
(2002) 01 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 2593 of 1984

Prabhakar Sadasheo Nandanwar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 18

Citation : (2002) 4 BomCR 710 : (2002) 4 MhLj 664

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; N.S. Khubalkar, A.G.P., for the Respondent

Judgement

V.G. Palshikar, J.—When this petition came up for final hearing, Shri C.G. Madkholkar, learned Senior Advocate appearing on behalf of the petitioner, made a preliminary submission that anomalous position was occurred because of restrictive interpretation of the provisions of Chapter XVII, Rule 18 of the Bombay High Court (Appellate Side) Rules, 1960.

2. By this petition, the petitioner is challenging the action of the respondents of reverting the petitioner as a sequel to an order made by the Caste Verification Authority holding that the petitioner does not belong to a particular backward community. The post held by the petitioner as a promotional post having been reserved for that backward community, the petitioner should not be continued in that post and hence he was reverted after the decision of the Government that his caste was not that for which the post is reserved. The learned counsel has not gone into the merits of the case but has canvassed that by Judgment of this Court delivered by learned Single Judge of this Court in Writ Petition No. 3826/2000, some observations have been made in relation to the Chapter XVII, Rule 18 of the Bombay High Court (Appellate Side) Rules, 1960 and by interpretation thereof in accordance with this Judgment, the Registry of the Bombay High Court at Nagpur is listing for admission as also for hearing the

matters arising out of the orders passed by the Caste Verification Committees in relation to the Scheduled Caste and Scheduled Tribe before the learned Single Bench. Identical orders in relation to the Other Backward Classes are placed before the Division Bench for admission and hearing. According to the learned counsel, this amounts to violent discrimination violative of Article 14 of the Constitution, as a person facing Caste Verification Committee by itself forms of a class whether he belongs to the Scheduled Caste or Scheduled Tribe or Nomadic Tribe or Vimukti Jati or any Other Backward Class, defined under the Orders framed under the Constitution. There is no distinction between the castes which have been given certain privileges for which verification of caste is strictly undertaken by the State Authorities. It may be that various Caste Verification Committees have been formed for different castes and communities but the job is same viz. to verify the caste of the candidate as per the claim made by the candidate. There is, therefore, no sub-classification possible or permissible and hence reading of Rule 18 as restricted to the Scheduled Caste and Scheduled Tribe, would be improper and illegal. There is nothing in the Appellate Side Rules which requires such restricted reading.

3. Yet another submission made by the learned counsel was that though the persons are identically situated viz. the persons facing caste verification for their being Nomadic Tribe and the persons belonging to the Scheduled Caste facing caste verification, are identically situated, the Caste Verification Committee in case of both the candidates, rejects the claim or invalidates the certificate of caste as claimed by the respective candidates. The challenge, in relation to the Scheduled Caste and Scheduled Tribe, will go before the Single Bench and the challenge, in relation to the Nomadic Tribe, will go before the Division Bench. Assuming that both the petitions are dismissed, a candidate belonging to the Scheduled Caste or Scheduled Tribe will have further opportunity to approach this Court under Letters Patent Appeal Jurisdiction whereas such opportunity is denied to a candidate belonging to the Nomadic Tribe. Restricted reading of Clause 44 to Rule 18, thus, results in hostile discrimination between two identical persons in the matter or remedy available for redressal of the grievance. For this reason also, according to the learned counsel, the Rule is liable to be read liberally. It was canvassed by the learned counsel that large number of cases go up in relation to the orders passed by the Caste Verification Committees and repeated discriminatory treatment in relation to the remedies available should not be permitted to exist. He, therefore, requested that the question of interpretation of the Rule authoritatively should be decided so far as this court is concerned. There is no doubt that the question is of some importance. It certainly is of regular occurrence and the rule, thus, requires to be interpreted.

4. Normally, no such order would be necessary but the learned counsel submitted that according to the Registry of this Court, in view of the order of this Court in Writ Petition No. 3826/2000 dated 7-12-2000, it is not possible to list before the Hon"ble Single Bench the matters not covering the orders in relation to the Caste Verification of the candidates of Scheduled Caste and Scheduled

Tribe.

5. The provisions of the Bombay High Court (Appellate Side) Rules in this regard may be noted. Chapter XVII deals with the petitions under Articles 226 and 227 and applications under Article 228 of the Constitution and rules for the issue of writs and orders under the said Articles. Rule 1 of this Chapter provides that; "every such application shall be heard and disposed of by the Division Bench to be appointed by the Chief Justice in that behalf. It is further ratified by the provisions of Rule 4 which very clearly mandates that the applications under Rule 1 shall be heard and disposed of by a Division Bench and provided exception in relation to the grant of Rule but stating that it may be granted by the Single Judge. A normal rule, therefore, is that all the petitions under Articles 226 and 227 are to be heard by the Division Bench. Rule 18, however, creates an exception to this general requirements. It reads as under:

"Notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of

Then 44 items are mentioned, orders in which are permitted to be heard by the Single Bench, Rule 18 therefore, is an exception to the general rule codifying Rules 1, 4 and 17 of Chapter XVII of the Bombay High Court (Appellate Side) Rules, 1960.

6. The entry with which we are concerned in the present case is entry No. 44 which reads as under:

"Orders passed by the different Committees constituted by the State Government for verification of the claims of Scheduled Caste and Scheduled Tribe candidates."

Therefore, the petitions against the orders passed by the Committee in relation to the Scheduled Caste and Scheduled Tribe can be decided and disposed of by the Single Bench.

7. The learned Single Judge of this Court (D.D. Sinha, J) in Writ Petition No. 3826/2000 was called upon to look into the provisions of Item 44 in Rule 18 of Chapter XVII of the Rules. In that petition, the petitioners were claiming protection in view of the provisions of certain Government Resolutions and seeking prohibitory writ against the State. In that case, there was no order passed by any authority under the Act described under the provisions of Rule 18 of the High Court Rules and consequently, according to the learned Judge, such simpliciter directions in view of the provisions of the Government Resolutions may not be within the jurisdiction of this Single Bench. It was in the light of this that the learned Judge observed in para 11:

"Since, I am of the opinion that the controversy raised by the petitioners in view of the Government Circular does not fall within the ambit of Rule 18 of the High

Court, Appellate Side Rules, and, therefore, the petitioners are entitled to move the Division Bench for this purpose and it is open for the respondent to canvass these contentions before the appropriate forum."

It will be seen there that the learned Judge found on the language of the Rule that the relief of a writ pursuant to the Government Resolution, without there being any orders which can be challenged, cannot come within the purview of Rule 18 and, therefore, was liable to be heard by the Division Bench. His Lordship did not decide the scope and extent of Rule 18 and the interpretation sought to be of this Judgment as a consequence, is incorrect. It is obvious that the learned Single Judge was not called upon to decide the scope and extent of that rule. He proceeded to hold that the petition with which His Lordship was dealing with, did not fall within the ambit of Rule 18 and, therefore, was liable to be heard by the Division Bench. This Judgment, therefore, does not lay down what is the scope and extent of entry of Rule 18 of the Bombay High Court (Appellate Side) Rules, 1960.

8. It will be seen that the High Court (Appellate Side) Rules, are the rules of convenience for administration of justice by this Court. This Court made it a rule that normally the matters under Articles 226 and 227 of the Constitution, will be heard by the Division Bench of this Court. But, looking to the heavy burden of work and stupendous number of litigants approach this Court, it was necessary for the proper administration of justice and possibly quick disposal of the cases, that good number of cases can be conveniently decided by the Single Bench so that two Judges are available to do the job with equal ability and, therefore, an exception in Rule 18 was created. Perusal of this rule will show that it has been frequently amended to add more and more orders or provisions out of which, if any application under Articles 226 and 227 is made, it may be dealt with by the Single Bench of this Court. The intention behind creating an exception to the Rule, of hearing by Division Bench, is obvious. It is for speedy disposal of the cases by as many as Judges as is possible and therefore, the entries in Chapter XVII, Rule 18, are to be read liberally keeping in mind the object with which the special exception of hearing by Single Bench is created to the general rule of Division Bench hearing.

9. It will be seen that several benefits are available to the Backward Class candidates belonging to various communities, castes and creeds and it has become now necessary that such claims of castes are properly verified by the Government. The Government has, for that purpose, established different Committees called Caste Verification Committees. They verify the castes and order itself valid or invalid in relation to the claim of the candidates. Every candidate, therefore, facing Caste Verification Committee, is similarly or identically situated. The claim of all the candidates is one i.e. verification of their caste claim, whether they claim verification of their being Scheduled Caste or being Scheduled Tribe or being Nomadic Tribe or being Other Backward Class, is immaterial. To hold that the petitions of the candidates claiming verification of

claim of Scheduled Caste and Scheduled Tribe will go to the Single Bench and others will go to the Division Bench, will create artificial classification in a homogeneous class. There is no need to create such classification or sub-classification. In our opinion, all orders passed by the different Committees constituted by the State Government for verification of the claims of all castes and not only the Scheduled Caste and Scheduled Tribe, must be treated identically. In our opinion, therefore, the mention of Scheduled Caste and Scheduled Tribe in Item 44, is only illustrative and not exhaustive. The verification of the caste of the Scheduled Caste and Scheduled Tribe candidates is an illustration of the orders passed by the different Committees for caste verification and Rule, therefore, says that all such orders would be liable to be disposed of by the Single Bench. There is no reason to take narrow view of the Item 44. It must be read to mean all orders passed by the different committees constituted by the State Government for verification of the claims of Scheduled Caste and Scheduled Tribe candidates and all other such caste verification claims. It is, therefore, directed that hereinafter, the Office would not classify the orders passed by the different committees constituted by the State Government for verification of caste claims of the Backward Class Communities and list for disposal of such petitions challenging of such orders before the Hon''ble Single Bench of this Court.

10. The Office to verify each such petition and list it for hearing before the appropriate Bench in the light of the observations made hereinbefore including the present petition.