
(2016) 08 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 2212 of 2016

Neeta Kashinath Sawarkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 — Section 6

Citation : (2017) 1 ALLMR 368 : (2016) 5 MhLJ 959

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. S.R. Narnaware, Advocate, for the Petitioner; Ms. Ritu Kaliya, A.G.P, for the Respondent Nos. 1 to 3

Final Decision : Allowed

Judgement

B.R. Gavai, J.(Oral)—Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties finally by consent.

2. The petitioner was appointed as a Tracer on 10.6.1997 on the establishment of the respondent nos. 2 & 3 against a post reserved for NTB category. Since the petitioner had applied from a reserved category, her claim was referred to the Scrutiny Committee. On 2.8.2007 the claim of the petitioner came to be invalidated. As such, the petitioner's services were terminated on 9.8.2007. The petitioner challenged the invalidation order and termination order by way of Writ Petition No. 3717/07. This Court vide judgment and order dated 11.9.2007 in Writ Petition No. 3717/07 remanded the matter back to the Scrutiny Committee by setting aside the order of invalidation. As such, the petitioner was reinstated on 29.9.2007. Vide order dated 9.12.2009 the respondent Scrutiny Committee again invalidated the claim of the petitioner. The same was challenged by way of Writ Petition No. 344/10. The Division Bench of this Court vide judgment and order dated 29.11.2011 dismissed the Writ Petition upholding the order passed

by the Scrutiny Committee. The same was challenged by the petitioner before the Apex Court. The Apex Court vide order dated 13.7.2016 granted liberty to withdraw the S.L.P. so as to enable her to file review before this Court.

3. It appears that during the pendency of the S.L.P., the petitioner's services were terminated on 9.7.2014. As such, the petitioner approached the learned Maharashtra Administrative Tribunal and filed O.A. No. 516/14. The said Original Application is also rejected on 11.2.2015. The petitioner has, therefore, approached this Court being aggrieved by the judgment of the learned Tribunal.

4. The petitioner has, therefore, approached this Court being aggrieved by the judgment of the learned Tribunal and also in view of the law laid down by the larger Bench of this Court in the case of Arun s/o Vishwanath Sonone v. State of Maharashtra and others reported in 2015(I) Mh. L.J. 457 dated 22.12.2014 claiming for protection of her service. The petitioner has given up her claim of belonging to N.T. and only prays for protection of her services.

5. The petition is vehemently opposed by the learned A.G.P. on the ground that the petitioner's appointment was purely temporary and as such, she is not entitled to protection of her services.

6. The perusal of the appointment order dated 10.6.1997 would reveal that the petitioner's initial appointment was after following due selection procedure by the Regional Subordinate Selection Board. The petitioner has thereafter continued till 2014. As such, it does not lie in the mouth of respondents to say that the petitioner's appointment is casual in nature.

7. The larger Bench of this Court in the case of Arun s/o Vishwanath Sonone v. State of Maharashtra (cited supra) has held that such of the candidates who are appointed against a post reserved for reserved category candidates and who have put in substantial number of years in the service and in whose case there is no finding of fraud, are entitled to protection of service. Admittedly, there is no finding of fraud in the case of present petitioner. As such, we find that the petitioner is entitled to protection of her service in view of judgment of larger Bench of this Court in the case of Arun Sonone (cited supra).

8. We, therefore, hold that the petitioner's services are liable to be protected. The respondents are directed to reinstate the petitioner within a period of two weeks from today. Though we hold that the petitioner would not be entitled to back wages for the period during which she was out of employment, she would be entitled to continuity in service with effect from the original date of her appointment, i.e. 10.6.1997 for all other purposes, including seniority and salary, etc.

9. It is, however, made clear that the petitioner would be considered as a candidate belonging to open category and would not be entitled to any of the benefits including promotion, etc. on the basis of her claim of belonging to N.T. The notices issued to respondent nos. 2 & 3 are discharged.

10. Rule is made absolute in the aforesaid terms. No order as to costs.