
(2016) 04 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 2709 of 2003

Kailash Manohar Wankhade	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 342

Citation : (2016) 4 AIRBomR 264 : (2017) 1 ALLMR 813

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

Bench : Division Bench

Advocate : Mr. S.Z. Sonbhadre, Advocate, for the Appellant; Mr. A.S. Fulzele, AGP, Mr. N.R. Saboo, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J. (Oral) - Heard Advocate Shri Sonbhadre for petitioner, learned AGP for respondent nos.1 and 2 and Advocate Shri Saboo for respondent no.3.

2. The challenge in Writ Petition is to order of respondent no.2 ? Scrutiny Committee dated 10th of February, 2003 invalidating caste claim of the petitioner as belonging to "Thakur" ? Scheduled Tribe. Shri Sonbhadre, upon instructions, has stated that the petitioner is only seeking protection of his employment and he relies upon Full Bench judgment of this Court reported at 2015(1) Mh.L.J. 457 (Arun Vishwanath Sonone v. State of Mah.)

3. We have accordingly heard respective counsel. Petitioner has joined employment as per appointment order dated 12th of March, 1999 and is in service even today. Adverse order of Scrutiny Committee stayed by this Court on 16th of July, 2003.

4. Perusal of the impugned order passed by the Scrutiny Committee shows that petitioner has relied upon document of School Leaving Certificate in respect of one Manohar Shankar Thakur (his father) where caste was recorded as "Thakur"

on 30th of June, 1955. He also pointed out School Leaving Certificate of Shrikrushna Shankar Thakur (his uncle) where caste was recorded as "Thakur" on 13th of June, 1949 and also relied upon abstract of Kotwal Book of village Palshi wherein death of one Suryabhan Sajaji Thakur was recorded on 2nd of June, 1939. It is not in dispute that all these documents mention caste as ""Thakur".

5. Petitioner is born on 11th of May, 1971 and he got the Caste Certificate dated 8th of July, 1991 when he was about 20 years old. On the basis of that Certificate he prosecuted his studies and then got employment. Scrutiny Committee has conducted Vigilance enquiry, however, it nowhere points any interpolation or tampering of any records. Affinity test has been applied to conclude that caste "Thakur" recorded in case of petitioner indicates upper caste "Thakur" and not "Thakur" ? Scheduled Tribe.

6. Thus, there is no finding of any concealment or dishonesty by petitioner either while procuring caste certificate or in attempt to obtain validity or then for procurement of service.

7. Hence, in this situation, we find petitioner entitled for protection of employment in view of Full Bench Judgment in the case of Arun Vishwanath Sonone v. State of Mah. mentioned supra and also in view of the Division Bench Judgment, reported at 2015(4) Mh.L.J. 251 (Alka d/o Prabhakar Rao Mahure v. Joint Director and Vice Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee).

8. Accordingly, services of petitioner shall remain protected if he files an undertaking that neither he nor his progeny shall claim benefit or status as "Thakur" ? Scheduled Tribe, within eight weeks from today with the Registry of this Court, with respondent no.2 ? Scrutiny Committee and with respondent no.3 ? employer.

9. Writ petition is thus partly allowed and disposed of. No costs.