

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3489 OF 2016

PETITIONER :-

Ku. Archana Vasantrao Dhakate, Aged : 40 yrs., Occu : Service, R/o Madhav Nagar, Gorakshan Road, Behind Kundan Apts., Post Office : Gandhinagar, Dist. Akola.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through its Secretary, Department of Social Justice and Empowerment, Mantralaya, Mumbai.
2. The Chairman, Scheduled Tribe Certificate Scrutiny Committee, Zilla Parishad Campus, Gadchiroli.
3. The Education Officer (Secondary), Zilla Parishad, Zilla Parishad, Akola.
4. Shikshan Prasarak Mandal, Wadegaon, Tal. Balapur, Dist. Akola, through its Secretary.
5. Shri Jageshwar Vidyalaya, Wadegaon, Tal. Balapur, Dist. Akola, through its Head Master.

Mr. P. S. Khubalkar, counsel for the petitioner.
Mr. A.M.Balpande, Asstt. Govt. Pleader for the respondent Nos.1 to 3.
Mr. S.D.Chande, counsel for the respondent Nos.4 and 5.

CORAM : SMT. VASANTI A. NAIK &
MRS.SWAPNA JOSHI, JJ.

DATED : 14.07.2016

ORAL JUDGMENT (Per Smt.Vasanti A. Naik, J.)

Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the parties.

2. By this writ petition, the petitioner seeks the protection of her service, in view of the judgment of the Full Bench, reported in 2015 (1) Mh.L.J. 457 (Arun Sonone v. State of Maharashtra). The petitioner challenges the order of termination, passed by the respondent-Management, during the pendency of the petition, thereby terminating the services of the petitioner, in view of the invalidation of her caste claim.

3. The petitioner claims to belong to Halba Scheduled Tribe. The petitioner was appointed as an Assistant Teacher in the respondent No.5-School on 09/09/1998, on a post earmarked for the Scheduled Tribes. The caste certificate of the petitioner was referred to the Scrutiny Committee for verification. The Scrutiny Committee, by the order dated 27/05/2016 invalidated the caste claim of the petitioner. Though the petitioner had challenged the order of the Scrutiny Committee in this petition, the petitioner has given up the said prayer and has only sought the protection of her services, in view of the law laid down by the Full Bench. Since the petitioner was terminated by an order dated 25/06/2016 that was served on the petitioner on 29/06/2016, the petitioner has challenged the termination order also.

4. Shri Khubalkar, the learned counsel for the petitioner, states that the services of the petitioner are required to be protected, as

both the conditions that are required to be satisfied while seeking the protection of service, in view of the judgment of the Full Bench, reported in 2015 (1) Mh.L.J. 457, stand satisfied in the case of the petitioner, in as much as, the petitioner was appointed before the cut-off date, on 09/09/1998 and there is no observation in the order of the Scrutiny Committee that the petitioner has fraudulently secured the benefits meant for the Halba Scheduled Tribe. It is stated that the caste claim of the petitioner is invalidated, as in some of the documents of the relatives of the petitioner, caste (Koshti) was recorded.

5. Shri A.M.Balpande, the learned Assistant Government Pleader appearing for the respondent Nos.1 to 3 and Shri S.D. Chande, the learned counsel appearing for the respondent Nos.4 and 5, do not dispute the position of law as laid down by the Full Bench. The learned counsel for the respondent Nos.4 and 5 admits that the petitioner was appointed before the cut-off date, in the year 1998. It is stated that there is some observation in respect of fraud in the order of the Scrutiny Committee. It is stated on behalf of the respondents that an appropriate order may be passed, in the circumstances of the case.

6. On hearing the learned counsel for the parties, we find that the services of the petitioner are required to be protected. As stated on behalf of the petitioner, both the conditions that are required to be satisfied while seeking protection of services stand satisfied in the case

of the petitioner. The petitioner was appointed in the year 1998 i.e. before the cut-off date and we do not find any observation in the order of the Scrutiny Committee that the petitioner has fabricated the documents and/or interpolated them with a view to seek the benefits meant for the Halba Scheduled Tribe. It appears from the reading of the order of the Scrutiny Committee that the caste claim of the petitioner is invalidated, as the petitioner had failed to prove the same on the basis of the documents and the affinity test. We do not find any observation in regard to the fraudulent action on the part of the petitioner in seeking the benefits meant for the Halba Scheduled Tribe.

7. Hence, for the reasons aforesaid, the writ petition is allowed. We quash and set aside the order of termination, dated 25/06/2016 and direct the respondent Nos.4 and 5 to protect the services of the petitioner, only on the condition that the petitioner furnishes an undertaking in this Court and before the respondent Nos.4 and 5 that neither the petitioner, nor her progeny would claim the benefits meant for the Halba Scheduled Tribe, in future. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

KHUNTE