

(2017) 04 BOM CK 0068
In the Bombay High Court
Case No : 9981 of 2014

Shri Shamsingh Narayan Rajput

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0068

Hon'ble Judges : V.K.Tahilramani, M.S.Karnik

Bench : DIVISON BENCH

Advocate : N.V.Bandi Wadekar, Sagar Mane, N.C.Walimber

Judgement

1. Rule. By consent of the parties, Rule is made returnable forthwith and the matter is heard finally.
2. The petitioner was appointed as a Store Keeper-cum-Clerk-Accountant on 08th December 1964 on the establishment of State Government. From 1976 till 1996, the petitioner was promoted from time to time. On 30 th June 2001 on reaching the age of 58 years the petitioner superannuated.
3. As the petitioner was denied retirement benefits, the petitioner filed Original Application No.633 of 2003 before the Maharashtra Administrative Tribunal, Mumbai. By Judgment and Order dated 26th July 2004, the Tribunal allowed the application and directed the release of Gratuity within a period of three months. Paragraph 2 of the Order directs that the pension shall be finalized and commutation of pension shall be paid to the petitioner after the

caste claim is decided, taking into consideration the decision of the Caste Scrutiny Committee.

4. By order dated 4th January/24th February, 2005, the Caste Scrutiny Committee invalidated the caste claim of the petitioner that he belongs to caste Rajput Bhamta. A Writ Petition was filed against the order of the Caste Scrutiny Committee before the Aurangabad Bench of this Court. The said Writ Petition was dismissed by Judgment and Order dated 27th June, 2007. The petitioner applied for review of the Judgment and Order. By order dated 3 rd March, 2011 the Review Petition was rejected.

5. On 15th April, 2009, the District Health Officer passed an order relying upon Government Resolution dated 23 rd May, 2001 that all retirement benefits granted to the petitioner should be withdrawn as the caste certificate of the petitioner has been invalidated. A direction was issued not to pay pensionary benefits to the petitioner. Being aggrieved by the said action, the petitioner filed Original Application No. 633 of 2003 before the Tribunal. The learned Member of the Tribunal rejected the Original Application by an order dated 27th April 2010. Paragraph 7 of the order of the Tribunal reads thus :-

"7. It is admitted position now that the applicant's Writ Petition against the Caste Scrutiny Committee's decision has been dismissed and the Review Application is pending before the Hon'ble High Court, in which no interim order has been passed. Thus, as things stand today, the applicant's Caste Certificate is invalid. Accordingly, he has no claim to any pensionary benefits until he succeeds in the Review Petition. Besides, it has been brought to my attention that even in the Review Application before the High Court, the applicant has sought relief to release pension and pensionary benefits. Hence, on the ground of seeking same relief in multiple fora, this Original Application also is not maintainable."

6. The petitioner challenged the said order of the Tribunal dated 27th April 2010 by filing Writ Petition No. 5420 of 2011 in this Court. The petitioner contended that neither the original

appointment of the petitioner is on a post which is reserved for any reserved category nor the petitioner was promoted to any post which was reserved. The submission in Writ Petition No. 5420 of 2011 of the petitioner was that the petitioner could not have been appointed on a reserved post in as much as in the year 1964, when the petitioner was granted employment he was not possessing the caste certificate which was obtained by him on 24 th March, 1976. This Court by order dated 22th October 2013 was pleased to set aside the order dated 27th April 2010 passed by the Tribunal and remanded the matter back to the Tribunal. At this stage, it would be material to reproduce the relevant paragraphs of the order dated 22 nd October, 2013 passed by this Court in Writ Petition No. 5420 of 2011.

7. We had called upon the respondents to produce the service book of the petitioner. The order dated 14 th October, 2013 passed by this Court records that "Prima-facie we find no entry in the Service Book to show that the original appointment of the petitioner is on a reserved post and there was no entry to show that even the promotions granted to the petitioner were on the reserved post". We granted time to the learned AGP to peruse the Service Book very carefully and to respond on the aforesaid aspect. Today on instructions, she states that atleast in the Service Book, there are no such entries to show that either the original appointment of the petitioner was on a reserved post or the subsequent promotions of the petitioner are on the posts which were reserved.

8. The learned counsel appearing for the petitioner has relied upon various orders under which the petitioner was appointed and promoted. The appointment order dated 30 th November, 1964 does not record that the petitioner was appointed on the reserved post. Even the subsequent orders of promotions granted to the petitioner do not record that the petitioner was appointed against any reserved post.

11. The factual scenario which emerges before this Court is that there is no record available with the State Government to show that the petitioner was appointed on a post reserved for V.J.N.T. category.

12. Even assuming that the petitioner was appointed in the year 1964 on the post reserved for V.J.N.T. category, the petitioner cannot be visited with the consequences provided under Section 10 of the 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. The provision of Section 10 which

contains drastic consequences cannot be allowed to operate retrospectively.

14. The order dated 15th April, 2009 (Exhibit - E to the petition) directs that all retirement benefits shall be withdrawn from the petitioner and he shall not be paid pension. In any event, in the absence of any record to show that the petitioner has taken benefit of reservation, such order could not have been passed. The perusal of the Original Application filed by the petitioner shows that though there is a reference in the Original Application to the communication dated 15 th April, 2009, there is no relief claimed by the petitioner of setting aside the said communication/decision. The perusal of the Original Application shows that there are no averments made that the petitioner has not at all taken the benefit of reservation or even assuming that he has taken the benefit of reservation, he cannot be visited with the consequences provided under the said Act of 2000.

15. The law is well settled. The petitioner will have to first approach the Administrative Tribunal for seeking appropriate relief. The petitioner approached the Tribunal, but the relief claimed therein was incomplete. We must note here that the petitioner superannuated on 30th June, 2001 and his present age is about 70 years.

16. Therefore, instead of dragging the petitioner to file a fresh Original Application, we propose to remand the Original Application by granting the permission to the petitioner to amend the Original Application. When the Original Application was filed, the Review Petition filed by the petitioner for seeking review of the order of this Court, by which the order of the Caste Scrutiny Committee was confirmed was pending. In the context of the pendency of the Review Petition, the petitioner has claimed peculiar reliefs in the said Original Application. The petitioner deserves to be granted permission to incorporate the specific relief of challenging the communication dated 15 th April, 2009 which was not claimed at the time of filing the Original Application. The petitioner will have to be permitted to add the averments to the effect that he was never appointed on a reserved post. Therefore, by condoning the delay, the Tribunal will have to permit the amendment of the Original Application.

7. It is also material to reproduce the relevant

paragraphs of the operative portion of the said order dated 22 nd

October 2013 passed by this Court.

(iii) The Tribunal shall permit the petitioner to carry out the amendment for incorporating additional averments and for incorporating the challenge to the communication dated 15th April, 2009. The petitioner shall also be permitted to amend the prayer clauses in the Original Application ;

(iv) After giving an opportunity of filing a reply to the amended Original Application, the Tribunal shall decide the Original Application afresh. If such amendment is made, the Tribunal shall make an endeavour to decide the

application as expeditiously as possible as the petitioner has not received any retirement benefits for last more

than 12 years ;

(v) It is obvious that the Tribunal shall decide the Original Application in the light of what we have held in this Judgment and Order ;

(vi) It will be open for the petitioner to make an application to the appropriate Authority for grant of provisional pension. If such application is made the same shall be decided within a period of three months from today, in the light of the observations made in this Judgment and Order.

8. Pursuant to the directions of this Court, the petitioner

amended the Original Application taking additional contentions and grounds and also challenged the order dated 15th April 2009.

Additional affidavit-in-reply came to be filed by the respondents No.1

& 2. Upon completion of the pleadings, the Tribunal was pleased to dispose of Original Application No. 888 of 2009 by the impugned judgment and order dated 28th August, 2014. The Tribunal was pleased to set aside the impugned order dated 15 th April 2009 and the matter was remanded back to the respondents for a fresh decision upon careful scrutiny of all the relevant documents at every stage of promotion and appointment.

9. The petitioner impugns this order dated 28th August 2014 of the Tribunal in this Petition.

10. Learned Counsel for the petitioner submits thus :

(i) The petitioner was appointed as a Store Keeper-cum-Clerk-Accountant on 08th December 1964 on the establishment of State Government.

(ii) From 1976 till 1996, the petitioner was promoted from time to time.

(iii) On 30th June 2001 on reaching the age of 58 years the petitioner superannuated. (iv) On 04th January/24th February, 2005, the Caste Scrutiny

Committee invalidated the caste claim of the petitioner that he belongs to caste Rajput Bhamta.

(v) A Writ Petition filed by him against the said order of the Scrutiny Committee was dismissed.

(vi) On 15th April, 2009, the District Health Officer passed an order that all retirement benefits granted to the petitioner should be withdrawn as the caste certificate of the petitioner has been invalidated. Reliance is placed on Government Resolution dated 23rd May 2001.

(vii) The petitioner was appointed on 08 th December 1964 and the caste certificate was obtained by him on 24th March 1976 and therefore according to the petitioner, he could not have been appointed on a reserved post in as much as in the year 1964, when the petitioner was granted employment he was not possessing the caste certificate.

(viii) The original appointment of the petitioner is not on a post which is reserved for any reserved category nor the petitioner was promoted to any post which was reserved.

(ix) This Court in Writ Petition No. 5420 of 2011 has prima facie, found that no entry in the Service Book is there to show that the original appointment of the petitioner is on a reserved post and there was no entry to show that even the promotions granted to the petitioner were on the reserved post.

(x) Even learned AGP perused the Service Book carefully and on instructions stated that there are no entries to indicate anything to this effect.

(xi) Various orders appointing and promoting the petitioner do not indicate that he was ever appointed on reserved post.

(xii) This Court has clearly arrived at a finding that there is no record available with the State Government to show that the petitioner was appointed on the post reserved for VJNT category.

(xiii) This Court has clearly observed that even assuming that the petitioner was appointed in the year 1964 on the post reserved for V.J.N.T. category, the petitioner cannot be visited with the consequences provided under Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 [for short "Act of 2000"]. This Court further held that the provisions of Section 10 which contains drastic consequences cannot be allowed to operate retrospectively. (xiv) This Court was pleased to remand the matter back on account of order dated 15th April 2009 passed by the respondent directing withdrawal of all retirement benefits remained to be challenged in Original Application.

(xv) This Court further observed that even on 22 nd October 2013, when the Court remanded back the matter, the petitioner's age was about 70 years having superannuated on 30th June, 2001.

(xvi) It is the submission of the learned Counsel for the petitioner that the Tribunal completely misdirected itself as regards the true purport of the order passed by this Court on 22nd October 2013.

(xvii) Learned Counsel for the petitioner submits that the Tribunal has misread the order passed by this Court. The Tribunal has proceeded on an erroneous footing that the High Court has directed the Tribunal to decide the matter afresh de hors the observations made by this Court in the order dated 22nd October 2013. In fact in the operative portion in paragraph 17 (v), this Court directed the Tribunal to decide Original Application in the light of what this Court had held in the judgment and order dated 22nd October 2013. Learned Counsel therefore submits that the findings of this Court in judgment and order dated 22 nd October 2013 in Writ Petition No. 5420 of 2011 has attained finality and the Tribunal should have restricted itself only to the challenge of the communication dated 15th April 2009 in the light of what has been held in the judgment and order.

(xviii) Learned Counsel for the petitioner submits that even the Tribunal in paragraph 26 of the impugned order has observed that the respondents are at liberty to move a review application before the High Court to bring the correct facts on record and make a plea to expunge the remarks in this regard.

11. Learned AGP for respondents on the other hand

supported the impugned order. According to him, the respondents were in position to produce several documents before the Tribunal to show that promotion of the petitioner as Administrative Officer shows category as Vimukta Jati (for short "V.J.") and therefore, the promotion was against a reserved post.

12. According to him, the Tribunal has taken into

consideration the reliance placed by the respondents on letter dated 26th March, 1996 of the Director, Health Services wherein as regards the name of the petitioner in DPC proceedings, it is mentioned that the petitioner is considered as V. J. Learned AGP further contends that the respondents explained to the Tribunal the circumstances under which all relevant records could not be produced before the High Court and the same therefore could be produced before the

Tribunal though belatedly. The observations are made by the High Court only because this record could not be produced before the High Court. For all these reasons, learned AGP contends that the Tribunal was justified in remanding the matter back to the respondents for a fresh decision upon careful scrutiny of all relevant documents at each stage of promotion and appointment. According to the learned AGP therefore the order passed by the Tribunal calls for no interference.

13. We have given our anxious consideration to the submissions advanced by the learned Counsel for respective parties. In our opinion, this Court by its order dated 22 nd October 2013 has specifically observed in clause (v) of the operative portion of the order that the Tribunal shall decide the Original Application in the light of what this Court has held in the Judgment and Order by granting liberty to the petitioner to challenge the communication dated 15th April 2009 and remanded the matter back to the Tribunal for a fresh decision. The Tribunal ought to have restricted itself to the challenge of the impugned communication dated 15 th April 2009 in the light of the observations which are made and what has been held by this Court. The Tribunal ought to have noted that the order of this Court of remand was on account of the fact that the petitioner did not challenge the communication dated 15th April 2009, and as the relief claimed in Original Application being incomplete, this Court held that it would be appropriate for him to approach Administrative Tribunal seeking appropriate relief in the first instance. This Court was conscious of the fact that the petitioner superannuated on 30 th June 2001 and his age as on the date of disposal of the Petition was 70 years. Therefore, instead of driving the petitioner to file a fresh Original Application, the matter was remanded back to the Tribunal by granting the permission to the petitioner to amend the Original

Application. It is in this context this Court held that upon challenge to the impugned communication dated 15 th April 2009 consequent upon remand, that the Original Application has to be heard afresh. While remanding the matter back this Court took care to clarify that the Tribunal shall decide the Original Application in the light of what has been held by its judgment and order.

14. So understood, we have no hesitation in concluding that the Tribunal proceeded on an erroneous footing thereby deciding the Original Application afresh de hors what has been held by this Court in the order dated 22nd October 2013. If at all, the respondents were aggrieved by what has been held by this Court, the appropriate course for them was to have challenged the order dated 22 nd October 2013 or sought a review. In fact, the Tribunal in the impugned order has also granted liberty to the respondent to seek review of the order dated 22nd October 2013 to bring the correct facts on record and make a plea to expunge the remarks in this regard. In this light of the matter, it was not open for the Tribunal to have travelled beyond what has been held by this Court. Upon remand of the Original Application, the Tribunal ought to have restricted itself to decide the Original Application in the light of what has been held by this Court. The approach of the Tribunal that it is open for the Tribunal to decide the Original Application afresh upon careful scrutiny of documents at every stage of appointment and promotion is on an erroneous premise and the Tribunal has misread the order of this Court.

15. We cannot loose sight of the fact that even this Court in Writ Petition No. 5420 of 2011 has observed that the petitioner retired way back on 30th June 2001 and his age as on 22nd October 2013 was 70 years.

16. We find that this Court in its order dated 22 nd October 2013 has clearly held in paragraph 11 that there is no record

available with the State Government to show that the petitioner was appointed on a post reserved for V.J.N.T. Category. It is further held that even assuming that the petitioner was appointed in the year 1964 on the post reserved for V.J.N.T. category, the petitioner cannot be visited with the consequences provided under Section 10 of the Act of 2000 as the provision of Section 10 which contains drastic consequences cannot be allowed to operate retrospectively. The respondents have not challenged the order dated 22 nd October 2013 passed by this Court and thus the same has now attained finality.

17. We find that upon remand, the petitioner has made averments in Original Application that admittedly, in the year 1964, when the petitioner was gainfully employed in the Government Service he did not have a caste certificate. He obtained the same only on 24th March 1976, therefore the very entry of the petitioner in the Government Service cannot be said to be on the post reserved for backward class. He has further averred that the same is also the position in respect of promotion received by the petitioner on the higher post till his retirement from the Government Service.

18. Having gone through the order of the Tribunal we notice that as regards initial entry into the service, there is absolutely no material to indicate that the same is on a reserved post. The respondents have not furnished any material before the Tribunal to indicate that the appointment of the petitioner is on the post which is for reserved category.

19. This Court in Writ Petition No. 5420 of 2011 having held that provisions of Section 10 of the said Act of 2000 which contains drastic consequences cannot be allowed to operate retrospectively, the order passed in Writ Petition No. 5420 of 2011 has attained finality. The Tribunal in these circumstances ought not to have remanded the matter back to the respondents for a fresh decision. As

indicated earlier, the petitioner retired way back in 2001 and now his age is 76 years. In this view of the matter, we are inclined to set aside the order of the Tribunal and allow this Petition in terms of prayer clauses (b) & (c) which read thus :

"(b) By a suitable writ, order or direction this Hon''ble Court be pleased to quash and set aside the impugned judgment and order dated 28/08/2014 in Original Application No. 888 of 2009 passed by the Hon''ble Maharashtra Administrative Tribunal, Mumbai and accordingly, the said Original Application may kindly be allowed with costs.

(c) By a suitable writ, order or direction this Hon''ble Court be pleased to quash and set aside the impugned order dated 15/04/2009 issued by the Respondent No.3 directing to recover from the Petitioner all the pensionary benefits received by him and further not to pay provisional pension to the Petitioner, and accordingly the Respondents be directed to pay all the retirement benefits to the Petitioner such as regular pension, gratuity etc."

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