

(2008) 02 BOM CK 0174

In the Bombay High Court

Case No : Writ Petition No. 6776 of 2007

Moh. Azhar Khan

APPELLANT

Vs

Scheduled Tribe Scrutiny Committee and Divisional Controller,
Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Citation : (2008) 4 ALLMR 539 : (2008) 4 MhLj 454

Hon'ble Judges : S.B. Deshmukh, J;N.V. Dabholkar, J

Bench : Division Bench

Advocate : S.M. Kulkarni, for the Appellant; M.S. Deshmukh and A.R. Salve, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Dabholkar, J.—Heard learned Counsel for the parties. Rule, made returnable forthwith by consent of the parties, for final disposal.

This writ petition was filed for seeking threefold remedy as per prayer Clauses (B), (C) and (D) which read as follows:

B. By issuing a writ of certiorari or any other appropriate writ, order or direction in the like nature the order dt. 26.6.2007 passed by R.No. 1 Committee at Exhibit "E" negating the claim of the petitioner may kindly be quashed.

C. By issuing a writ of certiorari or any other appropriate writ, order or direction in the like nature the order dt. 14.7.2007 passed by R.No. 2, M.S.R.T.C. at Exhibit "F" terminating the services of the petitioner may kindly be quashed.

D. By issuing a writ of mandamus or any other appropriate writ, order or direction in the like nature Respondent No. 2 may kindly be directed to reinstate the services of the petitioner as per the law laid down in the case of Panjab National Bank v. Vilas Bokade 2007 (3) Mh. L. J. 805.

2. Very few facts, which are undisputed, need to be quoted.

Petitioner claims to be belonging to Scheduled Tribe Tadvi. He possessed a caste certificate issued to him to that effect by Executive Magistrate, Aurangabad on 24th June, 1985. In the year 1985, he was appointed as a Helper with Respondent No. 2 corporation against a seat reserved for Scheduled Tribe. Subsequently, Petitioner was selected as Traffic Controller in the year 1992. Petitioner instead of accepting the post of Traffic Controller accepted promotion to the post of Art "C". Thereafter, in the year 1995, he was selected as Head Mechanic and, therefore, he is working on the post of Head Mechanic after such promotion. He has joined this promotional post after cut-off date 15th June, 1995. His claim was referred for verification to the Scrutiny Committee at Nasik. Petitioner submitted documents supporting his tribe claim. Unfortunately, after following due procedure, the Scrutiny Committee arrived at a conclusion that Petitioner does not belong to S.T. Tadvi and by its order dated 26th June, 2007 it has invalidated the tribe claim. On 14th July, 2007 the services of the Petitioner were terminated by Respondent No. 2, as a follow up of the fact that his tribe claim was invalidated by the Scrutiny Committee and he had secured employment on a seat reserved for scheduled tribe.

3. Advocate Shri S.M. Kulkarni for the Petitioner commenced his argument by saying that Petitioner does not press into service prayer Clause (B) challenging the order of the Scrutiny Committee dated 26th June, 2007 invalidating the tribe claim of the Petitioner; Petitioner desires to have benefit of the protection of Government Resolution dated 15th June, 1995 and follow up Government Resolutions dated 27th May, 2002 as also 30th June, 2004 are relied upon for the purpose of claiming that Petitioner's is a case fit for according benefit of the said Government Resolutions.

Admittedly, Petitioner was appointed in the year 1985. He secured his first promotion as Art "C" in the year 1992. Both these events are prior to cut-off date 15th June, 1995, By the Government Resolution dated 15th June, 1995 certain protections were accorded to certain persons whose tribe claims were not upheld. The second promotion as Head Mechanic is admittedly after the cut-off date 15th June, 1995.

4. The points to be considered by us are whether Petitioner is entitled to benefit of Government Resolution dated 15th June, 1995 and follow up Government Resolutions and, if yes, whether the promotion to the post of Head Mechanic, after cut-off date 15th June, 1995, can also be protected.

5. Since it has remained a matter of interpretation of three Government Resolutions, it is not necessary to refer to order passed by the scrutiny committee, as also a lengthy reply filed by the Corporation. We first refer to Government Resolution dated 15th June, 1995. The initial part of the Government Resolution indicates that some people belonging to some castes and communities, who were socially, economically and educationally backward, were requesting the Government for special concession, although they were not within the categories declared as scheduled castes or scheduled tribes. By Government

Resolution dated 7th December, 1994, Government had declared certain castes/ communities as special backward class. There is a list of 41 castes/ communities grouped into five groups. Clause 4 of this Government Resolution states that the reservation of 2% as declared by Clause 3 in favour of these special backward classes, shall be for the purpose of direct appointment as also for promotion and the principles of creamy layer will not be applicable to people belonging to these special backward classes (i.e. these people may not be required to prove by evidence that they do not belong to non-creamy layer). Clause 4 further states as follows:

i.e. people belonging to these special backward classes if have secured employment or promotion in the Government, Semi-government services, on the basis of a certificate of belonging to scheduled tribe, they should not be removed from the service or demoted.

Reading Government Resolution dated 15th June, 1995, as a whole, it is evident that Government, by taking into consideration demand of the people belonging to castes, the names of which castes have some similarity with certain castes and communities, which were already declared as scheduled castes and scheduled tribes, claimed certain benefits, concessions such as reservation and for doing so Government carved out a class called "Special Backward Class" of 41 castes/ communities as special backward class. It also carved out 2% reservation for them and accorded a special protection by directing the authorities not to withdraw the promotion or remove the employees, if they have secured employment or promotion in Government or semi-government services on the basis of a certificate belonging to scheduled tribe. There is nothing in this resolution to indicate that a person not belonging to any of these 41 special backward classes, is entitled to such protection.

6. The Petitioner, after his tribe claim of belonging to Scheduled Tribe Tadvi, is invalidated, must be treated as an open category candidate and he certainly does not belong to any one of the 41 castes/ communities which are declared as special backward class by Government Resolution dated 15th June, 1995. In order to persuade us that the benefits are available to the petitioner even if this Court holds the petitioner to be an open category candidate, Advocate Shri Kulkarni has referred to contents of Government Resolutions dated 27th May, 2002 and 30th June, 2004 by which, according to him, the scope of Government Resolution dated 15th June, 1995 is enlarged. Copy of Government Resolution dated 27th May, 2002 is available at paper book pages 53 to 57. Page 53 and major portion of page 54 is preamble and Government Resolution begins at the bottom of page 54 and concludes at page 55. Shri Kulkarni has laid emphasis on clause () in the Government Resolution. It appears at page 55 and which begins with the words " ". The clause as a whole reads that thus Non-Adiwasis, who have secured either employment or promotion on reserved seats, should be shown in the category to which they belong and the posts which have become so

vacant should be filled in from amongst Adiwasī persons. In other words, while protecting non-Adiwasīs from removal or reversion, the posts which were reserved for Adiwasīs and occupied by these non-Adiwasīs are practically declared as backlog and non-Adiwasī, till then occupying the seat for Adiwasī, is accommodated in the category to which he belongs. According to Advocate Shri Kulkarni, the distinction is only between Adiwasī and Non-Adiwasī i.e. person belonging to scheduled tribe and not belonging to scheduled tribe. We are afraid, such interpretation cannot be drawn when we take into consideration the opening paragraph of the resolution, which reads:

The contents, if translated into English, read that, on the basis of recommendations of Maharashtra Rajya Janjati Sallagar Parishad the Government has resolved as follows; so far as it relates to employees/ persons belonging to Special Backward Class appointed on the seats reserved for Scheduled Tribe.

the description "

relied upon by the Advocate Shri Kulkarni cannot be read in conflict with the opening part of the Government Resolution.

It is evident that amongst the Government Resolutions, referred at the top of this Government Resolution, earlier Government Resolution dated 15th June, 1995 is at serial No. 5. It is, therefore, obvious that Government Resolution dated 27th May, 2002 is to be taken as follow up action to Government Resolution dated 15th June, 1995.

7. Lastly, coming to Government Resolution dated 30th June, 2004, we may state at the beginning that Advocate Shri Kulkarni has again relied upon the words " " appearing in clause () of first paragraph in this Government Resolution. However, this Government Resolution also, within the references at serial Nos.1 to 6, refers to Government Resolution dated 15th June, 1995 and dated 27th May, 2002 at serial Nos.5 and 6. Thus, this Government Resolution is further extension of protection accorded by Government Resolution dated 15th June, 1995. Clause () , which is relied upon by Advocate Shri Kulkarni, although begins with the word " " it terminates with "---

The clause, in vernacular, quoted above, indicates that the persons who had secured employment or promotion on the seats reserved for scheduled tribe, on the basis of a certificate of belonging to scheduled tribe, were to be accommodated in the categories to which they belonged, after invalidation of their claim of belonging to scheduled tribe and they were not only protected against reversion or removal, but they were to continue to get the benefits of reservations of the categories to which they belonged. We lay emphasis on the words " ", which clearly indicates that benefits of this Government Resolution or any of the three Government Resolutions is not available to any person who does

not belong to any of the reserved categories. The benefits and protections of these Government Resolutions, therefore, are not available to an open category candidate and if we were to refer to origin of the protection and benefits, as conferred by Government Resolution dated 15th June, 1995, the benefits are available only to those 41 categories which are enlisted as special backward class category by the said Government Resolution as declared by Government Resolution dated 7th December, 1994.

To illustrate, if an open category candidate obtains a certificate of belonging to scheduled tribe, which is subsequently invalidated on scrutiny, shall not be entitled to any protection of Government Resolution dated 15th June, 1995 or further follow up Government Resolutions. We hold that even person belonging to any other reserved categories than enlisted in Government Resolution dated 15th June, 1995, shall also not be entitled to such a protection. For example, a scheduled caste candidate obtaining a certificate of belonging to scheduled tribe thus secures employment or promotion, shall not be able to secure protection against reversion or removal, on invalidation of his tribe claim, merely because he otherwise belongs to reserved category i.e. scheduled caste. The benefit of Government Resolution dated 15th June, 1995 shall be available to only those 41 categories enlisted therein, unless State extends the scope of the said Government Resolution to the benefit of any other communities by bringing them under the Government Resolution for the purpose of benefits of said Government Resolution. However, the three Government Resolutions if so interpreted, shall frustrate the spirit of reservation so far as scheduled tribes are concerned and people from all communities may enter the seats reserved for scheduled tribes, subsequently get the protection of the Government Resolution and thus deprive the people from scheduled tribes category of that seat forever. The interpretation, as tried to be propounded by Advocate Shri Kulkarni, is, therefore, required to be rejected.

8. For all above reasons, we hold that benefit of Government Resolution dated 15th June, 1995 cannot be available to the Petitioner and, therefore, it is needless to consider the aspect whether his promotion, after cut-off date, also can be protected.

For all these reasons, writ petition is dismissed. Rule discharged.