

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 849 of 2023 (D.B.)

Amit S/o Fulchand Tumdam,
Aged 31 years, Occ: Student,
R/o at Fulzari, Post-Hiwara Bazar,
Tah. Ramtek, Dist.: Nagpur.

Applicant.

Versus

- 1) Maharashtra Public Service Commission,
at Belapur CBD, New Mumbai-400614 through its Secretary.
- 2) Agriculture, Animal Husbandary,
Dairy Development and Fisheries Department,
Mantralaya, Mumbai- 32 through its Secretary.
- 3) Shri Rishikesh Bibhishan Bodhwad
R/o Vidhyanagar (West) Beed,
Tah. & Dist. Beed-431122.

Respondents.

S/Shri P.S. Wathore, H.S. Hurduke, Advocates for the applicant.
Shri M.I. Khan, learned P.O. for respondent nos.1 and 2.
S/Shri R.V.,N.R. Shiralkar, A.M.Motlag, Advocates for resp.no.3.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 06/09/2023.

J U D G M E N T

Heard Shri P.S. Wathore, learned counsel for the applicant, Shri M.I. Khan, learned P.O. for respondent nos.1 and 2 and Shri R.V. Shiralkar, learned counsel for respondent no.3.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular

No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally. The matter is heard and decided finally with the consent of learned counsel for both the parties.

3. The case of the applicant in short is as under –

The respondent no.1 published advertisement dated 18/02/2022 for the various posts to be filled by direct recruitment. The last date of submission of application form on the website was 17/03/2022. The applicant applied for the post of Deputy Director of Agriculture and others on 27/02/2022. The applicant appeared for Maharashtra Gazetted Technical Services Combined Preliminary Examination,2021- Agriculture Service- Deputy Director Agriculture and others on 30/04/2022. The result of preliminary examination was declared on 12/07/2022. The applicant received the Hall ticket with roll number for main examination scheduled on 01/10/2022. The applicant appeared in the Main Examination at Centre M.G.M. Jawaharlal Nehru Engineering College, N-6 Sidko, Aurangabad on 01/10/2022. The result of the Maharashtra Agriculture Services Main Examination-2021 was declared on 30/12/2022. The applicant received interview call letter from respondent no.1 and he was directed to remain present for interview on 11/04/2023. The result of

the Maharashtra Agriculture Services Main examination-2021 was declared on 12/07/2023. On 17/07/2023, the applicant made representation to the respondents and objected the candidature of respondent no.3.

4. It is the case of the applicant that respondent no.3 not belongs to Mahadeo Koli. He has obtained false caste certificate, therefore, he cannot be appointed on the post of Deputy Director of Agriculture. In support of his submission pointed out the Judgment of the Hon'ble Supreme Court in the case of the ***Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others (2017) 8 SCC, 670*** and the G.Rs. dated 22/08/2007 and 26/03/2010.

5. As per the submission of learned counsel for the applicant, respondent no.3 not belongs to Mahadeo Koli caste and therefore his Caste Certificate issued by the Authority is not valid. The respondent nos.1 and 2 shall not appoint the respondent no.3 on the post of Deputy Director of Agriculture. The learned counsel for applicant has submitted that the caste of Grandfather of respondent no.3 was invalidated. Thereafter, another inquiry was held in the case of Shri Lahu Atmaram Mande and it was found by the Caste Scrutiny Committee that family members of Shri Lahu A. Mande are not belongs to Mahadeo Koli and therefore caste of Lahu Atmaram Mande

was invalidated. He has pointed out the material portion of order dated 08/02/2021 passed by the Caste Scrutiny Committee, Aurangabad Division (P-162).

“आदेश

i) उपरोक्त नमूद कारणास्तव अर्जदार क्र. १ नामे श्री. लहु आत्माराम मंदे यांचा कोळी महादेव अनुसूचित जमातीचा दावा अवैध घोषित करण्यात येत असून उप विभागीय अधिकारी, माजलगांव जि. बीड यांच्या कार्यालयाकडून जा.क्र.3122 दि.२९/०७/२०१९ रोजी अन्वये निर्गमित करण्यात आलेले अनुसूचित जमातीचे प्रमाणपत्र रद्द व जप्त करण्यात येत आहे.”

6. The respondent no.3 has filed the reply. In the reply, objection is raised by respondent no.3 on the ground that this Tribunal has no jurisdiction to decide as to whether the respondent no.3 belongs to S.T. category or not. It is for the Caste Scrutiny Committee to decide the caste validity of respondent no.3. The respondent no.3 got Caste Certificate of S.T. category and it may be subject to the scrutiny to be done by the Competent Scrutiny Committee under Section 6 (3) of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (in short “Act of 2000”). Hence, this Tribunal has no jurisdiction.

7. The applicant has participated in selection process and secured less marks than respondent no.3, therefore, he cannot claim for the post of Deputy Director of Agriculture. The applicant is already selected for the post of Taluka Agriculture Officer, but he wants the post of Deputy Director of Agriculture. He has secured less marks, therefore, he is challenging the appointment of respondent no.3. It is submitted that the father and sisters of respondent no.3 are having caste validity certificate of S.T. (Mahadeo Koli). The respondent no.3 is having caste certificate of Mahadeo Koli (S.T.). As per the Section 6 (3) of the Act of 2000, it is for the Appointing Authority to refer the documents of the newly appointed employee for the caste validity. At present, caste of respondent no.3 is not invalidated by any authority. Two real sisters and father of the respondent no.3 are having caste validity certificate from the Caste Scrutiny Committee. Those Certificates are in respect of Mahadeo Koli (S.T. category). Hence, the contention of the applicant that the respondent no.3 not belongs to Mahadeo Koli caste is false. Hence, the O.A. is liable to be dismissed.

8. During the course of submission, the learned counsel for respondent no.3, Shri R.V. Shiralkar has pointed out the Judgment in the case of ***the Maharashtra Public Service Commission, Mumbai Vs. Tejrao Bhagaji Gadekar and another, 2013 (4) Mh.L.J.,91***. He has also pointed out the Judgment of ***Sadique Hussain Sheikh Azim***

Qureshi Vs. Divisional Caste Certificate Scrutiny Committee, Nagpur and others, 2010 (6) Mh.L.J.,417. He has also pointed out the Government G.R. dated 26/03/2010. At last submitted that respondent no.3 is having Caste Certificate. The father and two real sisters of respondent no.3 are having caste validity certificate of Mahadeo Koli (S.T. category). Therefore, the applicant cannot challenge the appointment of respondent no.3 on the ground that he does not belong to Mahadeo Koli caste. The learned counsel for respondent no.3 has submitted that the order passed by Caste Scrutiny Committee in respect of Shri Lahu Atmaram Mande was not in respect of respondent no.3 or his father or his family members. In the said inquiry, the respondent no.3 or his father or sisters were not the party, therefore, that order passed by Caste Scrutiny Committee is not binding on respondent no.3. Hence, the claim of applicant that respondent no.3 does not belong to Mahadeo Koli (S.T. category) is liable to be rejected.

9. Heard Shri M.I. Khan, learned P.O. for respondent nos.1 and 2. He has pointed out the relevant provisions of the Act of 2000, more particularly, Section 6 and submitted that the respondent nos.1 and 2 may submit the relevant documents for the purpose of scrutiny of caste of respondent no.3 to the caste scrutiny committee. Hence at this stage grievance of the applicant is premature. He may raise

objection before the Caste Scrutiny Committee as and when the matter comes before the Caste Scrutiny Committee.

10. The learned counsel for the applicant Shri P.S. Wathore submits that the Judgments cited by the side of respondent no.3 are not applicable. Hence, the O.A. be allowed.

11. While granting the interim relief by this Tribunal, the applicant had pointed out one order passed by the Caste Scrutiny Committee in respect of the caste of Lahu A. Mande. In that order, the reference was made that grandfather of respondent no.3 was not belonging to Mahadeo Koli (S.T. category). This Tribunal has granted interim relief on the assumption that respondent no.3 is not belonging to Mahadeo Koli. The respondent no.3 after appearing in this O.A., filed reply and filed the material documents on record. The documents filed by respondent no.3 shows that his father namely Bibhishan is having Caste Validity Certificate. His real two sisters namely Jyoti and Shital are having Caste Validity Certificates. The respondent no.3 is having Caste Certificate issued by the competent authority.

12. Now the question arose before this Tribunal, whether this Tribunal can make a detailed enquiry as like the enquiry expected from the Caste Validity Scrutiny Committee. In the case of ***Ku. Madhuri Patil Vs. Additional Commissioner, Tribal Development, Dist. Thane and others***, the guidelines are given by the Hon'ble

Supreme Court how to decide the caste validity. The caste affinity etc. is to be decided by the Caste Validity Committee. It is not the business of this Tribunal to decide the caste validity. It is clear from the documents filed by respondent no.3 that his father and two real sisters are having caste validity certificate of the cast of Mahadeo Koli (S.T. category). Their caste validity certificates are not challenged till date by the applicant. One of the complaint is made by the applicant (P-165) shows that this is complaint made to the Caste Validity Scrutiny Committee, Aurangabad dated 28/08/2023. It appears from letter dated 28/08/2023 that this complaint is made after the filing of this O.A. This complaint is till not decided by the Caste Scrutiny Committee. At present, there is no dispute that the father and two sisters of respondent no.3 are having caste validity. The respondent no.3 is also having the Caste Certificate of Mahadeo Koli (S.T. category). Therefore at this stage the applicant cannot challenge the appointment of respondent no.3 on the post of Deputy Director of Agriculture.

13. The learned counsel for applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira*** (cited supra). He has pointed out para-65 of the Judgment as under-

“(65) Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.”

14. The cited Judgment in the case of **Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira** is in respect of the employees whose services were terminated, because, of the decision of Caste Scrutiny Committee. Their caste certificates were invalidated by the Caste Scrutiny Committee. Thereafter, those employees approached to the Hon'ble High Court. Those Petitions were dismissed and thereafter they approached to the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that once the castes of the respective

candidates / employees are invalidated, they cannot claim the benefit of regular service etc. The cited Judgment is not applicable to the case in hand.

15. The learned counsel for applicant has pointed out the G.R. dated 26/03/2010. The learned counsel for respondent no.3 has pointed out the G.R. dated 22/08/2007. As per the G.R. of 2010, the Appointing Authority has to consider the caste validity of the nearest blood relatives. It appears that this Government decision is directive to the Caste Scrutiny Committee. The G.R. dated 26/03/2010 cannot override the specific provisions made in the Act of 2000 itself. Section 6 (3) of the Act of 2000 clearly shows that after the appointment, it is the duty of Appointing Authority to submit material documents to the Caste Scrutiny Committee for caste validity. This relevant provision is also quoted in the Judgment of **Sadique Hussain Sheikh Azim Qureshi Vs. Divisional Caste Certificate Scrutiny Committee, Nagpur and others** (cited supra). The Hon'ble Bombay High Court has held in para-7 and 8 as under –

“(7) Whatever be the merits of the contention, we are of the view that the scheme of the Act requires the appointing authority to refer the matter of the validity of the caste claimed by an employee to the Committee under section 6 (3) of the Act. The Committee alone has the power to decide the question of validity. The entire section 6 reads as follows: "Section 6. Verification of Caste Certificate by Scrutiny Committee. (1) The Government shall constitute by notification in the Official Gazette, one or

more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees, (2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate, (3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co- operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtained such certificate. (4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificates and adhere to the time limit for verification and grant of validity certificate, as prescribed." This provision sets up the forum for verification of caste certificates issued by Competent Authorities under the Act. Sub-sections (2) and (3) then provide for the persons who can invoke the forum for verification of caste certificates. Sub-section (2) provides that any person after obtaining a caste certificate and desirous of availing the benefits or concessions provided to various categories in any public employment or admission to any educational institution or any other benefit under any special provision made under Clause 4 of Article 15 of the Constitution of India or for the purpose of contesting an elective post in any local authority or a co-operative society or for purchase of transfer of land

from a tribal landholder or for any other purpose specified by the Government vide section 3 may make an application to the concerned Scrutiny Committee for the verification of such a caste certificate and for the issue of a validity certificate.

(8) Sub-section (3) provides that the appointing authority must make an application to the Scrutiny Committee for the verification of the caste certificate and issue of a validity certificate where a person who has been selected for appointment has not obtained such a certificate. The Legislature by enacting sub-sections (2) and (3) has ensured that the caste certificate of any person availing of a benefit or concession provided to the Scheduled Caste, Scheduled Tribes, De-notified Tribes, Vimukta Jatis, Nomadic Tribes, Other Backward Classes or Special Backward Class, who has obtained a caste certificate is scrutinized by a Scrutiny Committee established for the purpose of sub-section (1) of the Act. In relation to matters of employment, the Legislature has ensured that caste certificate of a person who has availed of these benefits but has not submitted his certificate for such scrutiny, does not escape such scrutiny upon his selection for appointment by casting a duty on the appointing authority to make an application to the concerned Scrutiny Committee for the verification of the caste certificate of such a person if he has not obtained such a certificate. There is notable difference in the language employed by the two sub-sections. Sub-section (2) states that such a person desirous of obtaining benefits "may make an application", whereas sub-section (3) states that the appointing authority who selects such a person for appointment "shall make an application".

16. The G.R. dated 26/03/2010 does not show that earlier G.Rs. are replied by the said G.R. Moreover, this G.R. cannot override the specific provisions in the Act of 2000. As per Section 6 (3) of the Act of 2000, it is for the Appointing Authority to submit the documents

after the appointment to the Caste Scrutiny Committee for caste validity.

17. Hence, the contention of the applicant that respondent no.3 does not belong to Mahadeo Koli cannot be accepted at this stage. It is for the Caste Validity / Scrutiny Committee to decide as to whether respondent no.3 belongs to Mahadeo Koli or not. At present, father and two real sisters of respondent no.3 are having caste validity of Mahadeo Koli (S.T. category). The respondent no.3 is having Caste Certificate of Mahadeo Koli (S.T. category), therefore, it cannot be said that respondent no.3 not belongs to Mahadeo Koli. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 06/09/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 06/09/2023.