
(2014) 04 BOM CK 0255
In the Bombay High Court
Case No : Writ Petition No. 704 of 2014

Nitin

APPELLANT

Vs

The Divisional Caste Certificate Scrutiny Committee

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 6 ALLMR 693 : (2015) 5 BomCR 419 : (2015) 1 MhLj 392

Hon'ble Judges : C.V. Bhadang, J;B.R. Gavai, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari and C.B. Dharmadhikari, Advocate for the Appellant; M.K. Pathan, AGP, Advocate for the Respondent

Judgement

B.R. Gavai, J.—Rule. Rule is made returnable forthwith. Heard by consent of learned counsel for both the parties. Though the petitioner has initially approached this Court being aggrieved by the order passed by respondent No. 1 - Committee invalidating the claim of the petitioner of belonging to V.J.N.T., the petitioner has restricted his claim only for seeking protection to his services.

2. The petitioner was initially appointed on daily wages in the respondent No. 2 - University on 1st of March, 1990. The Managing Committee of the respondent - University vide Resolution dated 22nd of September, 1996 absorbed various employees including the petitioner into the regular employment by Resolution No. 199. However, it appears that on 6th January, 1998 the respondent - University has terminated the services of the petitioner. The petitioner, therefore, approached the learned Labour Court at Amravati by filing a complaint being Complaint (ULP) No. 8 of 1998. Vide order dated 19th of July, 1999, the learned Labour Court granted an interim relief thereby reinstating the petitioner. Accordingly, the petitioner continued in the services. The respondent - University addressed a communication dated 2nd December, 2008 to the petitioner stating therein that if the petitioner withdraws the complaint filed before the Labour Court, he shall be continued in the services. Accordingly, the petitioner withdrew the complaint and he was given a regular appointment on 30th of October, 2009.

3. Subsequently, University addressed communications to the petitioner on 28th of December, 2012 and 1st of July, 2013 stating therein that if the petitioner fails to submit the validity certificate, his services shall stand terminated. The petitioner along with others, therefore, approached this Court by way of Writ Petition Nos. 410 of 2013 and 4243 of 2013. This Court vide Judgment and order dated 8th of February, 2013 and 24th September, 2013 protected the services of the petitioner till the respondent - Scrutiny Committee decided the claim of the petitioners. By the impugned order, the petitioner has been held to be not belonging to V.J.N.T. and as such petitioner has approached this Court.

4. Heard Shri C.B. Dharmadhikari, learned counsel for the petitioner and Shri J.B. Kasat, the learned counsel for the respondent - University.

5. Advocate Shri Dharmadhikari submits that in view of the judgment of the Apex Court in the case of State of Maharashtra Vs. Milind and Others, , in the case of Dattu Thakur Vs. State of Maharashtra and Others, , in the case of Kavita Solunke Vs. State of Maharashtra and Others, and in the case of Shalini Vs. New English High Sch. Assn. and Others, the petitioner's services are entitled to be protected. He further submits that the petitioner's services are also entitled to be protected on the other ground of estoppel. He submits that the respondent-University having represented the petitioner that the petitioner shall be continued in services, he was made to withdraw his complaint and now, subsequently, the respondent - University is resiling from its earlier stand. The learned counsel submits that in view law laid down in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., such an approach is not permitted.

6. As against this, Shri Kasat, the learned counsel appearing on behalf of the respondent - University submits that the petitioner's employment was subject to the validity of his caste claim. He submits that the petitioner's claim having been invalidated, he is not entitled to the protection in the services. The learned counsel further submits that in view of the conflict of two Division Bench Judgments, the Division Bench of this Court has already referred the matter to the Full Bench to decide as to whether the employees whose appointments are prior to 28th of November, 2000 are entitled to protection or not. He submits that it would not be appropriate for this court to decide the present matter in view of the pendency of the issue before the Full Bench of this Court.

7. Taking into consideration that the petitioner is continuously in service from 1990, we had requested the learned counsel for the respondent - University to verify from the Authorities as to whether the petitioner's services are satisfactory or not. On instructions, Shri Kasat learned counsel, submits that after reinstatement there is nothing adverse against the petitioner and his services have been found to be satisfactory.

8. Insofar as the contention of Shri Kasat regarding the issue pending before the Larger Bench of this Court in view of conflict between two Division Bench

Judgments is concerned, it is to be noted that the judgment of the Apex Court in the case of Shalini Vs. New English High Sch. Assn. and Others, has come subsequently to the passing of referral order by the Division Bench. In any case on account of judicial propriety it would not be appropriate for us to go into that issue, since the Full Bench is seized of the issue.

We, however, find that the petition deserves to be allowed on the other ground of promissory estoppel. On the representation made by the respondent - University that the petitioner shall be continued in service, the petitioner withdrew his complaint which was filed before the learned Labour Court and now the respondent - University cannot be permitted to act contrary to the representation made to the petitioner. The Apex Court in the catena of judgments including in the cases Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., has held that if an Authority makes a representation to the citizen and thereby such a citizen acts on such a representation then the Authority cannot be permitted to change its stand to the detriment of such a citizen. In that view of the matter, we find that present petition deserves to be allowed.

We, therefore, hold that the petitioner's services shall stand protected. However, he shall be treated to be the candidate from Open Category. The petitioner shall file an undertaking to the effect that he or his progeny shall not claim any benefit of belonging to the Scheduled Tribe.

Rule is made absolute in the above terms with no order as to costs.