

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1093 OF 2019

DISTRICT:- HINGOLI

Bhanudas S/o Bhagwanta Putwad,
Age 46 years, Occ. Service as
Principal, D.I.E.C.P.D. Institute,
Hingoli, Tq. & Dist. Hingoli.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
School Education & Sports
Department, Mantralaya,
Mumbai-400 032.

2. The Commissioner of Education,
Maharashtra State, Central Building,
Dr. Annie Besant Road, Pune-1.

.. RESPONDENTS.

APPEARANCE : Shri Ravindra B. Ade, learned counsel
for the applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 11.04.2023

O R A L O R D E R

Heard Shri Ravindra B. Ade, learned counsel appearing for
the applicant and Shri N.U. Yadav, learned Presenting Officer
appearing for the respondent authorities.

2. In the present Original Application, it is the grievance of the applicant that though he has completed the period of probation of two years in the year 2014 itself, the respondents have not yet passed formal order in that regard because of which no increment has been released in favour of the applicant since the date of his appointment.

3. It is the case of the applicant that he joined as Principal in D.I.E.C.P.D. Institute, Hingoli Tq. & Dist. Hingoli in the year 2012. The applicant was selected through Maharashtra Public Service Commission (for short "the Commission"). In the appointment order itself the probation period was stated to be of two years. It is further case of the applicant that since one complaint was received alleging that the applicant has submitted a fake Caste Certificate and Caste Validity Certificate, the respondents did not pass the further order, thereby terminating the period of probation pertaining to the applicant. It is the further contention of the applicant that in pursuance of the complaint so made, the matter was referred to Caste Scrutiny Committee and the applicant also had appeared before the Caste Scrutiny Committee and has submitted that while issuing the Caste Validity Certificate in the year 2005 all relevant documents were considered by the Caste Scrutiny

Committee and thereafter the Validity Certificate was issued in favour of the applicant. It is the further case of the applicant that after he received the notice dated 6th December, 2018, requiring him to remain present before the Scrutiny Committee on 8th January, 2019, he approached the Hon'ble High Court by filing Writ Petition bearing No. 196/2019 challenging the authority of the said committee to review its own order. The said Writ Petition came to be disposed of on 20th January, 2020, thereby directing the applicant to raise all his objections before the committee itself and the committee was directed to pass an order whether it is convinced to reopen the proceeding or not. It was also clarified in the said order that if the committee decides to reopen the proceeding, it would be permissible and accordingly further process was to be carried out.

4. It is the grievance of the applicant that though the period of more than 3 years has lapsed after passing the aforesaid order by the Hon'ble High Court, nothing has been communicated by Caste Scrutiny Committee whether it is intending to reopen the proceeding in regard to the Caste Validity of the applicant and is intending to carry out the further process. It is the contention of the applicant that since then though nothing adverse has been communicated or made

known to the applicant he is being deprived of the benefits on completion of the period of probation. The applicant has therefore, prayed for direction against the respondents to hold the probation period completed by the applicant and to make him entitled for all consequential benefits.

5. The contentions raised in the O.A. and the prayers made therein are resisted by the respondents. Respondent No. 1 has filed affidavit in reply contending therein that on receipt of complaint against the applicant that he has produced a fake validity certificate, the matter has been referred to the Caste Scrutiny Committee and it is still pending before it. The respondents have clarified in their affidavit in reply that the moment the decision is received from the Caste Scrutiny Committee, further necessary actions will be taken by the respondents. It is clarified that if the Caste Scrutiny Committee does not cause any interference in the earlier validity certificate the applicant will be entitled for all benefits and if the decision goes against the applicant all necessary consequences would follow. According to the respondents, they are unable to take any decision for want of the decision of the Caste Scrutiny Committee. The respondents in the circumstances have prayed for dismissing the O.A. so filed.

6. Learned counsel appearing for the applicant submitted that the applicant has completed the period of probation way back in the year 2014, however, on the basis of complaint received against the applicant, he has been kept still under probation and resultantly he has been deprived of benefits which are available to the Government employees on completion of the period of probation. Learned counsel submitted that in spite of the order passed by the Hon'ble Bombay High Court, Bench at Aurangabad in the month of January, 2020, the Caste Scrutiny Committee has not yet taken any decision whether any case is made out for reopening of the proceedings in regard to caste validity issued in favour of the applicant by the said Committee in the year 2005. Learned counsel submitted that the applicant had several times approached the Caste Scrutiny Committee for expediting the matter, however, has not received any response. Learned counsel submitted that in the circumstances the applicant has made out a case for directions against the respondents to hold that the applicant has completed the probation period and to make him entitled for all consequential benefits.

7. Learned Presenting Officer reiterated the averments taken in the affidavit in reply filed on behalf of respondent no. 1.

Learned Presenting Officer submitted that since the matter is pending before the Caste Scrutiny Committee, the respondents are helpless in the matter. Learned P.O. further submitted that everything depends upon the report of the Caste Scrutiny Committee; if report comes in favour of the applicant, he will be entitled for all the reliefs and if it goes against the applicant, perhaps the services of the applicant will be liable to be terminated on the said ground. Learned Presenting Officer submitted that the applicant has been given appointment on the basis of his caste certificate. According to the learned Presenting Officer, the present Original Application is premature and could not have been filed by the applicant and he is supposed to wait till the decision of the Caste Scrutiny Committee. Learned Presenting Officer therefore prayed for rejecting the Original Application.

8. After having heard the learned counsel appearing for the applicant and the learned Presenting Officer appearing for the State authorities, it is revealed that the probation period of the applicant has not been terminated though the applicant has resumed his post of Principal on 11.12.2012 in pursuance of the order of promotion dated 22.11.2012. According to the averments in the order of appointment, the applicant was

appointed subject to successfully completing the period of probation of 2 years. According to the applicant, he has successfully completed the period of probation in the year 2014 itself. In the affidavit in reply there is nothing from the side of the respondents that the period of probation was extended and express written orders in that regard are passed. As is revealing from the contents of the affidavit in reply filed on behalf of the respondents, the respondents are not declaring that the applicant has completed the period of probation only on the ground that caste claim of the applicant is pending before the Caste Scrutiny Committee.

From the pleadings of the parties and the documents placed on record, it is revealed that one Dr. Devanand Savarkar has made a complaint against the applicant alleging that the applicant does not belong to the Scheduled Tribe and that he has placed on record the fake validity certificate in respect of his Tribe. On such complaint the enquiry seems to have initiated by the Caste Scrutiny Committee. The documents on record further reveal that challenging the authority of the Caste Scrutiny Committee to review its own order, the applicant had preferred the Writ Petition No. 196/2019 before the Aurangabad Bench of the Hon'ble Bombay High Court and same came to be disposed of on 20th January, 2020 with certain observations

and directions. I deem it appropriate to reproduce the entire order passed by the Hon'ble High Court, which reads thus: -

“ORDER:

1. The petitioner was issued validity certificate of Koli Mahadev, Scheduled Tribe in between 2005 to 2008. On the basis of the complaint received, show cause notice was issued to the petitioners. The petitioner has replied the said notice. Opportunity is also given to the petitioner for hearing.

2. Mr. Vibhute, the learned counsel submits that the respondent does not have power of review. The petitioner has already filed his say to the show cause notice. All the points agitated by the petitioner can be agitated before the Scrutiny Committee. The Committee will certainly consider all the points agitated by the parties.

3. The Committee shall pass an order as to whether it is convinced to reopen the proceedings or not. Copy of the said order be given to the parties. The petitioner can agitate against said order as may be permissible. It is only after arriving at the satisfaction that the committee seeks to reopen the proceedings and such order is passed, the proceeding should be reopened.

4. With this observation, the writ petition is disposed of. All contentions are kept open. No costs.”

9. Perusal of the aforesaid order makes it abundant clear that it was the Caste Scrutiny Committee, which was expected

to take further decision whether to reopen the matter or to close it by holding that there is no substance in the complaint received against the applicant. The order by the Hon'ble High Court has been admittedly passed on 20th January, 2020. Three years have passed after passing the order by the Hon'ble High Court. As has been submitted by the applicant on oath the Caste Scrutiny Committee has not passed any order in regard to the complaint received against the applicant about his Caste/ Tribe Validity Certificate. The respondents also have not come out with any specific contention that the matter is under active consideration of Caste Scrutiny Committee. The vague defence has been raised by the respondents that if the Caste Scrutiny Committee decides the matter in favour of the applicant his probation period will be held to have been completed and all benefits would be given to the applicant and if it goes against him his services will be liable to be terminated. It is not in dispute that the applicant has been promoted to the post of Principal through the Commission in the year 2012. The period of more than 11 years has, thus, lapsed after his promotion to the said post. As has been submitted on behalf of the applicant for want of termination of the probation period annual increments are not released, the applicant has thus suffered huge monetary loss though he has completed the

period of probation way back in the year 2014. It is not in dispute that the matter pertaining to the validity of the Caste/Tribe Certificate of the applicant is pending before the Caste/Tribe Validity/Scrutiny Committee at Aurangabad. Though it is accepted that it may not be possible for the Caste Scrutiny Committee to decide every matter expeditiously, it is certainly expected that the validity is to be decided of the caste or tribe of any candidate within a reasonable time. As has been contended on behalf of the applicant till today Caste Scrutiny Committee has not communicated anything to the applicant or to the respondents. The statement so made has not been refuted by the respondents, neither the respondents have come out with any specific defence that the matter before the Caste Scrutiny Committee is actively under process. In the circumstances, it would be unjust and unfair to keep the applicant under probation for indefinite period. The respondents also could have made request to the Caste Scrutiny Committee to decide the matter as expeditiously as possible, however, from the affidavit in reply it does not appear that any such endeavour is made by the respondents also.

10. After having considered facts as aforesaid it appears to me that the applicant has certainly made out a case for directions

against the respondents as are prayed in the application. I am convinced that the applicant cannot be deprived of the benefits which would flow on completion of probation period by him. In the result, the following order is passed: -

ORDER

(i) Respondents are directed to release the increments and other monetary benefits payable in favour of the applicant, which are withheld for want of completion of probation period by the applicant, within 8 weeks from the date of this order by obtaining an undertaking/ bond of indemnity from the applicant to the effect that in the event the Caste/Tribe Scrutiny Committee cancels the Tribe Validity Certificate earlier issued in his favour, he will refund the monetary benefits so received to him within 8 weeks from the date of the order of Scrutiny Committee.

(ii) The Original Application is allowed in the aforesaid terms.

(iii) No order as to costs.

VICE CHAIRMAN