



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1689 OF 2010

...

Mr.Prakash Ramchandra Chavan ...Petitioner

v/s.

Kolhapur Municipal Corporation
and others ..Respondents

...

Mr.G.S.Godbole with Mr.M.S.Topkar for the Petitioner.

Mr.C.R.Sonawane, AGP for State.

Mr.S.S.Patwardhan for Respondent No.1.

...

CORAM: D.K.Deshmukh &
R.Y.Ganoo,JJ

DATED: 8th December,2010

P.C.:

1. Rule. Returnable forthwith. Heard finally by
consent of parties.

2. By this petition the Petitioner challenges the order

of the Scrutiny Committee holding that the claim of the Petitioner that he belongs to Thakkur Schedule Tribe is not valid as also the order passed by the Kolhapur Municipal Corporation dated 29-4-2010 terminating the services of the Petitioner and asking him to deposit with the Corporation all financial benefits that he has received from the Corporation.

3. Admitted position is that the Petitioner was appointed as a Junior clerk by order dated 6-4-1983 in a seat reserved for Schedule tribe, because he claimed that he belongs to Thakur Schedule Tribe. The Petitioner was thereafter promoted to the post of Senior Clerk by order dated 10-7-1984 again in a seat reserved for Schedule Tribe. The Petitioner was thereafter appointed to the post of Municipal Secretary by order dated 19-3-2008. The Petitioner became eligible to be appointed to the post of Municipal Secretary because he was occupying the post of Superintendent in the Corporation and that post the Petitioner could get because of his claim that he belongs to Thakur Schedule Tribe. Because

the Scrutiny Committee held by its order dated 24-12-2008 that the Petitioner's claim that he belongs to Thakur Schedule Tribe is not valid, the Corporation has terminated the services of the Petitioner, because the entry of the Petitioner in the service of the Corporation was because of his claim that he belongs to Thakur Schedule Tribe.

4. So far as challenge to the order of Scrutiny Committee is concerned, we have heard the learned Counsel for both sides and perused the record. Perusal of the record shows that before the Scrutiny Committee a document was produced which was the school record of the grant father of the Petitioner Shri Ganpati Govind Chavan, which related to the year 1926 and in that record the caste of the Petitioner's grand father was recorded as "Maratha". The Vigilance Cell's report called by the Scrutiny Committee was against the Petitioner. The Scrutiny Committee relying on the material produced before it, principally the entry relating to the year 1926 found that the claim of the Petitioner that he belongs to Thakur Schedule Tribe is not valid.

5. It was argued by the learned Counsel appearing for the Petitioner that the constitution of the Scrutiny Committee which decided the caste claim of the Petitioner is not as per the direction of the Supreme Court contained in its judgment in the case of Kumari Madhuri Patil v/s. Addl.Commissioner, Tribe Dept, 1994 (6)SCC 241. However, we find that there are no proper averments made in the petition showing as to how the constitution of the Scrutiny Committee is not in terms of the judgment of the Supreme Court. In our opinion, in any case considering the overwhelming material on record showing that the decision of the Scrutiny Committee that the claim of the Petitioner that he belongs to Thakur Schedule Tribe is not valid, we will not be justified in interfering with the decision of the Scrutiny Committee for any technical defect. As the decision of the Scrutiny Committee cannot be interfered with, in view of the provisions of Section 10 of the Maharashtra Schedule Castes, Schedule Tribes, De-notified Tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes, Special Backward Category

(regulation of Issuance and Verification) of Caste Certificates Act, 2000, when a person receives any benefits because of his claim that he belongs to any Schedule Tribe those benefits are to be immediately withdrawn, when his claim that he belongs to Schedule Tribe is found to be incorrect. Therefore, in our opinion, in view of the provisions of Section 10 of the aforesaid Act no exception can be taken to the order of the Corporation terminating the services of the Petitioner.

6. The learned Counsel appearing for the Petitioner submitted that the Petitioner's services as Municipal Secretary have been terminated. That is an isolated post and therefore it cannot be said that the appointment of the Petitioner to that post was as a member of Schedule Tribe.

7. In our opinion, the submission is not well founded. The Petitioner became eligible to compete for that post only because he was holding the post of Superintendent in the Corporation and to that post the Petitioner was appointed because of his claim that he belongs to Schedule Tribe, and

therefore, in our opinion, the submission has no substance.

8. The learned Counsel for the Petitioner further submitted that by the order of the Corporation not only the services of the Petitioner have been terminated, but he has also been directed to deposit with the Corporation the salary paid by the Corporation to him during his services.

9. We have heard the learned Counsel for the Petitioner. In our opinion, the submission is not well founded. Because by the order of the Corporation dated 29-4-2010 the Petitioner has not been directed to deposit the salary paid to him. He is being asked to deposit the financial benefits apart from salary that he may have received because of his claim that he belongs to Schedule Tribe, which has been now found to be invalid.

10. One of the submissions made was based on the Government Resolution dated 15-6-1995. The submission was that even if the claim of the Petitioner that he belongs to

Schedule Tribe is found to be invalid, his services should not be terminated. In our opinion, the Government Resolution dated 15-6-1995 is contrary to the provisions of Section 10 of the aforesaid Act and therefore it cannot be enforced. In any case the Full Bench of this Court in the case of Vandana Bharat Kauthalikar v/s. State of Maharashtra & ors., 2009 (5) Bom.C.R. 49 has held that once the caste claim of a person is held to be invalid, any benefits received by him because of his claim have to be withdrawn and there is no illegality involved in such decision.

11. Taking overall view of the matter, therefore, in our opinion, there is no room to interfere either with the order of the Scrutiny Committee or with the order of the Corporation which are impugned in the petition. Petition, therefore, fails and is dismissed. Rule discharged. No order as to costs.

(D.K.Deshmukh, J.)

(R.Y.Ganoo, J.)

