material is placed on record and other documents are not clear as not available in the particular community, the vigilance cell report needs to be respected. There is no question of discarding the vigilance cell report, the purpose for which is well reconsidered and even recorded by the Apex Court in Madhuri Patil's case and Dayaram's case (supra).

7. Therefore, taking an overall view of the matter, we are inclined to set aside impugned order dated 29 May 2013 with direction to re-consider the same, in accordance with law, in view of the above observations, including the Supreme Court judgments referred to above. It also means that the concerned Respondents, in case the caste is validated in favour of the Petitioner, to pass consequential order at the earliest.

14. In our view, Respondent No.4 - The Committee has not considered the material produced before it in proper perspective. As stated herein above, during home enquiry conducted by the Vigilance Cell, it is found that as the traditional occupation of the family of Petitioner is weaving, they are known as belonging to Muslman-Jullah Caste. Therefore, it appears that the inquiry report itself supports the claim of the Petitioner based on the traits, traditions, characteristics, and customs of her caste. It appears that Respondent No.4 - the Committee invalidated the caste claim of the Petitioner only on the ground that the caste mentioned in the documents produced by the Petitioner is Musalman/Muslim. Respondent No.4 - The Committee did not consider the vigilance cell report properly.

15. In view of the discussion in the foregoing paragraphs, the impugned order

dated 22/04/2015 passed by Respondent No.4 Committee would have to be quashed and set aside, and is accordingly quashed and set aside and the following directions are issued :-

A] The caste claim of the Petitioner as belonging to ""Jullahâ? (OBC) caste is remanded back to Respondent No.4 Committee for a de-novo consideration.

B] On remand, Respondent No.4 Committee is directed to dispose of the caste claim of the Petitioner as expeditiously as possible and preferably within four months from today by giving opportunities to all the parties.

C] The parties to appear before Respondent No.2 on 23/03/2020.

Thereafter Respondent No.4 shall make a fresh adjudication of the caste claim of the Petitioner in accordance with law as expeditiously as possible and preferably latest by 30/06/2020.

D] All contentions of the parties on merits are kept open for being agitated before Respondent No.4.

E] Ad-interim order dated 17/06/2015 passed by this Court would continue to operate till the decision of Respondent No.4 on remand.

F] The above Writ Petition is accordingly allowed. Rule is accordingly made absolute to the aforesaid extent with parties to bear their respective costs of the Petition. The Writ Petition is accordingly disposed of.