

State of Maharashtra and Another

Vs

Dilip S/o Vishwanath Jamdar

Civil Appeal No. 2811 of 1987

(L. M. Sharma, Dr. T. K. Thommen JJ)

12.09.1989

JUDGMENT

SHARMA, J. -

1. This appeal by special leave is directed against the decision of Bombay High Court on a writ application by the respondent challenging the order passed by a committee holding that he does not belong to a Scheduled Tribe.
2. The respondent applied for appointment to a post under the State Government of Maharashtra and the public Service Commission selected him against a seat reserved for Scheduled Tribes on the condition that he produced a certificate showing that he belonged to a Scheduled Tribe. The Tahsildar, authorised to issue such a certificate, refused to do so on the ground that the respondent belongs to Hindu Koli caste and not to Mahadeo Koli caste which is a Scheduled Tribe. The respondent, thereafter, moved the Commissioner, who examined the matter and directed the Tahsildar to issue the necessary certificate. The respondent, thus, obtained a certificate which he produced, but, which was rejected by a committee known as Caste Verification Committee or Scrutiny Committee. On an application under Article 226 of the Constitution by the respondent, the Bombay High Court quashed the Committee's order and directed the authorities to take appropriate steps in the matter of appointment of the respondent.
3. The main ground given by the High Court in support of its judgment is that the Commissioner, who after an enquiry into the controversy, held that the petitioner belonged to a Scheduled Tribe was "an appellate authority over the decision of the Scrutiny Committee. As such when the superior authority has applied its mind and its application of mind has not been challenged, it would not be proper for the subordinate authority to give a contradictory finding." The learned counsel for the appellants, Mr. Bhamse, contended that the Commissioner is not an appellate authority over the decision of the Scrutiny Committee and the assumption made in this regard by the High Court is misconceived. We are not in a position to agree with the learned counsel inasmuch as no such plea has been taken in the special leave petition. The question whether the Commissioner was the appellate authority or not does not appear to have been challenged before the High Court. Nor has it been done so before this Court except during the course of argument addressed by the learned counsel for the appellant. In the circumstances this plea cannot be entertained in the present appeal. The appeal is, therefore, dismissed but, without costs. We, however, make it clear that it will be open to the appellants to urge that the Commissioner is not an appellate authority, vis-a-vis the Scrutiny Committee if an occasion arises to do so in any other case in the future.

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