

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12391 OF 2019

Sandeep N. Buga

...Petitioner

Versus

Pawan Hans Ltd. and Ors.

...Respondents.

...

Mr. R. K.Mendadkar for the Petitioner.

Mr. Lancy D'souza a/w. Ms. Deepika Agarwal & Mr. V. M. Parkar
for Respondent No.1.

Mr. B. V. Samant Assistant Government Pleader for
Respondent Nos.2 & 3.

...

**CORAM: NITIN JAMDAR &
SANDEEP V. MARNE, JJ.
DATE : 11 AUGUST 2023.**

P. C.:

1. By this petition, Petitioner challenges order dated 27 August 2019 passed by the Chairman and Managing Director, Pawan Hans Ltd. rejecting Petitioner's appeal against order dated 04 May 2018, by which disciplinary authority has imposed penalty of dismissal from service on him.

2. Brief facts of the case are that Petitioner claims to be belonging to Mahadev Koli Tribe which is notified as Scheduled Tribe. He claims that the Tehsildar, Alibaug issued tribe certificate dated 01 July 1985 certifying that he belongs to Hindu Mahadev Koli tribe, which is recognised as Scheduled Tribe.

3. Petitioner applied for the post of Driver which was reserved for Scheduled Tribe category in Pawan Hans Ltd. and came to be appointed with effect from 01 July 1989. He was further promoted to the post of Assistant Operator. It appears that the employer, by its letter dated 05 November 2001, inquired with Tehsildar, Alibaug about genuineness of tribe certificate dated 01 July 1985 submitted by Petitioner. By letter dated 29 November 2001, Tehsildar, Alibaug informed Pawan Hans Ltd. that the certificate was not issued by his office. Disciplinary proceedings were initiated against Petitioner by issuance of Memorandum of charge sheet dated 13 February 2017 alleging that the caste certificate, on the strength of which he was appointed on the post of Driver, was not issued by the office of Tehsildar, Alibaug. It was therefore alleged that Petitioner illegally claimed benefit meant for Scheduled Tribe category by giving false declaration in the application and by producing a false tribe certificate. Inquiry Officer was appointed to conduct inquiry into the charge. After holding inquiry, the Inquiry Officer submitted report dated 29 December 2017 holding that charge levelled against Petitioner was proved. He was supplied with copy of IO's report, and he submitted his representation against the same. The Disciplinary Authority thereafter

passed order dated 04 May 2018 holding Petitioner guilty of misconduct and imposed a penalty of dismissal from service. Petitioner filed Appeal dated 01 June 2018 before the Appellate Authority. Since the Appeal was not being decided, he filed Writ Petition No. 1377 of 2019 before this Court, which was disposed of by order dated 06 February 2019 directing Appellate Authority to decide the Appeal. The Appeal was accordingly decided and rejected by order dated 27 August 2019. Petitioner has filed present petition challenging the order of the Appellate Authority.

4. Appearing for the Petitioner, Mr. Mendadkar, the learned counsel would submit that Petitioner has erroneously been dismissed from service on an assumption that the caste certificate was not issued by the office of Tehsildar, Alibaug when in fact by subsequent letter dated 27 July 2017, the Tehsildar confirmed issuance of the caste certificate. That therefore, the findings recorded in the inquiry are perverse and the penalty imposed on Petitioner is liable to be set aside. He would further submit that the Respondent erroneously acted upon earlier letter of Tahsildar, Alibaug issued in the year 2001, when in fact subsequently the same authority has confirmed issuance of caste certificate by his office. He would therefore urge that the entire matter deserves to be remanded for considering the effect of Tehsildar's letter dated 27 July 2017.

5. Mr. Mendadkar would further submit that Tehsildar's failure to maintain proper records relating to Petitioner's caste certificate, cannot be a reason for making him suffer. That the Tehsildar, Alibaug was not examined as a witness in the inquiry and that therefore Petitioner's caste

certificate cannot be presumed to be fake in absence of any concrete evidence to that effect. He would rely upon judgment of the Apex Court in **R. Gunjaswami Vs. Chief Engineer, (1997) 7 SCC 505** in support of his contention that the certificate issued by the Competent Authority is valid for all purposes as long as the same is not cancelled by the appropriate authority. He would further submit that Petitioner is not required to produce validity certificate in respect of his caste claim as the provisions of the Scheduled Castes and Scheduled Tribes Act, 2000 The Maharashtra Scheduled Castes, 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 (**SC ST Act, 2000**) are not applicable to the Central Government PSUs.

6. *Per contra*, Mr. Samant the learned AGP appearing for State would submit that the certificate relied upon by Petitioner is not issued by the concerned Tehsildar. That Tehsildar's letter dated 27 July 2017 is erroneously relied upon by Petitioner, which does not confirm issuance of certificate. He would invite our attention to the affidavit-in-reply dated 05 June 2023 filed in pursuance of directions issued by this Court which confirms that caste certificate of the Petitioner was never issued by the office of Tehsildar, Alibaug.

7. We have also heard Mr. D'souza the learned counsel appearing for the Respondent-Pawan Hans Ltd., who would support the penalty order imposed on Petitioner.

8. After having considered submissions canvassed by the learned counsels appearing for the parties, we find that there is no dispute to the position that Petitioner's initial appointment in service is against a post reserved for Scheduled Tribe category. Petitioner claimed that he belongs to Hindu Mahadev Koli Scheduled Tribe on the strength of caste certificate dated 01 July 1985 allegedly issued by Tehsildar, Alibaug. Thus, based on said certificate dated 01 July 1985, he entered in service of Pawan Hans Ltd. in the year 1989 against the vacancy reserved for ST community.

9. Upon request made by the employer-Pawan Hans Ltd. for verifying genuineness of caste certificate, Tehsildar-Alibaug has intimated the employer by letter dated 29 November 2001 that the concerned caste certificate was never issued by his office. Thus, the certificate dated 01 July 1985, on the strength of which Petitioner got appointed turned out to be fake.

10. The employer accordingly initiated disciplinary proceedings against Petitioner for the charge of securing appointment based on false caste certificate. The memorandum of charge sheet dated 13 July 2017 was issued to Petitioner. A detailed inquiry was conducted by the inquiry officer by offering full opportunity of defence to him. After considering the entire evidence, on record, the inquiry officer submitted his report dated 29 December 2017. Relying on Tehsildar's letter dated 29 November 2001, inquiry officer concluded that the caste certificate dated 01 July 1985 submitted by the Petitioner was false. The inquiry officer

further held while all other contents in the caste certificate were handwritten, except the date and number, which is typewritten. The inquiry officer also observed that Petitioner was granted opportunity to produce duplicate caste certificate, which he failed to produce. That he was also called upon to produce caste certificates of his blood relatives, which also could not be produced by him. The inquiry officer therefore held the charge to be proved. We do not find any perversity in the findings recorded by the inquiry officer.. The disciplinary authority, after granting full opportunity of hearing to Petitioner on findings recorded by the inquiry officer, accepted the findings in the report and passed penalty order dated 04 May 2018. Again, we do not find any perversity in the decision of the disciplinary authority. The Appellate Authority has also proceeded to reject the Appeal.

11. Petitioner's sheet anchor is Tehsildar's letter dated 29 July 2017 which reads thus:

वरील विषयान्वये कळविणेत येते की, आपण या कार्यालयाकडे जातीचा दाखला पडताळणीसाठी अर्ज केला असून दि. २९/११/२००१ रोजी या कार्यालयाकडील पत्र क्र. ADM/WS-/२/२००१ / caste certificate अन्वये मॅनेजर, पवन हंस, हेलि. लिमिटेड, जुहु एरोडम्स, एस. व्ही. रोज, विले पार्ले ;वेस्टेड, मुंबई नं. ५६ यांना सदर दाखला पडताळणी संबंधात पत्र पाठविण्यात आले आहे. त्या पत्राचे जावक नोंदवहीमध्ये कोणत्याही प्रकारची नोंद दिसून येत नाही. तसेच दि. २९/११/२००१ चे जे पत्र दिले आहे. त्याबतची संचिका या कार्यालयात शोध घेतला असता त्या पत्राची फाईल आढळत नाही.

आपण सोबत जोडलेल्या जातीच्या दाखल्याच्या झेरॉक्स वरून असे दिसून येते की, सदरचा महोदय कोळी जातीचा दाखल हा एस. आर. नं. १५६/१९८५, दि. ०१/०७/१९८५ अन्वये या कार्यालयाकडून देण्यात आला आहे. परंतु या कार्यालयाकडील सन १९८५ चे अनुसूचित जमातीचे रजिस्टरचा शोध घेतला असता सदरचे रजिस्टर उपलब्ध होत नाही.

12. Translation of letter dated 29 July 2017 as provided by Petitioner is as under:

“To

Shri Sandeep Narayan Buga,

Add: Chalmala, Tal. Alibag

Subject: Letter No. ADM / WS-2 / 2001 / Caste Certificate dt. 29.11.2001 to be verified Reference: Your application ct. 10.04.2017

With reference to the above subject, you are informed that you have applied to this office for verification of the Caste Certificate; thereupon a letter has been sent on date 29.11.2001, being this office letter No. ADM/W5-2/2001/Caste Certificate, to the Manager Pavan Hans, Heli Limited, Juhu Aerodrome, S.V. Road, Vile Parle [West], Mumbai No.56, in connection with verification of the said certificate. No entry whatsoever of that letter is found in the Outward Register. As regards the letter dt. 29.11.2001, which has been given, a search thereof was made for the file in that behalf in this office but the file in respect of that letter is not found.

From the xerox copy of the caste certificate enclosed therein by you, it appears that the certificate of the said Mahadev Koll Caste, was given by this Office by S.R. No.156/1985 dt. 1.7.1985. But when a search was taken for the Register of Scheduled Tribes, the said Register was not available.”

13. During the course of hearing of the present petition, this Court noticed contradictions in the contents of letter dated 29 July 2017. It was stated in the said letter that caste certificate dated 01 July 1985 was issued by Tehsildar's office, but at the same time it was also stated that the records pertaining to the certificate are not available in the office. In view of the contradictions in the contents of the letter dated 29 July 2017, this Court passed following order on 23 February 2023:

“1. We cannot comprehend the manner in which letter at page no. 20 of the Writ Petition is issued by the Tahasildar, Alibaug. On the one hand the Tahasildar says that the file is not traceable and on the other hand he states that the caste certificate is issued to the Petitioner from his office.

2. Respondent No.3 is required to explain the said anomaly and also comment on the genuineness of the issuance of the caste certificate in question. The affidavit shall be filed by the respondent no.3 before the next date.

3. Stand over to 6 April 2023.”

14. In pursuance of directions issued by this Court, the Tehsildar, Alibaug has filed affidavit dated 05 June 2023, paragraph Nos. 3 to 5 whereof read thus.

“3. I submit that I have taken charge as Tahsildar Alibag on 10.03.2023. In view of compliance of the above mentioned directions of this Hon'ble Court, I submit that I have perused the record available in my office and found the Register of Caste Certificates of year 1984 to 1987.

4. I say and submit that in said Register of Caste Certificates, the entry of issuance of Caste Certificate bearing no. SR 156/1985 dated 1.07.1985 as referred by the Petitioner in present Petition has not been found in said register. Annexed hereto and marked as ***Exhibit R-1 (colly.)*** are the copies of pages of said Register from first entry dated 15.01.1985 till the last entry dated 13.12.1985 of year 1985.

5. I say and submit that, that this Hon'ble High Court, by an order dated 23.2.2023 was pleased to direct the respondent No. 3 to explain the anomaly and also comment on the genuineness of caste certificate in question. I say that, the said letter dated 29.7.2017 was issued by the then Tahsildar, Alibag, Raigad, after perusal the said letter annexed at Exhibit-D, it is understood that the petitioner has submitted xerox copy of Caste Certificate bearing No. 156/1985, dated 1.7.1985. therefore the Learned

Tahsildar has come to the conclusion that the said certificate was issued by their office and further the Learned Tahsildar has said that the register of the year 1985 was not found after search. I say that, the said letter was issued in view of the xerox copy of caste certificate submitted by the Petitioner. I say that, after the order of this Hon'ble Court, I have recorded the statement of the present record keeper and the peon of the record keeper department. I say that, in the said statement it was stated that after search in the register of the year 1984 to 1987, the entry of issuance of caste certificate in the name of petitioner Shri. Sandeep Buga has not found in the Caste Certificate Register. Hereto annexed and marked as ***Exhibit-R-2*** is the copy of the statement of the present record keeper and peon.

15. Thus, Tehsildar, Alibaug has once again certified that the caste certificate dated 01 July 1985 was not issued by his office. Faced with the stand taken in the Affidavit, Mr. Mendadkar would invite our attention to affidavit-in-rejoinder filed by Petitioner. He has strenuously tried to contend that the officer who has filed the affidavit dated 05 June 2023 is not examined in the inquiry. That the author of the caste certificate issued in 1985 was also not examined. That the Affidavit has been filed by Tehsildar relying upon information given by a Peon. We find these submissions to be totally baseless. Mere change of officer will not alter the position as to whether caste certificate dated 01 July 1985 was actually issued by the office of Tehsildar, Alibaug or not. Also, purpose of directing filing of Tehsildar's affidavit was not to collect additional evidence but just to seek clarification with regard to the letter dated 29 July 2017. It is now clear that the certificate dated 01 July 1985 was not issued by the office of Tehsildar, Alibaug. Therefore, Petitioner

cannot seek to derive any mileage out of letter dated 29 July 2017.

16. Even otherwise, Petitioner's reliance on the letter dated 29 July 2017 is totally misplaced as he cannot seek to challenge findings recorded in the inquiry on the basis of something which did not form part of the inquiry. If Petitioner really believed that his caste certificate was indeed issued by the office of Tehsildar-Alibaug, he ought to have produced a letter to that effect from the office of Tehsildar, Alibaug during pendency of the inquiry. He could have examined the concerned official in the office of Tehsildar to prove that the certificate was indeed issued by the office. He failed to do so. Therefore, Petitioner could not be permitted to take benefit of letter dated 29 July 2017 issued after finalization of disciplinary proceedings. Be that as it may, now the contents of the letter have been clarified by the Tehsildar and the falsity in Petitioner's certificate is now more apparent.

17. In disciplinary proceedings, the test for proving the charge is preponderance of probability. The employer-Pawan Hans Ltd. was armed with Tehsildar's letter dated 29 November 2001 certifying that caste certificate dated 01 July 1985 was not issued by his office. We do not find any wrong on the part of employer in relying on the said letter of Tehsildar for the purpose of arriving at a finding that the caste certificate submitted by Petitioner was fake. The employer discharged the burden of proving the charge on the touchstone of test of preponderance of probability. It was then for the Petitioner to prove that the certificate was indeed issued by the office of Tehsildar, Alibaug. He further failed to

adduce any evidence to that effect. Though he was granted opportunity to produce caste certificate of his blood relatives, including his father, he failed to produce the same. Therefore the finding recorded in the disciplinary inquiry to the effect that certificate is not a genuine document, cannot be faulted with.

18. There was one more option open for Petitioner to save his job. Petitioner could have applied for issuance of tribe certificate in prescribed form and ought to have filed the proposal for validity of the same with the competent Scrutiny Committee. If Petitioner indeed belong to Koli Mahadev Tribe, he ought to have adopted the said course of action. However, Petitioner has neither procured fresh caste certificate in the prescribed form nor has filed any proposal for issuance of validity certificate.

19. Mr. Mendadkar's submission that the provisions of Act of 2000 would not apply to the employees in Central Government PSUs is in the teeth of the provisions of Sections 3 and 6 of the SC-ST Act, 2000 which read thus:

3. Application for a Caste Certificate.- Any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, required to produce a Caste Certificate in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes, either in any public employment or for admission into any educational institution, or any other benefit under any special provisions made under clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or in the Co-operative Societies; or for purchase or transfer of land from a tribal

land-holder or any other purposes specified by the Government, shall apply in such form and in such manner as may be prescribed, to the Competent Authority for the issue of a Caste Certificate.

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 obtain such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

20. The issue of mandatory requirement of procuring a validity certificate from scrutiny committee by employees of Central Government or its PSUs is no longer *res integra* and is covered by the Judgment of Division Bench of this

Court, Bench at Aurangabad in *Arun Shankar Nimje Vs. Union of India*, Writ Petition No, 9885 of 2019 decided on 13 March 2020.

21. As of today, there is no document on record to prove that Petitioner belongs to Koli Mahadev Tribe. Therefore, this Court will not be in a position to set aside the order of dismissal or issue Writ of mandamus directing the employer to reinstate him on post reserved for Scheduled Tribe category. In absence of Petitioner proving his tribe claim, he cannot be permitted to occupy post reserved for ST category.

22. Resultantly we do not find any merit in the Petition. It is rejected.

SANDEEP V. MARNE, J.

NITIN JAMDAR, J.

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2023.08.19
16:13:23
+0530