



" ... Everything ...
a lawyer needs ... "



- [Home](#)
- Cases & Schedule
 - Cases
 - [View, Search and Edit Cases](#)
 - [Generate Detailed View of a Case](#)
 - [Add A New Case](#)
 - [View Case Dates For a Day or Range](#)
 - [Add / Edit Dates, for a Case](#)
 - Case TimeSheets
 - [Timesheet Summary By Case](#)
 - [Timesheet Summary By Users](#)
 - [Enter Hours](#)
 - [Assign Cases For Timesheets](#)
 - Schedule
 - [Add / Edit A Schedule Item](#)
 - [List Schedule Items](#)
 - [List Reminders, Yet To Be Sent](#)
 - [List Already Sent Reminders](#)
 - [Calendar Month View](#)
 - [Calendar Month View](#)
- Judgments, Acts etc.
 - Judgments
 - [Basic Search](#)
 - [Citation Search](#)
 - [Advanced Search](#)
 - [SMS Suggestions Log](#)
 - [Latest Case Laws](#)
 - [Judgment Nominal Index](#)
 - [Saved Searches](#)
 - [Search History](#)
 - Acts & Rules
 - [Find An Act](#)
 - [Central Acts List](#)
 - [State-wise Acts List](#)
 - [Legal Dictionary](#)
 - [My Research Diary](#)
 - Ready Diaries
 - [Criminal cases diary](#)
 - [NI act diary](#)
 - [Constitution of India](#)
- Legal Tools
 - [Ready Precedent Document Formats](#)
 - Causelists & Positions
 - [HC Bombay - Board Positions & Set Alerts](#)
 - [View Position Alerts](#)
 - [Bombay HC Causelist](#)
 - [Nagpur HC Causelist](#)
 - [Bombay DRT, DRAT & SAT Causelist](#)
 - [District Courts' \(CC, SCC, CMM, FMY, MOTR, LBR, IND, RLWY, etc\) Causelist](#)
 - Calculators
 - [Land Conversion](#)
 - [Duration Calculator](#)
 - [Tax Percentage Calculator](#)
 - [Bombay Ad-Valorem Fee Calculator](#)
 - [Simple Interest Calculator](#)
 - [Compound Interest Calculator](#)
- Other Add Ons
 - [Gazette of India](#)
 - [Maharashtra GRs](#)
 - [Mumbai/Pune Police Station Directory](#)
 - [Notifications & Circulars](#)
 - [Advocates Directory \(Mumbai\)](#)
 - [Some Useful Links](#)
- Office Management
 - Your Library Items
 - [View & Search My Library Items](#)
 - [Add or Edit Library Items](#)
 - Firm's Clients
 - [View & Search My Client List](#)
 - [Add or Edit Clients](#)
 - Firm's Contacts

- [View & Search My Contact List](#)
- [Add or Edit Contacts](#)
- Firm's Finances
 - [Create Bills & Transactions](#)
 - [View Bills' List](#)
 - [View Transactions' List](#)
 - [View Balance Sheet](#)
- Account & Settings
 - Firm Information
 - [Your Firm's Profile](#)
 - [Control Access To Your Users](#)
 - [Contact Information of the Firm ID](#)
 - [Log of all SMSes sent](#)
 - Firm's Staff
 - [View & Search Staff Members](#)
 - [Add or Edit Staff Members](#)
 - [Change Your Password Here](#)
-

[Back](#)[Preview & Print](#)[Email Judgment](#)[Remove Highlights](#)[BookMark Judgment](#)[Previous Judgment](#)

You are viewing judgment no 4 of a total of 21 results.

[Next Judgment](#)

www.lawyerservices.in

Aakash v/s Brihanmumbai Mahanagarpalika & Others

Writ Petition (Lodging) No. 974 of 2016

decided on

27-10-2016

at

High Court of Judicature at Bombay

by

THE HONOURABLE JUSTICE ANNOP V. MOHTA & THE HONOURABLE JUSTICE G.S. KULKARNI

advocates

For the Petitioner: Abhijeet A. Desai, Vrushali Maindad, Advocates. For the Respondents: R1 to R3, S.S. Pakale, H.C. Pimple, Advocates.

Equivalent Citation(s)

2017 (1) ALL MR 154

Judgment

G.S. Kulkarni, J. (Oral)

1. The Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India to challenge the termination order dated 10 April 2014 passed by Respondent No.1 – Mumbai Municipal Corporation (for short 'the Corporation') and the communication dated 30 January 2016 whereby the Petitioner's representation for reinstatement stands rejected.

2. This petition was adjourned from time to time to enable the Respondents to take instructions. First time this petition had appeared before the Court on 3 May 2016 and thereafter finally by our order dated 23 September 2016 we had directed that the petition be listed for final disposal. This is how the matter is listed today before us. We accordingly take up the writ petition for final disposal.

3. Considering the facts and circumstances of the present case, in our opinion, this is an unfortunate case. The Corporation issued an advertisement dated 15 June 2011 to undertake recruitment. The post in question is of a clerk under the reserved category. The Petitioner had applied on 26 November 2011 for appointment to the said post as a reserved category candidate belonging to the "Nomadic Tribe". On 5 March 2012, the Petitioner underwent a typing examination as also a physical fitness test. The Corporation having considered the Petitioner qualified and eligible, on 28 May 2012, appointed the Petitioner as a clerk at the B.Y.L. Nair Hospital from the said reserved category (NT), on a temporary basis on probation for a period of three years. This appointment was subject to the Petitioner seeking validity of the caste certificate from the appropriate Caste Scrutiny Committee.

4. The case of the Corporation is that though the Petitioner accepted the appointment, the Petitioner did not disclose the fact that the Petitioner's claim for the Caste validity was rejected by the Caste Scrutiny Committee by an order dated 30 April 2012 and despite this, the Petitioner accepted the appointment order. The Petitioner has, however, given an explanation in that regard, that the Petitioner was not aware of the receipt of the order passed by the Caste Scrutiny Committee which was received at his home town Akola and the envelope containing the order was received by his mother who is an illiterate lady and was not aware of the contents. The Petitioner became aware of the same only in November 2012 when he visited Akola.

5. However, this did not detain us inasmuch as after coming to know of the order of the Caste Scrutiny Committee dated 30 April 2014, the Petitioner initiated proceedings. The Petitioner being aggrieved by the said decision of the Caste Scrutiny Committee approached the Nagpur Bench of this Court in Writ Petition No. 6280 of 2012. By a decision of the Division Bench dated 23 July 2013, the order passed by the Caste Scrutiny Committee was set aside and the Caste Scrutiny Committee was directed to reexamine the issue in the light of the directions as contained therein and take a necessary decision within a period of six months.

6. Accordingly, the Caste Scrutiny Committee considered the claim of the Petitioner and has issued a Caste Validity Certificate dated 15 July 2015 in favour of the Petitioner. By virtue of the grant of validity to the caste certificate issued to the Petitioner, the necessary condition of the appointment order, that the Petitioner shall seek validity of the certificate stands fulfilled. Thus, there is no dispute that the Petitioner has rendered himself eligible for appointment as a reserved category candidate.

7. However, in the intervening period, something what has happened at the hands of the Corporation is not only surprising but disturbing. The Corporation, on the ground that the caste validity certificate was initially rejected by the Caste Scrutiny Committee by virtue of an order dated 30 April 2012 and on a presumed ground that the Petitioner had played a fraud in not disclosing the decision of the Caste Scrutiny Committee while accepting the appointment, issued a show cause notice to the Petitioner dated 21 January 2014, calling upon the Petitioner to show cause as to why his services should not be terminated.

8. Admittedly, at that point of time, the proceedings which were adopted by the Petitioner to challenge the said decision of the Caste Scrutiny Committee and due reconsideration by the Caste Scrutiny Committee in pursuance of the order dated 23 July 2013 passed by the Division Bench of this Court were very much relevant. From a perusal of the show cause notice, it is clear that there is no consideration of these issues. In fact, the decision of the Caste Scrutiny Committee was pending at the relevant time when the show cause notice was issued.

9. The Petitioner responded to the show cause notice by his reply dated 30 January 2014. The Petitioner categorically pointed out that the envelope containing the order passed by the Caste Scrutiny Committee were received at his home town as received by his mother who is an illiterate person. She had not understood the contents of the envelope. It was also pointed out by the Petitioner that after he became aware of the said orders of the Caste Scrutiny Committee the Petitioner had approached the Nagpur Bench of this Court and the Nagpur Bench has accordingly allowed the writ petition with a direction to the Caste Scrutiny Committee to reconsider the matter.

10. The concerned Officer of the Corporation, however, being not satisfied with the Petitioner's reply, passed the impugned order dated 10 April 2014 terminating the Petitioner's services on the ground that the Petitioner had suppressed the order passed by the Caste Scrutiny Committee in accepting the appointment to the post of clerk. A representation made by the Petitioner for reinstatement has also been rejected by the Municipal Corporation on 30 January 2016. Both these orders are the subject matter of challenge in this Petition.

11. Admittedly, the Corporation has adopted a summary procedure. From the facts and circumstances it is difficult to accept that the Corporation had any cogent material to come to a conclusion that the Petitioner had played a fraud in getting the appointment. The Petitioner had categorically stated that his mother was in receipt of the envelope containing the orders passed by the Caste Scrutiny Committee and if this was to be disbelieved by the Corporation the first and foremost obligation on the Corporation was to examine this assertion and test the same on appropriate evidence. This basic requirement is not met by the Corporation and nonetheless the Corporation proceeded to pass the impugned order terminating the Petitioner's services. In fact, the impugned action lacks basic evidentiary foundation as also there is no other material to support this conclusion. The Corporation also could not have acted oblivious to the position that the Petitioner had successfully pursued his legal rights in the writ petition filed before the Nagpur Bench of this Court. The fact that the Petitioner was ultimately granted a validity to the caste certificate by the Caste Scrutiny Committee had also fallen to the deaf ears of the Corporation when the representation was turned down.

12. Considering the above facts, we are of the clear opinion that the impugned orders are drastic in nature. The basic principles of natural justice are admittedly not followed in passing the impugned order. In fact there is no evidence to support and establish the allegation in the show cause notice issued to the Petitioner. In any event, it is not a case that the Petitioner does not belong to the reserved category under which he came to be appointed. The Caste Scrutiny Committee has accepted the Petitioner's claim that he belongs to the Nomadic Tribe and has accordingly issued a caste validity certificate. If that be the position, then, in our opinion, there cannot be any grievance by the Corporation to say that the Petitioner is not validly appointed or for that matter any fraud is played by the Petitioner in seeking appointment. The Petitioner has been appointed on the post of a Clerk and undoubtedly being a public employment, it would definitely matter to the Petitioner, if any such adverse orders are passed by the Corporation affecting the fundamental rights guaranteed under Articles 14, 15, 16 and 21 of the Constitution.

13. The learned counsel for the Petitioner is right in relying on the decision of this Bench in Writ Petition No. 7268 of 2015 dated 29 June 2016. In a situation where the Caste Scrutiny Committee initially rejected the validity to a caste certificate and as such the Corporation terminating the services of the candidate, however, in the second round, the Caste Scrutiny Committee having granted validity to the caste certificate, this Court set aside the termination order issued by the employer in the said writ petition. It was held that subsequent grant of validity to the caste certificate would entail to the benefit of the Petitioner therein. The Division Bench made the following observations in paras 4 and 5 which read thus:

"4. Mr. Mendadkar, the learned counsel appearing for the Petitioner submits that the impugned order of termination has been passed only on the basis of invalidity of the caste claim of the Petitioner, by the Caste Scrutiny Committee. The said ground had vanished in view of the order dated 25 April 2014 passed by this Court, setting aside the orders of Caste Scrutiny Committee. It is submitted that the immediate consequence would be, the Petitioner would be required to be reinstated by Respondent No.1.

5. There is much substance in the contention raised on behalf of the Petitioner. The Petitioner would be right in contending that the entire foundation for Respondent No.1 to pass order of termination, has ceased to exist, in view of the order passed by this Court setting aside the order passed by the Caste Scrutiny Committee. Admittedly, there is no other ground on which the termination order has been passed. If this be the case, then we have no hesitation to grant prayer Clause (B) made in the Petition which reads thus:

"(B) To quash and set aside the impugned termination order dated 1.2.2013 (Exhibit-F) issued by the Respondent No.1 which is based on decision of the Committee dated 31.10.2012 invalidating Tribe Claim of the Petitioner and the same has been quashed and set aside by this Hon'ble High Court in Writ Petition No. 1383/2013 dated 25.4.2014; and direct the Respondent No. 1 and 2 to reinstate by continuing services of the Petitioner on

the post of Operator, by issuing appropriate writ, orders, or directions as the case may be;"

14. In view of the above clear position, we are of the clear opinion that the Corporation was not justified in issuing the impugned orders dated 10 April 2014 and 30 January 2016. In fact, as observed by us the impugned orders are clearly an arbitrary exercise of power by the Corporation. The basic facts as noted by us are completely overlooked by the Corporation as also the requirement of law is not complied. We are, therefore, certain that the impugned orders deserve to be quashed and set aside. We accordingly set aside the impugned orders dated 10 April 2014 and 30 January 2016 and direct the Corporation to forthwith reinstate the Petitioner with all consequential benefits and continuity in service. We pass this order having noted the peculiar facts of this case.

15. At this stage, Mr. Desai, learned counsel for the Petitioner submits that the Petitioner would be entitled for back wages from the date that the caste validity certificate was granted. In this regard, we feel it appropriate to permit the Petitioner to make a representation to the Corporation which shall be made within a period of four weeks from today. We direct the Corporation to decide the same in accordance with law within a period of four weeks thereafter.

16. The writ petition is accordingly allowed in the above terms. There shall be no order as to costs.

Parties to act on the basis of an authenticated copy of this order.

Ordered accordingly.

[Previous Judgment](#)

You are viewing judgment no 4 of a total of 21 results.

[Next Judgment](#)

[Back](#)

[Preview & Print](#)

[Email Judgment](#)

[Remove Highlights](#)

[BookMark Judgment](#)