

(2014) 08 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition Nos. 3236 of 1999, 25 of 2002 and 6228 of 2004

Sunanda Bansi Koparge

APPELLANT

Vs

Mahatma Phule Krishi Vidyapeeth

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2014) 6 ALLMR 35 : (2015) 4 BomCR 537

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

Bench : Division Bench

Advocate : S.R. Barlinge, Advocate for the Appellant; M.N. Navandar, Advocate and A.V. Gondhalekar, AGP, Advocate for the Respondent

Judgement

A.M. Badar, J.—As the points for determination in the instant petitions filed by Sunanda Koparge are interlinked, all of them are being decided by this common judgment.

2. Facts necessary for deciding these petitions are thus:-

Writ Petition No. 3236 of 1999

[i] By this petition, petitioner Sunanda Koparge, Clerk, has challenged the order of her dismissal from service issued by the respondent No. 1-Mahatma Phule Krishi Vidyapith, Rahuri, (hereinafter referred to as, "the respondent Krishi Vidyapith"). It is her case that, her grandfather shifted from Karnataka to the State of Maharashtra and settled at Shevgaon, District Ahmednagar, prior to 1950. She belongs to Lingder community, which is recognized as Scheduled Caste. On her application, the Executive Magistrate, Shevgaon, issued a caste certificate dated 17.8.1983, stating that she belongs to Hindu Lingder Scheduled Caste. Thereafter, by an order dated 19.9.1984, she came to be appointed as a Clerk with the respondent Krishi Vidyapith against a post reserved for Scheduled Caste category. It was on 22.9.1994, that a show cause notice was issued to her asking her to explain, why Departmental Enquiry should not be initiated against

her. It was alleged therein that there is discrepancy in respect of her caste in School Leaving Certificate and the certificate issued by the Tahsildar, Shevgaon. Though not mentioned in the show cause notice, it needs to mention here that in the School Leaving Certificate of the petitioner, her caste is shown as "Lingayat Wani". It was further averred by respondent Krishi Vidyapith that the petitioner misguided and cheated while securing employment from Scheduled Caste category. On 10.10.1994, the petitioner replied this show cause notice, by contending primarily that if the validity of her caste certificate is doubted, then, it be referred for verification to the Caste Scrutiny Committee. Not satisfied with her reply, respondent Krishi Vidyapith initiated a Departmental Enquiry against her and accordingly, charge sheet dated 1.7.1996 was issued. Two charges were levelled against the petitioner and they can be summarized as under:-

[a] The petitioner submitted false caste certificate for getting herself selected as a Clerk from the Scheduled Caste Category;

[b] The petitioner was not qualified or eligible for appointment from reserved category but, still, she secured appointment from reserved category.

[ii] After conducting regular Departmental Enquiry, the Enquiry Officer submitted a report, copy of which was endorsed to the petitioner. The petitioner submitted her explanation pointing out that he belongs to Lingder community and that she did not deceive the respondent Krishi Vidyapith.

[iii] Not satisfied with her reply, the respondent Krishi Vidyapith, by impugned order dated 31.5.1999, dismissed the petitioner from service.

Writ Petition No. 25 of 2002.

[i] Petitioner - Sunanda Koparge, by this petition, is praying for quashing and setting aside the order dated 7.3.2000 passed by respondent No. 2 Scrutiny Committee invalidating her caste claim for Lingder Caste. According to the petitioner, by order dated 23.9.1999 passed by this court in W.P. No. 3236 of 1999 filed by her, respondent Krishi vidyapith i.e. her employer was directed to submit her caste certificate for scrutiny to respondent No. 2 - Scrutiny Committee. In the process of scrutiny of her caste claim for Lingder caste, the Scrutiny Committee called for report from the Vigilance Cell. Accordingly on 31.1.2000, the Vigilance Cell submitted report and that report was forwarded to the petitioner vide letter dated 18.2.2000. The petitioner replied to that report of vigilance Cell, by communication dated 7.3.2000. However, the Scrutiny Committee rejected the caste claim of the petitioner for Lingder caste by the impugned order dated 7.3.2000.

[ii] Main ground of challenge to the impugned order is that, Sharad Mane, Vigilance Officer and Nagnath Nimbalkar, District Social Welfare Officer from the Caste Scrutiny Committee were trapped by the Anti-Corruption Bureau in cases under the Prevention of Corruption Act, 1988 and two officers involved in the verification of her caste claim were in hurry to decide the same. It is further

averred that reply submitted by her was not considered by the Scrutiny Committee while adjudicating her caste claim.

Writ Petition No. 6228 of 2004.

[i] Petitioner - Sunanda Koparge, by this petition, is again challenging the order dated 31.5.1999 passed by her employer - respondent Krishi Vidyapith, dismissing her from service.

[ii] According to her, she has challenged this order by filing a petition bearing No. 3236 of 1999 and during the pendency of that petition, this Court, in the matter of Anil Vasantrao Shirpurkar Vs. State of Maharashtra and Others, has held that initiation of proceedings and termination of services of the employees on the ground that they do not belong to scheduled tribe beyond a reasonable period of 2 years, is arbitrary and illegal. According to the petitioner, in her case, the proceedings were initiated in the year 1994 i.e. after a lapse of about 10 years from her appointment in the year 1984.

3. Mr. Baglinge, learned counsel for the petitioner contended that way back in the year 1984, on the basis of a certificate issued by the Executive Magistrate showing that the petitioner belongs to Lingder Scheduled Caste category, she was appointed as a Clerk by the respondent Krishi vidyapith. After a lapse of about more than 10 years, the petitioner was served with a show cause notice and subjected to a Departmental Enquiry, which resulted in her dismissal.

[ii] Mr. Barlinge, learned counsel for the petitioner further argued that the impugned order of dismissal passed on the basis of Enquiry Report that the petitioner submitted a false caste certificate for Lingder caste, is per-se illegal. The enquiry Officer is not at all empowered to adjudicate or determine the caste of the petitioner.

[iii] According to learned counsel, Special Forum has been established to verify the caste claims and determination of the caste claims of an employee by the Departmental Enquiry officer or holding that the caste claim of an employee is false, is absolutely illegal. The issue regarding correctness of caste certificate cannot be gone into by holding a domestic enquiry and the order of dismissal passed on such finding in the domestic enquiry needs to be quashed and set aside.

[iv] By placing reliance on the judgment of "Kavita Salunke vs. State of Maharashtra" reported in 2012(5) Mh. L.J. 921, decided by the Honourable Apex Court, the judgment in the matter of "Shalini Vs. New English High School Association and others", reported in 2014(2) Mh. L.J. 187 and the judgment in W.P. No. 3014 of 2004 "Rakesh Dafade Vs. State of Maharashtra and others", with companion petitions, decided by the Division Bench of this Court at the principal seat, on 4th April, 2014 and the judgment in W.P. No. 1873 of 1999 "Chintaman Shivram Sonawane Vs. State of Maharashtra and others" dated 19th June, 2014, delivered by the Division Bench of this Court at Aurangabad, Mr.

Barlinge, argued that it cannot be said that the petitioner has submitted a false caste certificate for claiming employment, by manipulation or fabrication of record. As such, the petitioner is entitled to protection against ouster.

[v] Mr. Barlinge, learned counsel also placed reliance on the following judgments:

[i] Hitesh Dasiram Murkute Vs. State of Maharashtra and Others,

[ii] "Santosh Singwa Padoti Vs. Caste Scrutiny Committee and another" reported in 2006 (Supp.) Bom. C.R. 797;

[iii] "Preeti Gopalrao Kamble Vs. State of Maharashtra" decided by the Division Bench at Aurangabad in W.P. No. 3627 of 2011, as well as judgment of the Honourable Supreme Court in "Action Committee on issue of Caste Certificates to Scheduled Castes and Scheduled Tribes in the Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, and judgment in the matter of Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others,

Placing reliance on above judgments, he argued that the caste claim of the petitioner cannot be rejected only on the ground that the original place of residence of the parents of the petitioner was from State of Karnataka and the petitioner cannot be compelled to obtain caste certificate from the State of Karnataka.

4. Per contra, Mr. Navandar, learned counsel appearing for the respondent Krishi Vidyapith submitted that because of discrepancy in the caste of the petitioner mentioned in the School Leaving Certificate and the Caste Certificate issued by the Executive Magistrate, the matter was referred to the Director, Tribal Research and Training Institute Pune by letter dated 6.6.1986. According to him, in the School Leaving Certificate of the petitioner her caste was shown as "Lingayat Wani", which is not a Scheduled Caste, whereas, the caste certificate issued by the Executive Magistrate, Shevgaon, shows her caste as "Lingder". According to learned counsel, the Director Tribal Research, Pune, referred the case of the petitioner to the Director of Social Welfare, Pune, who, in turn, informed the respondent Krishi Vidyapith that verification of the caste of the petitioner does not fall within his purview. According to Mr. Navandar, the Agriculture and Cooperation Department of the State, vide communication dated 10.6.1987, informed that the caste claim of the petitioner be referred to the District Magistrate for verification and accordingly, the matter was referred to the Collector/District Magistrate, Ahmednagar. However, by communication dated 8.6.1993, the District Magistrate invalidated the caste claim of the petitioner. The petitioner showed her inability to produce caste certificate showing her to be belonging to Lingder caste. As such, the Departmental Enquiry was conducted and it was found that the charges were proved against the petitioner and, therefore, she was dismissed.

5. Mr. Navandar, learned counsel further contended that the findings of the

Enquiry Officers are based on record and, therefore, this court cannot interfere with those findings. Learned counsel contended that penalty of dismissal awarded to petitioner is perfectly proportionate to the proved misconduct and as such, is not liable to be interfered with. Reliance is placed by the learned counsel on the ruling in the matter of Deputy Commissioner, KVS and Others Vs. J. Hussain, and State Bank of India and Others Vs. Samarendra Kishore Endow and Another,

6. Mr. Navandar, learned counsel further submitted that as petitioner does not belong to Lingder scheduled caste, her appointment as a clerk is illegal and she cannot be said to have held a civil post for claiming constitutional guarantee under Article 311 of the Constitution of India. He also placed reliance on the judgment in the matter of R. Vishwanatha Pillai Vs. State of Kerala and Others,

7. According to Mr. Navandar, the petitioner is not entitled for protection of service on rejection of her caste claim even if it is assumed that no case of any fraud being played while securing employment is made out. He placed reliance on "Nutan Vidarbha Shikshan Mandal vs. Presiding Officer, School Tribunal, Amravati and others " 2007(2) Mh. L.J. 440 and State of Maharashtra and Others Vs. Sanjay K. Nimje,

We have gone through the pleading of parties as well as the judgments cited by both the parties.

8. At the outset, it would be apposite to refer to the decision of a Full Bench of this Court in the matter of "Shweta Santlal Lal Vs. State of Maharashtra and others" reported in 2010(2) Mh. L.J. 904. The Full Bench of this court, considered the following question in that matter:-

Whether a person, who was not ordinarily resident as on the date of relevant presidential notification in the area that now constitutes the State of Maharashtra will be entitled to the benefit of reservation in the State.

This reference was arising out of the decision of the Division Bench of this Court in "Hitesh Dasiram Murkute Vs. State of Maharashtra" (cited supra) and "Santosh Padoti" (cited supra), relied on by the learned counsel for the petitioner.

9. After examining the issue involved in the reference, the learned Full Bench of this Court held that migrants in the State of migration will not be entitled to the benefit of reservation in the State of migration, but, will continue to enjoy the benefits in their home State or State of origin. It is further held that, if a person migrates to a geographical area forming part of another State, after the date of presidential notification, such a person will be treated as a migrant. So also, the children of such migrants born after the date of presidential notification will be entitled to the benefits of reservation in the State, where their parents were ordinarily resident. The judgment of the Honourable Supreme Court in the matter of "Action Committee" (supra) was also considered by the Full Bench of this court and the view taken in "Hitesh D. Murkute, Santosh Padoti, (supra) and other

judgments was overruled by the learned Full Bench of this Court.

10. It is thus clear that in case of migrants belonging to a scheduled caste not ordinarily resident as on 10.3.1950 in the areas that now constitutes the State of Maharashtra and in case of scheduled tribe, considering Rule 5 of the Maharashtra Scheduled Tribe (Regulation of Issuance) Rules, 2003, on 6.9.1950, would be entitled to benefits of reservation as Scheduled Caste/Scheduled Tribe in the State of Maharashtra, as per the verdict of the Honourable Full Bench in case of Shweta Lal (Supra).

11. Be that as it may, let us examine, whether action of the respondent Krishi Vidyapith, in dismissing the petitioner by the impugned order dated 31.5.1999, on the basis of Departmental Enquiry, can be justified or not. It is well settled that in the matter of Departmental Inquiries, scope of judicial interference is very limited. Irrationality and perversity are considered to be main grounds of judicial review in departmental action. In such cases, finding of the enquiry Officer can be interfered only if there is violation of principles of natural justice or statutory regulations, if decision is vitiated by consideration of extraneous evidence and merits of the case. The finding of the Enquiry Officer can be assailed if the conclusions arrived at on the very face of it are so illegal, arbitrary or capricious that no reasonable person could have arrived at.

12. When charges are proved, it is for the Disciplinary Authority to decide as to what kind of punishment is to be imposed on such delinquent employee. Nature and gravity of misconduct, past conduct, nature of duties and responsibilities assigned to the delinquent, previous penalty, if any, and several other factors play a role in deciding the quantum of punishment.

13. In the instant case, undisputedly, the petitioner was appointed as a Clerk from Scheduled Caste Category vide order dated 19.9.1984. For seeking said appointment, the petitioner submitted caste certificate dated 17.8.1983 issued by the Executive Magistrate, Shevgaon, District Ahmednagar, certifying her to be belonging to Hindu Lingder falling under the category of Scheduled Caste. It is not in dispute that the School Leaving Certificate of English School, Shevgaon, shows that the petitioner belongs to Lingayat Wani and on noticing this discrepancy, the respondent Krishi Vidyapith issued a show cause notice to the petitioner on 22.9.1994, contending that she misguided and cheated the respondent Krishi Vidyapith while securing employment from reserved category. Ultimately, charges came to be framed against the petitioner alleging that she submitted false caste certificate for getting herself selected as a Clerk from reserved category meant for Scheduled Caste and that though not qualified or ill-eligible, she secured appointment as a clerk from Scheduled Caste Category.

14. It is apposite to mention that in the reply dated 10.10.1994 to the show cause notice submitted by the petitioner, which at Annexure C to the Writ Petition No. 3236 of 1999, the petitioner has categorically contended that if there is doubt regarding genuineness of her caste certificate then, the matter may be

referred to the Caste Verification Committee in the Directorate of Social Welfare at Pune. She contended that no disciplinary action may be taken against her unless the caste certificate issued to her by the competent authority is declared to be illegal. Despite this stand of the petitioner, Departmental Enquiry was conducted against her and perusal of the report of the Enquiry Officer, at "Exhibit F", in the said writ petition, shows that on the basis of the documents produced on record, the Enquiry Officer came to the conclusion that the petitioner/delinquent has submitted false caste certificate and cheated her employer i.e. respondent Krishi Vidyapith and got herself appointed as a Clerk.

15. It is worthwhile to note that no oral evidence was adduced in the said Departmental Enquiry. The Enquiry Officer, mainly relied on the letter of the Collector, Ahmednagar dated 8.6.1993 and came to the conclusion that vide said letter, the Collector, Ahmednagar has invalidated the caste certificate issued by the Executive Magistrate, Shevgaon. Hence, It was concluded that the charges levelled against the petitioner are proved. It is not the case of the respondent Krishi Vidyapith that caste certificate of the petitioner dated 17.8.1983 issued by the Executive Magistrate, Shevgaon, District Ahmednagar, stating that the petitioner belongs to Hindu Lingder Scheduled Caste, is not the certificate issued by the office of the said authority. In other words, the respondent Krishi Vidyapith has not alleged that said caste certificate is fake, forged or bogus certificate, not issued by the said authority.

16. Record shows that Respondent Krishi Vidyapith had referred said caste certificate to the Director, Tribal Research, vide letter dated 6.6.1986 and Director, Tribal Research, in turn, referred it to the Director of Social Welfare, for the reason that caste certificate of a person belonging to Scheduled Caste is scrutinized by the Director of the Social Welfare Department. This letter is placed on record by the respondent Krishi Vidyapith, at Exhibit R-3.

17. Instead of verifying the caste claim of the petitioner, the Director, Social Welfare, Pune, vide his letter dated 14.8.1986 (Exhibit R-4 in W.P. No. 3236/1999) sent it back to the respondent Krishi Vidyapith, on the pretext that the work of scrutiny of caste claim of the petitioner does not fall within its purview/jurisdiction. Then, the Desk Officer of the Agriculture and Cooperation of the Government of Maharashtra, vide letter dated 10.6.1987, informed the respondent Krishi Vidyapith that the caste certificate of the petitioner be got examined from the Collector/District Magistrate of the said District. Pursuant to the this communication, caste certificate of the petitioner was sent to the Collector/District Magistrate, Ahmednagar, who, by letter dated 8.6.1993, informed the respondent Krishi Vidyapith that the petitioner originally hails from Karnataka State and, therefore, her caste certificate cannot be accepted and she be instructed to obtain a caste certificate from the concerned Collector from Karnataka State. (Exhibit R-6).

18. With this record, it becomes crystal clear that the Caste Certificate of the petitioner issued by Executive Magistrate, Shevgaon, was not at all scrutinized or

verified by any of the authorities of the State. Each authority indulged in passing the buck. In the result, the caste certificate issued by Executive Magistrate, Shevgaon was never verified and scrutinized in order to determine whether really the petitioner belongs to Scheduled Caste or not. Ultimately, the Collector/District Magistrate opined that the petitioner be directed to obtain caste certificate from the place of her origin i.e. Karnataka State.

19. With such material on record, the respondent Krishi Vidyapith as an employer, in our view, has completely erred in issuing charge sheet to the petitioner on 1.7.1996, alleging that she submitted false caste certificate for getting herself selected as a Clerk from Scheduled Caste Category. The certificate submitted by petitioner which was issued in her favour by the Executive Magistrate, was never invalidated by a competent Scrutiny Committee appointed by the State. As such, the finding of the Enquiry Officer that petitioner produced false caste certificate and cheated the respondent Krishi Vidyapith, is totally perverse. Reliance placed by the Enquiry Officer on the communication dated 8.6.1993 issued by Collector/District Magistrate Ahmednagar for coming to the conclusion that the Collector has invalidated the caste certificate issued by Executive Magistrate, Shevgaon, was totally misplaced, as the said authority never examined the caste claim of the petitioner. The Collector/District Magistrate by this letter has not come to the conclusion that the caste claim of the petitioner for Lingder Scheduled Tribe is false. The Collector/District Magistrate has only communicated his opinion that as the petitioner originally hails from Karnataka, the caste certificate obtained from Executive Magistrate, Shevgaon, cannot be accepted and she be informed to obtain caste certificate from the Collector of the concerned District of the State of Karnataka. In the light of this discussion, the impugned order of dismissal issued on the basis of such enquiry report cannot be upheld.

20. On conclusion of the Departmental Enquiry, the Enquiry Officer has virtually come to the conclusion that the petitioner does not belong to Lingder Scheduled Caste, by holding that her caste certificate is false. Apart from perversity of this finding, it also suffers from lack of jurisdiction. The Enquiry Officer arrogated to himself with the job of determination of the caste of the petitioner and concluded that she does not belong to Lingder caste, by holding that the caste certificate produced by her is false. The issuance of caste certificate is the work entrusted to the competent authority by the State and the Scrutiny Committees are constituted by the State for the purpose of scrutiny of caste certificates produced by the citizens. In the instant case, the Enquiry Officer has virtually exceeded his jurisdiction by holding that the petitioner does not belong to Lingder caste, by entering into the issue regarding correctness of the certificate issued by the Executive Magistrate, Shevgaon. Such exercise is totally without jurisdiction and, therefore, it needs to be held that the conclusion arrived at by the Enquiry Officer is wholly arbitrary, illegal and perverse.

21. At this stage, it is apposite to refer to the ruling in the matter of "Sudhakar

Vitthal Kumbhare" (cited supra). In somewhat similar situation, Honourable Apex Court has held, in para. 6, thus:-

"Here we find that the Maharashtra State Electricity Board acting upon the direction of the State Government has reverted the appellant without referring the matter to the Scrutiny Committee which was not the correct way to deal with the appellants case. In fact in such a situation the employer was required to refer the question before the Scrutiny Committee which admittedly had been constituted and established for coming to the matter. We may notice in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, this Court observed:

"The admission wrongly gained or appointment wrongly obtained on the basis at false social status certificate necessarily has the effect of depriving the genuine Schedule Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the in a duties by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false Status certificate."

Similar observations have been made in Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, This aspect of the matter has been noticed following the observations of this Court in Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, in Punit Rai Vs. Dinesh Chaudhary,

"3. As regards prayer (b) read with direction No. (iv) of the order of this Court, we too appreciate the inconvenience caused due to vast area of the State. Therefore, instead of one Committee of three officers, there will be three Scheduled Tribe/Caste Scrutiny Committee comprising of five members with quorum of three members as suggested in para 4 of the directions to take a decision. At Pune, Nasik and Nagpur, six caste Scrutiny Committees for Denotified Tribes, Nomadic Tribes, other backward classes and the Special Backward category in existence at Mumbai, Pune, Nashik, Aurangabad, Amravati and Nagpur would continue to scrutinize the certificates issued by the respective officers and take a decision in that behalf. In this regard it is also suggested by Shri Dholakia, learned Senior Counsel for the applicant that in case any certificate has been wrongfully, refused by the certificate issuing authority, the aforestated Committees also would go into the question and decide in that behalf whether refusal was wrongful and in case it finds that the refusal was wrongful, they create liberty to direct the authority to grant the certificate.

5. With regard to prayer (d), along with the vigilance cell, one research officer/

tribal development or social welfare officer would be associated in finding the social status of eligibility of the officers."

In the light of ratio of this judgment, the impugned order of dismissal of the petitioner cannot be sustained. Considering the fact that the impugned order of dismissal is being set aside as the same is based on perverse Enquiry Report, it is not necessary to go into the question as to whether the punishment imposed is proportionate or not.

22. Now, let us examine, whether the order dated 7th April, 2000, passed by respondent No. 2 Caste Certificate Scrutiny Committee, Nasik, in terms of the directions issued by this Court on 22.9.1999, in W.P. No. 3236 of 1999, is perverse, as alleged by the petitioner. We have peruse the impugned order dated 7.4.2000, passed by the Caste Certificate Scrutiny Committee, Nasik. It is seen that the Scrutiny Committee had called for the report from the Vigilance Cell prior to verification of the caste claim of the petitioner. The impugned order further shows that the petitioner was asked to submit documents in support of her caste claim and accordingly, the petitioner had furnished several documents, including her School Leaving Certificate issued by the Primary School, certificates issued to her as well as to her brother by Gram Sevak, Shevgaon, caste certificate issued to her by the Executive Magistrate and documents issued to her family members from the various agencies. The impugned order also makes it clear that the Caste Scrutiny Committee had furnished a copy of report of the Vigilance Cell for the purpose of seeking her explanation and the Committee had then considered her explanation dated 7.3.2000. It is thus, clear that all principles of natural justice were duly followed by the respondent No. 2 Scrutiny Committee while scrutinizing the caste claim of the petitioner. The scrutiny committee found that in the Service Book as well as the School Leaving Certificate of the petitioner, her caste is recorded as "Lingayat Wani". The respondent No. 2 Scrutiny Committee has also observed that though the Sarpanch/Gram Sevak, Shevgaon and President of the Maharashtra Veershaiv Sabha, Pune, had issued caste certificates, it is not known as to on the basis of which evidence such certificates are issued. The fact that in the birth register, caste of the elder brother of the petitioner is not recorded also weighed while determining the validity of the caste claim of the petitioner. Respondent No. 2 Scrutiny Committee recorded a finding that the petitioner was unable to furnish any factual details, as to whether the forefathers of the petitioner were required to suffer untouchability because of the unwanted practice adopted by the Society at that time. In other words, respondent No. 2 Scrutiny Committee, as such, came to the conclusion that the petitioner has failed to prove her claim for Lingder - a Scheduled Caste. The order of Respondent No. 2 Scrutiny Committee is well reasoned order, based on the evidence before the said committee and it was passed by following the principles of natural justice. No fault can be found with the decision making process adopted by respondent No. 2 committee and it cannot be said that the impugned order invalidating caste claim of the petitioner is the result of perverse appreciation of the evidence on record.

23. The contentions of the petitioner that the impugned order rejecting her caste claim is liable to be set aside because two Officers involved in verification of her caste claim were in hurry; Sharad Mane, Vigilance Officer and Nagnath Nimbalkar, District Social Welfare Officer, were trapped by the Anti-Corruption Bureau, are noted only for rejection. Such allegation cannot, ipso facto render the order of respondent No. 2 Committee illegal, as it is not pointed out as to how such events are having nexus with invalidation of the caste claim by the impugned order. The contentions are irrelevant. In the result, challenge to the order invalidating the caste claim of the petition in W.P. No. 25 of 2002 fails.

24. The order of dismissal dated 31.5.1999 passed by the respondent Krishi Vidyapith is also challenged on the ground that action against the petitioner was initiated after 10 years of her entry in service. In support of this contention, reliance is placed on Anil Vasantrao Sirpurkar Vs. State (supra), wherein, the Division Bench of this Court on facts has held that proceedings for verification of caste claim should be initiated within a reasonable time. In the said case, the petitioner was appointed in the year 1994, he was regularized in the year 1996 and alleging that he did not belong to Scheduled Tribe, proceedings were initiated in July, 2001. Since the proceedings were initiated after a period of two years, it was held in that case that the action so taken deserves to be quashed. The said judgment was considered by the Full Bench of this Court in the matter of "Prakash Namdeorao Kedar Vs. Union of India" reported in 2003(4) Mh. L.J. 333, and the relevant observations of the learned Full Bench found in para. 47 can be reproduced with advantage, which read thus:-

"47. A careful scrutiny of the judgments and the law laid down by this Court in cases of Chandrabhan Nandanwar's case (supra), Anil Shirpurkar's case (supra) and Prakash Pralhad Ingle's case (supra) as well as the law laid down by the Apex Court in cases of G. Sudarsan (supra) and Central Excise Jaipur (supra), the conclusions, which we have arrived at the legal proposition which finally emerges, is summarized, in nutshell, as follows:-

The employer/Government, is required to refer the Caste Certificate of its employee for verification to the Caste Scrutiny Committee as early as possible from the date of the order of appointment of such employee. However, if there is a delay in making reference for some valid reasons, the reference made by the employer beyond the period of two years is neither invalid, nor any order passed by the Caste Scrutiny Committee on such reference is null and void. In case of an employee, who has obtained a Caste Certificate by playing fraud, the employer is entitled to refer the caste claim of such employee to the Caste Scrutiny Committee as and when such fraud is detected and the question of applying any kind of limitation in this regard does not arise."

It is thus clear that the initiation of proceedings of reference to the Scrutiny Committee after a period of 2 years cannot be said to be invalid and it cannot be said that no reference can be made by the employer for scrutiny of the caste claim of the employee beyond the period of 2 years.

In the case at hand, respondent Krishi Vidyapith had referred the caste claim of the petitioner to the Director, Tribal Research and Training Institute on 1.6.1986 and ultimately, it was referred to the Collector/District Magistrate, Ahmednagar, because of refusal of various authorities to examine the same. Therefore, it cannot be said that merely because the reference was made beyond 2 years, same is invalid. Even otherwise, this Court, during the pendency of W.P. No. 2326 of 1999 had directed reference of the caste claim of the petitioner to the respondent No. 2 Scrutiny Committee and accordingly, same is examined by the competent Scrutiny Committee. Therefore, the impugned order of dismissal cannot be quashed only for the reason that the reference was belated, though the same is required to be quashed for other reasons recorded in the foregoing paragraphs.

25. Having held that the impugned order dated 31.5.1999, dismissing services of the petitioner passed by respondent Krishi Vidhapith cannot be upheld and keeping in mind the fact that the impugned order of respondent No. 2 Scrutiny Committee dated 7.4.2000 invalidating the caste claim of the petitioner cannot be faulted, let us examine, whether the petitioner would be entitled to any relief.

26. By relying on the judgments in the matter of Kavita Salunke, Shalini, Rakesh Dafade and Chintaman Sonawane in W.P. No. 1873 of 1999 (cited supra), it was contended on behalf of the petitioner that on quashment of the impugned order of dismissal, the petitioner would be entitled for reinstatement with continuity in service. It is submitted that as there is no reason to hold that the petitioner had fabricated or falsified the particulars of not belonging to the Scheduled Caste only with a view to obtain undesirous benefit for securing employment. It is argued that, therefore, the benefit of protection against the ouster, cannot be denied to her. It is further argued that petitioner cannot be said to have submitted a false caste certificate and as such, she need to be extended service protection, in consonance with the policy prescribed by the State Government in its resolution dated 15th June, 1995.

27. We are unable to persuade ourselves for such a course of action. Reinstatement can be granted only when it is established that a sanctioned post is available and is vacant for accommodating the petitioner. The petitioner is dismissed from service by order dated 31.5.1999 i.e. prior to about 15 years. There is no iota of evidence on record to show that the sanctioned post is available and vacant with the respondent Krishi Vidyapith for accommodating the petitioner and that too, after a lapse of 15 years from her dismissal. As such, the petitioner cannot be granted reinstatement. At the same time, the order of dismissal passed pursuant to Departmental Enquiry having held in excess of jurisdiction also is required to be set aside. So also, the judgment of Scrutiny Committee invalidating the caste claim is upheld. Considering all the above facets of the matter, we deem it appropriate to adopt an equitable view inasmuch as order of dismissal shall stand modified to that of discharge from service with effect from the date, the caste claim of the petitioner is invalidated i.e. 7/3/2000.

28. In the result, we pass the following order:-

[a] The Impugned order of dismissal of the petitioner dated 31.5.1999, which is subject matter of challenge in W.P. No. 3236 of 1999, is modified by directing that the petitioner stands discharged from service w.e.f. 7/3/2000 A.N. The petitioner shall be paid retiral benefits as may be permissible under law.

[b] W.P. No. 3236 of 1999 is thus partly allowed. Rule is made absolute in above terms.

[c] W.P. Nos. 25/2002 and 6268 of 2004, stand dismissed.