
(2015) 03 BOM CK 0299

In the Bombay High Court

Case No : Writ Petition No. 4226 of 2014

Pushpa Vijayrao Ingle

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 03 BOM CK 0299

Hon'ble Judges : V.A. Naik, J;A.M. Badar, J

Bench : Division Bench

Advocate : Ashish P. Chaware, for the Appellant; T.R. Kankale, AGP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

V.A. Naik, J—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

2. By this petition, the petitioner impugns the order of the Maharashtra Administrative Tribunal dated 2nd July, 2014, dismissing the Original Application filed by the petitioner.

3. The petitioner was appointed by the respondents as a Staff Nurse on 4.1.2000. The petitioner was fully eligible for the appointment on the post of Staff Nurse. It is the case of the petitioner that the petitioner was appointed in open category but it is the case of the respondents that the petitioner was appointed from the S.T. category as she claimed to belong to Mahadev Koli scheduled tribe. On 3.10.2002, on the demand by the respondent, the petitioner submitted a caste certificate of belonging to Koli caste. The caste certificate tendered by the petitioner was submitted by the respondents to the Scrutiny Committee for verification. The claim of the petitioner of belonging to Koli caste was verified by the Scrutiny Committee and the claim was validated on 12.9.2005. The respondents issued a notice to the petitioner on 13.5.2009 as to why her services should not be terminated as she was appointed on a post ear-

marked for the S.T. category. The petitioner services were terminated on 9.7.2009. Being aggrieved by the order of termination the petitioner filed an Original Application before the Maharashtra Administrative Tribunal. The Original Application was dismissed by the Maharashtra Administrative Tribunal.

4. It is stated on behalf of the petitioner that since the petitioner was appointed as Staff Nurse on 4.1.2000, the petitioner is entitled to protection of her services, though it is held by the Tribunal that the petitioner was appointed on a post earmarked for the scheduled tribe category. It is stated that on the demand made by the respondents, the petitioner had submitted a caste certificate of belonging to Koli caste and not Mahadev Koli scheduled tribe and the said certificate was sent by the respondents to the Scrutiny Committee for verification without insisting for the documents in respect of the claim to Koli Mahadev scheduled tribe. The petitioner's caste claim was verified on 12.9.2005 and it was held that the petitioner belongs to Koli caste, which falls in the special backward classes. It is stated that the respondents having accepted the caste validity certificate dated 12.9.2005 and after having made the necessary entries in respect of the caste of the petitioner in the service book (S.B.C. category), the action of the respondents in terminating the services of the petitioner on 9.7.2009 is bad in law. In any case, according to the learned counsel, in view of the judgment of the Full Bench of this Court in the case of Arun Sonowane Vs. State of Maharashtra, reported in 2015(1) Mh.L.J. 457 and the unreported judgment of this Court in Writ Petition Nos. 3729/2014 and others dated 12th February, 2015, the services of the petitioner need to be protected.

5. Shri Kankale, the learned Assistant Government Pleader appearing on behalf of the respondent Nos. 1 to 3 stated that the Maharashtra Administrative Tribunal was justified in dismissing the Original Application filed by the petitioner as the petitioner claimed to belong to S.T. scheduled tribe and was not able to prove her tribe claim. It is stated that since the petitioner did not produce the validity certificate in respect of Mahadeo Koli scheduled tribe, the services of the petitioner were rightly terminated.

6. On hearing the learned counsel for the parties, it appears that the prayer made on behalf of the petitioner for protection of her services needs to be granted in the circumstances of the case. The petitioner was appointed before the cut-off date i.e. 4.1.2000 and the claim of the petitioner of belonging to Koli caste was sent to the Scrutiny Committee for verification. The respondents ought to have refused to refer the claim of the petitioner of belonging to Koli caste to the Scrutiny Committee if the respondents were of the view that the petitioner had secured the appointment on a post reserved for the S.T. Category. In the service record also the caste of the petitioner is shown to be Koli and the petitioner is referred to as belonging to special backward classes. In the facts of the case, specially in view of the judgment reported in Arun Sonowane Vs. State of Maharashtra, reported in 2015(1) Mh.L.J. 457 and the unreported judgment of this Court in Writ Petition Nos. 3729/2014 and others dated 12th February, 2015,

the services of the petitioner are required to be protected. Since the petitioner was terminated on 9.7.2009 and was not in service till date, the petitioner would not be entitled to claim the salary for the said period though the petitioner would be entitled to continuity of service.

7. Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The respondents are directed to protect the services of the petitioner and reinstate the petitioner in service within a period of seven days after the petitioner furnishes an undertaking that neither the petitioner nor her progeny would claim the benefits meant for the Koli scheduled tribe. As already stated herein above, the petitioner would not be entitled for the arrears salary and other consequential benefits except the continuity of service from the date of her termination, till her reinstatement.

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