

(2017) 03 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 462 of 2017

Sanjay Vishwasrao Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
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 10(1), Section 6
Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate
Rules, 2003 — Rule 11

Citation : (2017) 3 ALLMR 558 : (2017) 3 MhLJ 147

Hon'ble Judges : R.M. Borde and A.S. Gadkari, JJ.

Bench : Division Bench

Advocate : Mr. Ramchandra K. Mendadkar, Advocate, for the Petitioner; Mr. Nitin
P. Deshpande, AGP, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

A.S. Gadkari, J. :- Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for respective parties, heard finally.

2. The petitioner has challenged the legality, validity and propriety of the Order dated 11th September 2016 in Original Application No.921 of 2014 passed by the Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai, thereby dismissing the Original Application and confirming the Order of dismissal of the petitioner from service dated 9.9.2014 passed by the respondent No.2, however modified the date of termination from 4.6.2010 to 9.9.2014.

3. The petitioner was granted caste certificate by showing his caste as "Thakar", Scheduling Tribe by the Taluka Executive Magistrate, Shirala, District-Sangli dated 18.6.1992. On the basis of the said caste certificate of "Thakar", Scheduling Tribe the petitioner was appointed on the establishment of the

respondent No.2 on a post reserved for Scheduling Tribe candidate on regular basis on 31.7.1996. The petitioner joined the services of the respondents on 12.8.1999 on the post of Assistant Store Keeper.

4. The caste certificate of the petitioner along with other documents were referred by the respondent No.2 to the Scheduling Tribe Caste Scrutiny Committee, Pune Region, Pune on 16.11.2004 for its verification. The Caste Scrutiny Committee by its Order dated 28.5.2010 invalidated the said caste certificate by holding that, the petitioner does not belong to the caste "Thakar" Scheduling Tribe and therefore his claim towards same was held to be invalid. The Caste certificate issued by the Taluka Executive Magistrate, Shirala, Dist-Sangli dated 18.6.1992 was cancelled and confiscated. The Caste Scrutiny Committee in its Order dated 28.5.2010 has held that, the petitioner has failed to prove his affinity towards the caste "Thakar" Scheduling Tribe. It has further held that the petitioner has utterly failed to prove his caste claim of "Thakar" Scheduling Tribe by way of documentary evidence as well as affinity test also. Therefore, it invalidated the caste certificate issued to the petitioner as stated earlier. The record further reveals that the writ petition no.6854 of 2010 preferred by the petitioner against the Order of the Caste Scrutiny Committee was dismissed by this Court by its Order dated 15.10.2010.

5. It is the case of the petitioner that, upon invalidation of the caste by the Caste Scrutiny Committee, the respondents took a decision to treat the petitioner as a candidate from open category. Thereafter series of correspondence took place between the parties herein. The petitioner was also given time-bound promotion benefit in terms of policy of the respondent No.1-State, for which necessary sanctions were rendered by the concerned authorities.

6. That the respondent No.4 thereafter issued a show cause notice dated 25.9.2013 informing the petitioner that, why action in terms of Government Resolution dated 18.5.2013 should not be initiated against the petitioner and called his explanation within 30 days from the date of issuance of such notice. The petitioner submitted his representation/reply dated 14.10.2013 to the said show cause notice and placed all facts on record including the fact that he has been now treated as a person from open category and has been granted benefits accordingly. That the respondent No.2 thereafter passed an Order dated 9.9.2014 thereby terminating the services of the petitioner with retrospective effect from 4.6.2010 and also directed to initiate action against the petitioner under Section 10(1) of the Maharashtra Scheduling Castes, Scheduling Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

7. Feeling aggrieved by the Order dated 9.9.2014, the petitioner preferred Original Application No.921 of 2014 before the Maharashtra Administrative Tribunal, Mumbai Bench. The Maharashtra Administrative Tribunal by its impugned Order dated 11.8.2016 was pleased to dismiss the said Original

Application by directing the respondents to treat termination of the petitioner from 9.9.2014 and not from 4.6.2010. The said order is impugned herein.

8. The Hon'ble Supreme Court in the case of *Shalini v. New English High School and Ors*, reported in 2014 (2) Mh.L.J. 913, has held that since there was no falsity in the claim of the appellant and as such it cannot be viewed as having filed a "false" caste certificate, the rigors of section 10 of the Maharashtra Scheduling Castes, Scheduling Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Caste Certificate Act, 2000 (23 of 2001) would not apply to the appellant to be debarred from any further advantage.

The Full Bench of this Court in the case of *Arun Vishwanath Sonone v. State of Maharashtra and Ors.*, reported in 2015(1) Mh L.J. 457, relying on the decision in the case of *Shalini v. New English School and Ors* (Supra) and after taking into consideration various decisions of the Supreme Court and this Court, in para-65 (d) (i) and (ii) held as under:

65 (d)-

(i) that upon verification by the Scrutiny Committee, the Caste Certificate produced to secure an appointment, is no found to be false or fraudulent,

(ii) that the appointee shall not take any advantage in terms of promotion or otherwise after 28.11.2000 solely on the basis of his claim as a candidate belonging to any of the backward class categories in respect of which his claim is invalidated by the Scrutiny Committee."

9. Mr. Deshpande, the learned AGP for the State while opposing the present petition, submitted that the applicant was well aware about his caste status that he does not belong to "Thakar" Scheduling Tribe and with an ill intention and to avail concession and facilities must have obtained caste certificate as belong to "Thakar" Scheduling Tribe and therefore the petitioner is not entitled for any reliefs from this Court. We are unable to accept the said submission of the learned AGP so also the finding to that effect recorded by the Caste Scrutiny Committee. It is to be noted here that the petitioner has obtained the said caste certificate showing his caste "Thakar" from the Government authority namely Taluka Executive Magistrate, Shirala, Dist. Sangli on 18.6.1992. A safe primary presumption can be drawn that the concerned authority who issued the caste certificate in favour of the petitioner had issued it after making some preliminary enquiry into the matter. It is only at the stage of its verification by the Caste Scrutiny Committee which after thorough enquiry with respect to the certificate came to the conclusion that the petitioner has failed to prove his claim of caste "Thakar", Scheduling Tribe by way of documentary evidence as well as by way of affinity test also. We are of the view that it is for the respondent No.1 Government of Maharashtra to take appropriate remedial measures with its concerned authorities who at the initial stage issued such certificate and entire blame cannot be put on the person who receives such certificate, like petitioner.

10. After scrutiny of the record of the present case, it reveals that, admittedly there is no finding of fraud and or production of fabricated or fraudulent caste certificate by the petitioner is recorded by the Caste Scrutiny Committee. It has been held by the Full Bench of this Court in the case of Arun V Sonone (supra) that such of the candidates who are appointed against the post reserved for reserved category candidates and who are put in substantial number of years in the service in whose case there is no finding of fraud, are entitled to the protection of service. As stated earlier, the Caste Scrutiny Committee has invalidated the caste certificate of the petitioner on the ground that the petitioner has failed to establish his caste claim on the basis of documentary evidence and affinity test, however, there was no allegation against the petitioner that he produced fraudulent and/or fabricated caste certificate before the employer at the time of entering into the service. The Maharashtra Administrative Tribunal in the impugned Order has erred in holding that the petitioner obtained the said certificate for securing the benefits by practicing a fraud.

11. We therefore quash and set aside the Orders dated 9.9.2014 passed by the respondent No.2 and dated 11.8.2016 passed by the Maharashtra Administrative Tribunal in Original Application No.921 of 2014 and hold that the petitioner's services are liable to be protected.

12. The respondents are directed to reinstate the petitioner within a period of four weeks from today. The petitioner will be entitled for continuity in service with effect from 9.9.2014 for all purposes. However, the petitioner will not be entitled for back wages for the period during which he was out of employment i.e. from 9.9.2014 till today i.e. 7th March 2017. It is however made clear that the petitioner would be considered as a candidate belonging to open category and would not be entitled for any of the benefits including promotion on the basis of his claim belonging to "Thakar" Scheduling Tribe.

13. Rule is made absolute in the aforesaid terms.

14. No order as to costs.