

(2003) 06 BOM CK 0119
In the Bombay High Court
Case No : Writ Petition No. 866 of 2003

Shri Sandesh Yashwant Katwate

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Citation : (2003) 4 ALLMR 103 : (2004) 1 BomCR 164 : (2003) 4 MhLj 345

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; C.R. Sonawane, A.G.P. for Respondent Nos. 1 to 3 and N.V. Walawalkar, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—Rule. Respondents waive service. By consent taken up for hearing and final disposal forthwith.

2. On 4th August 1994, the Executive Magistrate, Alibagh, District Raigad granted a Caste Certificate to the Petitioner certifying that he belongs to the Mahadeo Koli community which is designated as a Scheduled Tribe. The petitioner was appointed as a clerk in the Panvel Municipal Council on 5th December 1995. The Caste Certificate was referred for verification to the Committee for Scrutiny and Verification of Tribe Claims, Konkan Division. An enquiry was ordered to be conducted by the Vigilance Cell attached to the Scrutiny Committee. The Vigilance Cell examined the school records and other relevant material in relation to the claim of the Petitioner to belong to the Mahadeo Koli community and submitted its report. A copy of the report was forwarded to the Petitioner and by a notice dated 2nd August 1999 he was given an opportunity of furnishing his response. The petitioner filed his reply by a letter dated 7th November 1999, whereafter he was also given an opportunity of a personal hearing. The Scrutiny Committee passed an order on 25th March 2001 after hearing the petitioner. By that order, which is impugned in these proceedings, the Scrutiny Committee has rejected the claim of the petitioner to

belong to the Mahadeo Koli community. The Scrutiny Committee has found that all the relevant entries in the School records between 1928 and 1950 pertaining to the great grant father, grant father, father and uncles of the petitioner show them as Kolis or Sonkolis. In the circumstances, the claim of the petitioner that he belongs to the Mahadeo Koli Scheduled Tribe has been rejected.

3. The Scrutiny Committee has in arriving at the finding that the Petitioner does not belong to the Mahadeo Koli community, acted on the basis of the material on the record. An enquiry was conducted by the Vigilance Cell which revealed that entries in the school records dating back to 1928 of the great grand father of the petitioner belied the claim that the petitioner belongs to the Mahadeo Koli Community. The entries which related to the great grand father, grand father, father and uncles of the petitioner relate to the period from 1928 to 1950. The Committee was, therefore, justified in placing reliance on those entries which were of significant probative value. This Court is not a Court of Appeal over findings of fact which have been arrived at by the Scrutiny Committee, that position being settled by the judgment of the Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . In fairness, it must be stated that no serious attempt was made on behalf of the petitioner to challenge the finding of the Scrutiny Committee in the submissions urged by Counsel before this Court.

4. This only point which was urged on behalf of the petitioner, however, was that the services of the Petitioner are liable to be protected by virtue of a Government Resolution dated 15th June 1995 read with a corrigendum dated 24th July 1998. By the Government Resolution dated 15th June 1995, the Koli community, amongst others, has been listed as a Special Backward Class. Paragraph 4 of the aforesaid Government Resolution states that members of those communities which have been listed out as comprising the Special Backward Class category in the resolution who had already been employed in Government or Semi Government service prior to the date of the resolution should not be removed from service. On 24th July 1998, the State Government issued a corrigendum by which paragraph 4 of the earlier resolution came to be amended so as to extend the protection against termination from service to persons employed in Government, Semi Governmental service as well as in statutory Boards, Municipal Councils, Municipal Corporations, Zilla Parishads, Co-operative Banks and Educational Institutions. Learned Counsel urged that in view of the Government Resolution dated 24th July 1998, a person in the position of the petitioner who had been employed prior to the date of the aforesaid resolution, though after the earlier resolution of 15th June 1998 would be entitled to protection against termination of service. In the circumstances, it was urged that even though the claim of the petitioner to belong to a Scheduled Tribe has been rejected by the Scrutiny Committee, his services with the Municipal Council are liable to be protected since he belongs to a Special Backward Class under the Government Resolution dated 15th June 1995. In order to buttress this submission, reliance was sought to be placed on an unreported judgment of a

Learned Single Judge of this Court, A.B. Palkar, J. dated 3rd May 1999 in *Kisan Sulhdeorao Ingle v. The Divisional Controller, Maharashtra State Road Transport Corporation, Amravati* (Writ Petition No. 854 of 1998).

5. While considering the tenability of the submission that has been urged on behalf of the petitioner, it would at the outset be necessary to note that by the Government Resolution dated 15th June 1995, various castes and communities including the Koli Community, came to be constituted into a category designated as a "Special Backward Class". The Resolution states that this has been done taking into account the demand for special concessions, on the ground of socio-economic and educational backwardness, to some other castes and tribes besides those communities which have been specifically declared as Scheduled Castes and Scheduled Tribes in the State. Paragraph 4 of the resolution prescribes that the reservation which is provided for this category would extend to direct recruitment and promotion. Persons from this category who had already entered service prior to the date of the Resolution in Government or Semi Governmental service are directed not to be removed.

6. The Corrigendum issued by the State Government on 24th July 1998 extends the coverage of the earlier resolution dated 15th June 1995. Whereas, the coverage of the earlier resolution was to those persons who had been engaged by the Government or in Semi Governmental Service, the resolution dated 24th July 1998 extends the protection to those engaged by Boards, Municipalities, Municipal Corporations, Zilla Parishads, Co-operative Banks, Government Undertakings and educational institutions.

7. In extending the coverage, the corrigendum issued on 24th July 1998 substitutes paragraph 4 of the earlier resolution with a stipulation providing for an extended coverage of employment. The corrigendum dated 24th July 1998, however, does not alter the cut off date for entry into service that has been prescribed by the learned resolution dated 15th June 1995. The effect of the Corrigendum is that persons belonging to a caste or community designated as a Special Backward Class by the Resolution dated 15th June 1995 and employed in one of the Organisations spelt out in the corrigendum would be entitled to protection, if the date of employment was prior to 15th June 1995. The corrigendum does not stipulate that the cut off date for protection against termination would be extended to 24th July 1998 in respect of service in the Organisations in respect of which extended coverage is provided in the corrigendum.

8. To construe the corrigendum dated 24th July 1998 in the manner suggested by the petitioner would result in an obvious discrimination which could not have been the intention of the Government to create. The acceptance of the submission of the Petitioner would mean that those from the Special Backward Classes who had entered into Government or Semi Government service prior to 15th June 1995 would be protected while those amongst the said class who had entered into the service of Municipalities, Municipal Corporations, Zilla Parishads,

Co-operative Banks, Statutory Boards and Educational Institutions would be protected even if they had entered service thereafter until 24th July 1998. This would have no rational basis and would be anomalous. The submission that has been urged on behalf of the petitioner is contrary to the plain terms of the corrigendum. The corrigendum dated 24th July 1998 only extends coverage in respect of the categories of employment. The cut off date prescribed by the Government Resolution dated 15th June 1995 is not altered by the corrigendum.

9. A Learned Single Judge of this Court, A.B. Palkar, J. in an unreported judgment delivered on 3rd May 1999 in *Kisan Sulhdeorao Ingle v. The Divisional Controller, Maharashtra State Road Transport Corporation, Amravati* (W.P. No. 854/98) held that an employee falling in the Special Backward Class category who was engaged by the Maharashtra State Road Transport Corporation after 15th June 1995, but prior to 24th July 1998 would be entitled to the protection of the Government Resolution dated 15th June 1995. In holding thus, the Learned Single Judge has relied on the following rationale:

In this connection, one thing has to be borne in mind that a government resolution has to be prospective and cannot be made applicable with retrospective effect. The Government does not have powers to issue a notification with retrospective effect which power solely vests in the legislature and cannot be exercised by any other authority exercising the powers of subordinate legislative body. That being the case, the amendment will take effect from 24-7-98 from when it is made applicable to the statutory bodies like M.S.R.T.C. and the petitioner has entered into service prior to that date and his claim of belonging to Mahadeo Koli community having been invalidated, he thus continues to be belonging to Koli community which is a special backward caste and merely by invalidation of the claim of belonging to Scheduled tribe, his services cannot be terminated."

10. We are unable to accept the view of the Learned Single Judge. The Learned Single Judge has premised the judgment on the basis that Government Resolutions can only be prospective and not retrospective. The Learned Judge consequently held that the amendment to the earlier Resolution dated 15th June 1995 will take effect from 24th July 1998 when it was made applicable to statutory bodies. With respect, we hold that this approach is not correct. There arises no question as regards the retrospectivity of the corrigendum dated 24th July 1998. The earlier Government resolution of 15th June 1995 granted protection against termination from employment to those persons belonging to specified castes and communities designated as a Special Backward Class, provided they had entered Government or Semi Governmental service prior to the date of the Resolution. The Corrigendum which was issued on 24th July 1998 extends the protection that was conferred by the earlier Resolution to employment in additional categories such as Municipal Corporations, Municipalities, Statutory Boards. Co-operative Banks and Educational Institutions. There is no question of the corrigendum dated 24th July 1998

having a retrospective effect or of disturbing any vested rights. All that it does is to extend protection to additional categories of employment, over and above those which were recognised in the original Resolution dated 15th June 1995. But for the corrigendum dated 24th July 1998, persons from those communities listed as a Special Backward Class would not be entitled to avail of the protection of service if they were in the employment of Municipal Corporations, Municipalities, Boards, Co-operative Banks and educational institutions. These categories of employment were brought within the ambit of protection on 24th July 1998. However, the cut off date stipulated in the basic Government of a vested right nor any retrospectivity. There was indeed no vested right for those engaged in the additional categories of employment which were brought into the fold of a concession on 24th July 1998. We accordingly overrule the decision of the Learned Single Judge.

11. There is no dispute about the fact that the petitioner entered the service of the Panvel Municipal Council after 15th June 1995. The petitioner is in the circumstances, not entitled to the benefit of the Resolution dated 15th June 1995 read with the corrigendum dated 24th July 1998.

12. There is no merits in the petition. The Petitioner is accordingly dismissed. No costs.