

(2003) 08 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition No. 7380 of 2002

Mrs. Suniti Ashok Sarathi

APPELLANT

Vs

State of Maharashtra, Tribal Development Department,
Committee for Scrutiny and Verification of Tribe Claims, Pune
Division and Dy. Director, National Institute of Virology and
Shri C.B. Lande

RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Citation : (2004) 2 ALLMR 484 : (2004) 1 BomCR 574

Hon'ble Judges : C.K. Thakker, C.J.; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; C.R. Sonawane, Assistant Government Pleader, for respondent Nos. 1, 2 and 4; K.K. Waghmare, for the Respondent

Final Decision : Dismissed

Judgement

C.K.Thakker, C.J.—Rule. Mr. C.R. Sonawane, learned Assistant Government Pleader, appears and waives service of notice of rule on behalf of respondent Nos. 1, 2 and 4 Mr. K.K. Waghmare, learned counsel, appears and waives service of notice of rule on behalf of respondent No.5.

2. In the facts and circumstances, and with the consent of the parties, the matter is taken up for final hearing.

3. This petition is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside an order dated 5th July. 2002 passed by the Committee for Scrutiny and Verification of Tribe Claims, Pune Division, Pune, with further direction to the Committee to consider the case of the Petitioner de novo after affording opportunity of hearing to the petitioner. A prayer is also made to declare that the caste certificate issued by the Executive Magistrate, Pune City, in favour of the petitioner on 4th August. 1980 be declared legal, valid and subsisting. Interim relief is also prayed.

4. The case of the petitioner is that she belongs to Mannervarlu, Scheduled Tribe. She was granted caste certificate by the Competent Authority-Executive Magistrate. Pune City, respondent, No.4 herein, as early as on 4th August. 1980. In 1981 the petitioner was appointed as Laboratory Assistant. It was a substantive and clear vacancy. The order of appointment was silent about the verification of caste certificate. The petitioner was then appointed as Technician by an order dated 5th November, 1981. In 1990, she was promoted to the post of Technical Assistant. In 1995, she was further promoted to the post of Senior Technical Assistant. For the first time in 2000, the petitioner was asked to submit fresh caste certificate issued in her maiden name within ten days failing which appropriate action would be taken against her. The petitioner filed her reply stating that she was granted caste certificate by respondent No. 4 after her marriage, and it was not issued in her maiden name. On June 11, 2002. the petitioner received a show cause notice from the committee for Scrutiny and Verification of Tribe Claims. Pune, respondent No.2. asking her to file her reply. A detailed reply was submitted by the petitioner raising several objections. On 5th July, 2002. the petitioner appeared before the second respondent along with her Advocate and prayed for a copy of the complaint made by respondent No.5. The petitioner's Advocate also sought cross-examination of Police Inspector of Vigilance Cell as, according to the petitioner, there were serious allegations about the school record of the father of the petitioner which was having far-reaching consequences. The Committee considered the seriousness of the matter and well-founded grievance of the petitioner and adjourned the matter. In November, 2002, the petitioner was against promoted to the post of Technical Officer by National Institute of Virology, respondent No.3 herein, where she is presently working. Finally, however, by an order dated 4th December, 2002, the certificate of the petitioner was invalidated, Which has compelled her to approach this Court.

5. Notice was issued, Interim relief of status quo was also granted.

6. We have heard the learned counsel for the parties. The learned counsel for the petitioner raised many contentions. It was submitted that the action of the respondents is contrary to law and the order passed by respondent No.2 in invalidating the caste certificate of the petitioner is illegal and unlawful. The action was in substance ex parte inasmuch as no sufficient opportunity of hearing was afforded to the petitioner and there was non-observance and non-compliance with the principles of natural justice and fair play.

7. On merits, the order passed by the second respondent is not sustainable in law. In the appointment order, there was no condition regarding production of caste validity certificate, and hence it cannot be insisted from the petitioner. The petitioner was appointed as early as in 1981 and after about two decades, here services cannot be terminated. Apart from other grounds, even on that ground, the petition deserves to be allowed.

8. No affidavit is filed on behalf of respondent Nos. 1 to 4. An affidavit is, however, filed by respondent No.5 supporting the order passed by the Committee

contending that he is the complainant and as the petitioner had obtained fake certificate, it was held invalid. He had also stated that because of the promotion of the petitioner, he had suffered and he was deprived of the said benefit. If the contention of the petitioner is upheld, he will be deprived of promotion even in future and serious prejudice will be caused to him.

9. No doubt, in the petition, a grievance was made by the petitioner that sufficient opportunity had not been given to the petitioner and the order was not in conformity with the principles of natural justice, but was unable to uphold the contention. The Committee had issued notice and complied with the principles of natural justice and fair play. The inquiry report and documents obtained by the Police Inspector and Vigilance Cell were also sent to the petitioner for her say thereon and she was asked to furnish materials within the stipulated period. When the petitioner requested the Committee to grant some time to file her reply, it was also granted. She was then called for personal hearing. She accordingly appeared before the Scrutiny Committee. Her contention that the action could not be taken against her and the principles of natural justice were not observed were also considered by the Committee. The Committee also considered the relevant documents produced by the petitioner. The Committee noted that school leaving certificate of the father of the petitioner pertaining to period 1933 i.e. prior to the first Presidential Order of 1950 revealed that he was shown as Hindu-Telgu. The School Leaving Certificate dated 12th September, 1981 issued by the Joint Secretary. Shri Shivaji High School, Kudal in favour of Vinayak Shivaram Mande, father of the petitioner showed that he was Telgu-Mannervarlu. It was of 1933. The Committee, therefore, in order to verify the genuineness of the caste certificate made inquiry through Police Inspector, Vigilance Cell and obtained the School record from the authority concerned. The said record, however, revealed that the candidate's father and her sister were shown as Hindu-Telgu and not Telgu-Mannervarlu. Since it was prior to the first Presidential Order, 1950, according to the Committee, it had got more probative value in determining the tribe claim of the candidate. It was because of the reason that the caste is acquired by birth and on paternal side.

10. The Committee, in the light of the above record, observed that when the candidate's father and her sister were Hindu-Telgu in their School record, the caste of the candidate could not be different than her father, the Documents Which the petitioner submitted and on which reliance was placed claiming her to be Mannervarlu-S.T. could not, therefore, be relied upon.

11. Regarding her claim that she could not be asked to produce the caste validity certificate has no substance in view of the fact that it is always subject to scrutiny and if the candidate does not belong to a particular caste or community and claiming to be of that caste or community, he or she gets an appointment, it is always open to the authority asking the candidate to produce necessary evidence in support of his or her claim and no objection can be raised against such a course being adopted by the authorities.

12. Moreover, in the instant case, the Scrutiny Committee verified the tribe claim of the petitioner with reference to traits, characteristics and customs of the community and even on that basis, the Committee observed that the petitioner did not belong to Mannervarlu, S.T. community, and hence the certificate was invalidated.

13. In our opinion, by taking such view and by invalidating the certificate of the petitioner, no illegality can be said to have been committed by the Committee.

14. It is no doubt true that the petitioner was appointed before many years and after she was confirmed and promoted to various posts that the proceedings had finally been culminated into invalidation of certificate issued in her favour. But it cannot be overlooked that the case of the petitioner was that she belongs to Mannervarlu community and in support of her say, she had produced caste certificate issued in her favour as well as in favour of her sister. It was only on verification of those certificates by calling record of the school in order to verify the genuineness of the certificates that the Committee came to know that in the record of the School of 1933, the petitioner's father and her sister were shown Hindu-Telgu and not Telgu-Mannervarlu. In our considered opinion, in the light of the above circumstances, it is not open to the petitioner to contend that no proceedings could have been initiated.

15. Moreover, with a view to curb the practice of obtaining employment by getting fake or false certificate and by depriving eligible and qualified persons from getting appointment in public services, the State of Maharashtra has enacted an Act known as Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act XXIII of 2001) (the Act for short). We had an occasion to consider the provisions of the Act in Mohan Parasnath Goswami Vs. The Committee for Scrutiny of Caste Certificates, Dr. Jitendra Prabhakar Wagh, The Municipal Corporation of the City of Thane and The State of Maharashtra, . We held in that case that on the basis of the report of the Scrutiny Committee and the order passed, appropriate actions can always be taken by the authorities. We have, however, held that for taking such actions in accordance with law, the provisions of the Act have to be followed. If a person has produced such certificate and obtained an advantage, it is open to the authorities to take appropriate proceedings in accordance with law.

16. In the instant case, when the certificate is held invalid and when the father of the petitioner did not belong to Telgu-Mannervarlu but Hindu-Telgu, in our opinion, the petitioner cannot be protected.

17. The petition, therefore, deserves to be dismissed and is accordingly dismissed. Rule discharged. Interim relief vacated. No order as to costs.

Parties be given copies of this order duly authenticated by the Associate/Sheristedar/Private Secretary.

The learned counsel for the petitioner prays that ad-interim relief granted earlier, which continues till today, may be continued for some more time so as to enable the petitioner to approach the Supreme Court. In our opinion, prayer is reasonable. Ad-interim relief will be continued for four weeks from today.