

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 691 OF 2014

DISTRICT : MUMBAI

Shri Laxman Pandurang Maske,)
Residing at Building No. 56, Room No.19)
Government Colony, Yogi Nagar,)
Borivali [W], Mumbai 400 092.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Deputy Secretary,)
Industries, Energy and Labour)
Division, Mantralaya, Mumbai-52.)
2. Development Commissioner,)
[Industries], having its office at)
New Administrative Building)
2nd floor, Opp. Mantralaya,)
Mumbai 400 032.)...**Respondents**

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Shri R.K Mendadkar, learned advocate for the Applicant.
Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 21.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri R.K Mendadkar, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 22.7.2014 terminating his service on the ground that the Applicant had obtained service on the basis of N.T (B) Caste Certificate, and he did not produce Caste Validity Certificate and submitted a fresh Certificate of S.T category, thus he defrauded the Government.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Junior Clerk on 12.12.1977 from N.T (B) category. His caste in the Caste

Certificate was mentioned as 'Thakar'. This caste was included in N.T category by Government Resolution dated 21.11.1961 for Ratnagiri District. This district came to be bifurcated into Ratnagiri & Sindhudurg districts. The Applicant had obtained Caste Certificate from Tahsildar & Executive Magistrate, Kudal, Dist-Sindhudurg in 1975. The Applicant was promoted as Noting Assistant, Head of Branch & Superintendent during his service career. On 19.11.2001, his Caste Certificate was forwarded by the Respondent no. 2 to the Caste Scrutiny Committee, Konkan Bhavan, Navi Mumbai for verification. It appears that the papers were not received by the Caste Scrutiny Committee and the Caste Certificate was again sent for verification to the Scrutiny Committee on 19.1.2006. The Applicant was called by the Caste Scrutiny Committee in November, 2006 and was informed that by a G.R dated 2.6.2004, 'Thakar' has been deleted from the list of Nomadic Tribes, and hence no verification certificate can be issued. On 28.2.2006, the Applicant had informed the Respondent no. 2 that he was not in a position to produce Caste Validity Certificate from NT(B) category as the caste 'Thakar' was removed from the list of Nomadic Tribes. The Applicant prayed that he may be treated as belonging to open category. In 2007, the Applicant produced a Certificate of S.T category, which was sent to S.T Scrutiny Committee, Konkan Bhavan, which invalidated his Certificate by order dated 31.10.2009. The Applicant's services were terminated by the

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impugned order, without giving him any show cause notice, thus violating the principles of natural justice. Learned Counsel for the Applicant argued that section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes, [Vimukta Jatis], Nomadic Tribes, Other Backward Classes and Special Backward category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 and G.R dated 18.5.2013 are not attracted in the present case. Learned Counsel for the Applicant argued that the Applicant is entitled to protection of his service in terms of G.R dated 21.10.2015 also. He cited several judgments in support of his contention that the Applicant's services could not be terminated.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant joined Government service in 1977 on the basis of Caste Certificate showing him as belonging to 'Thakar' caste, which was included in the list of N.T (B) category. Though the Applicant produced his Caste Certificate of 1975 at the time of joining service, he did not produce Caste Validity Certificate. Learned Presenting Officer argued that the Applicant was granted NT(B) certificate as he claimed to belong to 'Thakar' caste, which was recognized as N.T(B) in Ratnagiri District. However, in 2004, this caste was removed from the list of Nomadic Tribes by G.R dated 2.6.2004. A Tribe by the same name viz 'Thakar' is

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included in the list of Scheduled Tribes. However, the Applicant's claim that he belongs to 'Thakar' Tribe has not been found correct by the Scheduled Tribes Certificate Scrutiny Committee, Konkan Division, Thane by order dated 31.10.2009. Learned Presenting Officer stated that the claim of the Applicant that he is a victim of circumstances and is therefore, unable to produce Caste Validity Certificate is, therefore, wrong. He obtained Certificate claiming to belong to 'Thakar' Tribe in 2001, which he does not belong to. Learned Presenting Officer argued that section 10 of the 2001 Act is clearly applicable in the present case. There is no question of violation of the principles of natural justice, as the Applicant was asked to produce Caste Validity Certificate from time to time and he was fully aware that in the absence of Caste Validity Certificate, his appointment in the Government service was illegal and he was liable to be terminated. Learned Presenting Officer stated that G.R dated 21.10.2015 is applicable only to those who joined service on the basis of S.T Certificate, which was later found to be invalid. The Applicant had joined service on the basis of NT(B) Certificate and the aforesaid G.R has no application in the present case. Learned presenting Officer argued that none of the judgments cited by the Applicant is applicable to the facts of the case.

5. We find that in Schedule II to the G.R dated 21.11.1961, at Sr. No. 22, the following entry is included in the list of Nomadic Tribes of Maharashtra:

“(22) Thakar (in Ratnagiri District only)”.

The Applicant was issued a Caste Certificate showing that his caste was ‘Thakar’ which was included as N.T (B) by the Tahsildar and Executive Magistrate, Kudal, Dist-Sindhudurg in the year 1975. This is stated in para VII-3 of the Original Application by the Applicant and is not denied by the Respondents. There is some controversy about validation of his Caste Certificate of NT(B) category. The undisputed facts are that the Applicant did not produce Caste Validity Certificate in respect of NT(B) Certificate. His claim is that ‘Thakar’ is recognized as a Scheduled Tribe in Maharashtra without any area restriction in terms of SC/ST Orders (Amendment) Act, 1976. By G.R dated 2.6.2004, the caste ‘Thakar’ was removed from the list of Nomadic Tribes. The Applicant claims that he belongs to caste ‘Thakar’, which was recognized as Nomadic Tribe by G.R dated 21.11.1961 and remained as Nomadic Tribe till it was removed from this list by G.R dated 2.6.2004. In the meanwhile, the Government of Maharashtra by letter dated 30.3.2001, informed the Collector, Sindhudurg that for the persons belonging to ‘Thakar’ caste in Sindhudurg district, instructions have been issued on 7.3.1996 itself,



regarding issuance of S.T Certificate. This letter is produced by the learned Counsel for the Applicant during the arguments and it is reproduced below in full:-

महाराष्ट्र शासन

GOVERNMENT OF MAHARASHTRA

क्रमांक:एसटीसी-१०००/प्र.क.
अधिवासी विकास विभाग,
मंत्रालय, मुंबई ४०० ०३२.
दिनांक:- ३० मार्च, २००९.

जिल्हाधिकारी,
सिंधुदुर्गनगरी,
जिल्हा सिंधुदुर्ग.

विषय:- सिंधुदुर्ग जिल्हयातील ठाकर समाजास अनुसूचित जमातीचे दाखले मिळणेबाबत.

संदर्भ:- आपले पत्र क्र.डेस्क-१-साशा-३-ठाकर-अ.ण.२००९, दिनांक २०.३.२००९.

सिंधुदुर्ग जिल्हयातील ठाकर समाजास अनुसूचित जमातीचे दाखले निर्गमित करण्यासंबंधी आपण मार्गदर्शन मागितलेले आहे. त्यासंदर्भात कळविण्यात येते की, कु. माधुरी पाटील विरुद्ध अपर-आयुक्त, आदिवासी विकास, ठाणे १ इतर याच्या याचिकेवर मा. सर्वोच्च न्यायालयाने दिलेल्या निर्णयातील मार्गदर्शक सुचनानुसार अनुसूचित जमातीच्या व्यक्तींना जातीचे प्रमाणपत्र निर्गमित करण्यासंबंधी दिनांक ७ मार्च १९९६ च्या शासन निर्णयान्वये सर्व संबंधित सक्षम अधिका-यांना सुचना निर्गमित केलेल्या आहेत. त्यानुसार कार्यवाही करण्यात यावी.

(आर.सी.जोशी)
सचिव

It is quite clear that this letter did not recognize that caste 'Thakar' in Sindhudurg district was included in the Scheduled Tribe category. As have been mentioned, the Applicant did not produce Caste Validity Certificate of NT(B) category, till the caste 'Thakar' was removed from

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the list of Nomadic Tribe in 2004. He produced a Scheduled Tribe Certificate issued by the Resident Deputy Collector, Sindhudurg dated 25.10.2001 in 2007 as per his own claim. The Applicant in this Original Application has claimed that his certificate of NT(B) category was sent for validation to the Caste Scrutiny Committee by the Respondent no. 2 on 19.11.2001. (the copy is at p. 23 of the Paper Book). Before that date, the Applicant had already procured a S.T Certificate on 25.10.2001. The Applicant claims that another proposal for validation of his NT(B) Certificate was sent to Caste Scrutiny Committee on 19.1.2006. The Committee called the Applicant and informed him the Caste Validity Certificate cannot be issued to him in the month of November, 2006. The copy of letter dated 19.1.2006 and decision of Caste Scrutiny Committee are not on record. The Applicant claims that by letter dated 28.2.2006, he informed the Respondent no. 2 that his NT(B) Certificate cannot be verified as caste 'Thakar' is removed from the list of N.T by G.R dated 2.6.2004. From these course of events, it can be surmised that the Applicant had not made any serious efforts to get his Caste Certificate of N.T (B) category validated and on 25.10.2001, he had already obtained a S.T Certificate. In the Original Application, the Applicant claims that he produced his S.T Certificate before the Respondents in 2007 when he came to know that 'Thakar' is no longer a Nomadic Tribe by G.R dated 2.6.2004. He had, however, already

obtained an S.T Certificate on 25.10.2001 and this delay of six years is not explained. The S.T Certificate of the Applicant was invalidated by the Scheduled Tribes Certificate Scrutiny Committee, Konkan Division, Thane by order dated 31.10.2009. In para 2 of the order it is mentioned that the Caste Certificate issued by the Deputy Collector, dated 25.10.2001. The same Certificate is cancelled and confiscated. In para 3 of the order, it is mentioned that:

“3. The Scrutiny Committee examined the claim of the applicant with reference to Maharashtra Act No. XXIII of 2001 and as per the procedure lay down by Hon'ble Supreme Court in the case of Kum. Madhuri Patil Vs. Additional Commissioner, Tribal Development & others (Civil Appeal No. 5854/1994).”

It is clear that the Government letter dated 30.3.2009 (reproduced above) has also spoken about the same judgment of Hon'ble Supreme Court. In para 5 of the order, the Committee has noted that:-

“5. As per the procedure, on receipt of the Vigilance Cell Report the same was sent to the applicant vide Committees letter No. 836 dated 31/1/2009 interalia, he was asked to submit his explanation on the Vigilance Cell Report up to 28/2/2009. The applicant has submitted his

explanation on 12/3/09. In view of natural justice the applicant was asked to appear for personal hearing on 10/09/2009. The applicant has submitted his letter on 10/09/2009 mentioning therein that, he doesn't want to come for hearing. Further, he has also stated in the said letter that Committee can take decision without personal hearing. The matter was closed for final order."

The Committee has noted in the order in para 5 that there is a 'Caste' called 'Thakar' and a Tribe called 'Thakar' and both are different from each other. After examining the claim of the Applicant that he belongs to 'Thakar' Tribe, in the lights of facts and also relying on various judgments of Hon'ble Supreme Court, the Scrutiny Committee concluded in para 10 of the order that the Applicant does not belong to 'Thakar' Scheduled Tribe enumerated in Sr. No. 44 in the Presidential Order of 1950.

6. It is quite clear that the Applicant does not belong to 'Thakar' Scheduled Tribe. Whether he belongs to 'Thakar' caste cannot be now established with any certainly as this caste is deleted from the list of Nomadic Tribe by G.R dated 2.6.2004. The relevant extracts from the aforesaid G.R reads:-

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“ या शासननिर्णयाद्वारे खालील जाती, भटक्या जमातीच्या मूल यादीतून वगळण्यास शासन मंजूरी देत आहे. ”

अनुक्रमांक	यादीतील अनुक्रमांक	जातीचे नांव
२	२२	ठाकर


At the underlines places, ‘Thakar’ is mentioned as caste (जाती) and not tribe. From G.R dated 21.11.1976, it appears that ‘Thakar’ was recognized as a Nomadic Tribe in Ratnagiri district (which includes present Sindhudurg district). It is clear that in Ratnagiri and Sindhudurg districts, caste called ‘Thakar’ exists, which was recognized as Nomadic Tribe during 1976 to 2004. It is, however, a ‘Caste’ and not a ‘Tribe’. Persons belonging to Thakar caste in these districts are different from Thakars from other districts in Maharashtra. It cannot, therefore, be concluded that the Applicant joined service on the basis of a false Caste Certificate. He can only be blamed for not obtaining Caste Validity Certificate before the G.R dated 2.6.2004 was issued removing this caste from the list of Nomadic Tribes. The 2000 Act regarding issuance of Caste Certificate came into force w.e.f 18.10.2001. Section 8 of this Act provided that burden of proving that a person belongs to a caste under the Act shall be on such claimant.

7. “Section 10 of the Act reads:-

10(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-

notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes of Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or corporation, owned or controlled by the Government or in any Government aided institution or co-operative society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate, shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such persons as aforesaid shall be withdraw forthwith” (emphasis added)

It is clear that an employee can be discharged from service only on cancellation of Caste Certificate by the Scrutiny Committee. The Caste Certificate of Nomadic Tribe of the Applicant does not appear to have been cancelled by the Scrutiny Committee. The impugned order dated 22.7.2014 does not mention anything like that. From the copy of the Service Book, it appears that the Applicant entered service from Nomadic Tribe



category in 1977. From the letter dated 19.11.2001 sent by the Respondent no. 2 to the Caste Scrutiny Committee, Konkan Bhavan, Navi Mumbai, it is clear that the caste is mentioned in the certificate as Thakar-Nomadic Tribe, this Caste Certificate was appended to the said letter. The impugned order dated 22.7.2014 mentions that the Applicant had produced S.T Certificate dated 25.10.2001 issued by the Deputy Collector, Sindhudurg, which was held invalid by the Scrutiny Committee by order dated 31.10.2009. It is quite clear that the Applicant had not secured appointment in the Government in a post reserved for N.T-B category on the basis of a certificate which was later cancelled. In fact, the Applicant had secured employment in Government on the basis of a Caste Certificate (for N.T category) about which there is nothing on record to show that it was held invalid or cancelled by a Scrutiny Committee. From the material on record, there is a prima facie case that the Caste Certificate of N.T category produced by the Applicant might have been held as valid if its validity was examined before the Caste 'Thakar' was removed from the list of Nomadic Tribes by G.R dated 2.6.2004. We are of the considered opinion that the case of the Applicant does not come within the purview of Section 10 of the 2000 Act.

8. Learned Presenting Officer stated that the S.T Certificate of the Applicant was held to be fraudulent by

the Scrutiny Committee. She relied upon the observation of the Scheduled Tribe Certificate Scrutiny Committee in its order dated 31.10.2009 in para 9, which reads:-

“It is not surprising that when better facilities of Scheduled Tribes are possible and available, the person like this applicant is ready and willing to abandon her original caste and jump into Scheduled Tribe category. We feel this is wholesale fraud on genuine Scheduled Tribe in the State of Maharashtra.”

Even if this claim of the Respondent is accepted, the fact remains that the Applicant had not secured employment in the Government on the basis of this Scheduled Tribe Certificate, and therefore, action under Section 10 of the 2000 Act is not maintainable. The Respondents could have initiated Departmental action against the Applicant on this count, if he had violated any provision of the Maharashtra Civil Services (Conduct) Rules by producing so called fraudulent Tribe Certificate. However, the impugned order, therefore, cannot be upheld as stated above.

9. Having regard to the aforesaid facts and circumstances of the case, the order dated 22.7.2014 passed by the Respondent no. 1 is quashed and set aside. The Applicant has since reached the age of

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superannuation and, therefore, cannot be reinstated. The Applicant will be deemed to be in service till the date of his superannuation and will be eligible for all benefits except back wages. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 21.01.2016

Dictation taken by : A.K. Nair.