
(2015) 04 BOM CK 0307

In the Bombay High Court

Case No : Writ Petition No. 3035 of 2014 and Civil Appln. No. 2766 of 2014

Yunnus Abubakar Hawaldar

APPELLANT

Vs

Divisional Caste Certificate Scrutiny Committee No. 1 and
Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Citation : (2015) 4 MhLj 737

Hon'ble Judges : Anoop V. Mohta, J;K.R. Shriram, J

Bench : Division Bench

Advocate : S.G. Kudale, for the Appellant; S.S. Bhende, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anoop V. Mohta, J—Rule. Rule is made returnable forthwith. Ms. Bhende, the learned AGP, waives notice for the respondents. Heard finally by consent of the parties. The petitioner has challenged order dated 3 March, 2014 passed by the Divisional Caste Certificate Scrutiny Committee No. 1-Solapur-respondent No. 1 and prayed to set aside the order of termination dated 15 March, 2014 passed by the Superintendent of Police (Rural)-respondent No. 3. The petitioner filed this Writ Petition on 13 March, 2014. The respondents, by their reply resisted the claim and supported the reasons given by the Scrutiny Committee.

2. The petitioner claiming to be belongs to "Muslim Julaha" caste which is recognized as OBC in the State of Maharashtra. The concerned Officer issued Caste Certificate to the petitioner after confirming the genuineness of the documents. The petitioner, based upon the same, applied for the post of Constable and accordingly appointed in the category of OBC, subject to other eligibility since July, 2012. The matter was referred to respondent No. 1-the Divisional Caste Certificate Scrutiny Committee No. 1, Solapur. As per the requisite procedure, the Police Inspector of Vigilance Cell, conducted the inquiry and after recording the statement from the local place of residence/community of

the petitioner, submitted the supportive vigilance report. It is specifically recorded that the petitioner and his family carry all the traits and traditions of "Muslim Julaha" caste. The Vigilance inquiry report dated 24 September, 2012 was accordingly submitted and called upon the petitioner for hearing. The petitioner also supported the said report. However, respondent No. 1, by overlooking the report and facts, invalidated the caste certificate of the petitioner.

3. This Court in *Imram A. Ajij Shaikh vs. State of Maharashtra*, W.P. No. 8044 of 2013, dated 17 February, 2014, [2015 (4) Mh.L.J. 901] after considering the similar situation, including the same caste issue, based upon the Apex Court Judgments passed in *Dayaram Vs. Sudhir Batham and Others*, (2011) 6 CTC 192 : (2011) 12 JT 174 : (2011) 11 SCALE 448 : (2011) 6 UJ 3938 and *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp recorded as under:--

"5. In the present case, after hearing both the parties even considering the impugned order, we have noted that the respondent-Committee failed to consider the facts and circumstances of the present case specifically when it refers to matters that the petitioner belongs to "Muslim Julaha" caste. The requirement of documents of the community in question as insisted, in our view, is uncalled for. The very Vigilance Cell report, so prepared based on the material collected by the concerned Officer, at the relevant time, by recording reasons and/or statements of the people of the locality as well as community, unless a case of fraud and/or misrepresentation is made out, can only be required to be interfered with. There is no such reason and/or justification given. The justification given is by overlooking the findings of the Committee's report as recorded above. It is quite settled in *Madhuri Patil's case* (supra) that once the report is in favour of candidate found to be genuine and true, no further action needs be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained or serious doubts are raised.

6. There is nothing on record to show any contra material and/or any objection by any one on record. The inquiry report itself supports the case of the petitioner based on all the traits, traditions, characteristics and customs of his caste. There is nothing to disbelieve the inquiry conducted by the Vigilance Cell. Respondent No. 2 wrongly rejected the documents placed by the petitioner as caste is mentioned only as Musalman. In the Muslim community, there are few cases in which the caste is recorded regularly and/or properly in any Government record. Therefore, the Committee ought to have considered the Vigilance Cell report instead of relying solely upon the documents placed on record by treating it to be unreliable. The Committee must consider in such situation that unless contrary material is placed on record and other documents are not clear as not available in the particular community, the Vigilance Cell report needs to be respected. There is no question of discarding the Vigilance Cell report, the purpose for which is well reconsidered and even recorded by the Apex Court in *Madhuri Patil's case*

and Dayaram"s case (supra)."

4. In this case also, there is no contra material and/or any case of fraud and/or misrepresentation is made out. The inquiry report itself supports the case of the petitioner"s traits, traditions, customs, characteristics. There is nothing to disbelieve the inquiry report and the material placed on record by the petitioner.

5. Therefore, taking overall view of the matter and in view of above facts and judgments so recorded, we are inclined to set aside impugned order dated 3 March, 2014 passed by the Divisional Caste Certificate Scrutiny Committee No. 1-Solapur-respondent No. 1 with direction to reconsider the case of the petitioner in accordance with law in view of the observations so made, including of the above noted Supreme Court Judgments. It is also to mean that the concerned respondents, if the case is made out in favour of the petitioner, to pass the consequential order at the earliest.

6. Considering the submission so made and in view of the fact that respondent No. 3, in spite of knowledge of pendency of the Writ Petition, terminated the services on the basis of impugned order, we are inclined to set aside order of termination dated 15 March, 2014 passed by the Superintendent of Police (Rural)-respondent No. 3. Therefore, we direct respondent No. 1-Committee to hear the petitioner and decide his caste claim, as early as possible, preferably within 3 months from today.

7. Liberty is granted to the petitioner to apply for appropriate order in case the order is passed in favour and/or against the petitioner. Liberty is also granted to the petitioner to make representation to respondent No. 3, in view of the order, which we have passed today, to consider the case and/or claim of the petitioner on the post with respect of all other benefits in question. The petitioner is, therefore, at liberty to apply based upon the existing caste certificate which was the foundation for his appointment. That also be the foundation to his reinstatement, as the post needs to be restored back to the date of original caste certificate. The respondents to consider the same, in accordance with law.

8. Resultantly, the following order:--

a) Impugned order dated 3 March, 2014 passed by the Divisional Caste Certificate Scrutiny Committee No. 1-Solapur-respondent No. 1 is quashed and set aside.

b) respondent No. 1 to reconsider the case of the petitioner and to pass appropriate order, as early as possible, preferably within 3 months from today, in accordance with law.

c) Order of termination dated 15 March, 2014 passed by the Superintendent of Police (Rural)-respondent No. 3 is also quashed and set aside.

d) Writ Petition is accordingly disposed of with liberty, so also the Civil Application.

e) Rule made absolute accordingly.

The parties to act on the basis of an authenticated copy of this order.