

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 5497 of 1999

Smt. Savita d/o. Bandappa Ramgirwar,
Aged : 32 years,
Occupation : Service,
R/o. E-31/8, N-6, CIDCO,
New Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra.
 2. The Committee for Scrutiny & Verification
of Tribe Claims, M.S., Nasik.
 3. The Tahsildar and Taluka Executive
Magistrate, Aurangabad.
 4. The Superintending Engineer (Stores),
Maharashtra State Electricity Board (SM),
Circle Aurangabad.
- .. Respondents.

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*Mr. U.R. Awate, Advocate, holding for
Mr. S.B. Talekar, Advocate, for the petitioner.*

*Mrs. M.B. Gangwal (Patni), Assistant Government Pleader,
for respondent nos.1 and 3.*

Mr. K.D. Bade Patil, Advocate, for respondent no.2.

*Mr. R.P. Dhaware, Advocate, holding for
Mr. U.S. Malte, Advocate, for respondent no.4.*

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**CORAM : A.V. NIRGUDE &
A.M. BADAR, JJ.**

DATE : 6TH JULY 2015

ORAL JUDGMENT (Per A.V. Nirgude, J.) :

1. Heard learned Counsel for respective parties.
2. The petitioner challenges the judgment and order dated 7th May 1997, passed by the Committee for Scrutiny & Verification of Tribe Claims, Nasik, holding that the petitioner's claim that she belongs to Scheduled Tribe by name '*Chhatri*' is not proved.
3. The petitioner claims that she belongs to '*Chhatri*' - Scheduled Tribe. She obtained a caste certificate to that effect on the basis of affidavits of her parents and Circle Inspector's Report. On the basis of this Scheduled Tribe Certificate, she secured a job as Typist in Maharashtra State Electricity Board. Sometime thereafter, her employer referred her caste certificate to the Committee for Scrutiny and Verification of Tribe Claims, Nasik. The Committee then asked the petitioner to appear before it for hearing.
4. The petitioner submitted certain documents in support of her case. The documents submitted by the petitioner were of school origin. In all the school certificates, the caste of the petitioner was mentioned as '*Telagu*', probably indicating her mother tongue, but, nowhere it mentioned that she belongs to '*Chhatri*' - Scheduled Tribe. Apparently,

the petitioner did not produce any record to show her affinity to 'Chhatri' - Scheduled Tribe. She did not produce evidence, as to whether she or her family members follow peculiar practices, customs, rituals of the tribe. Obviously, the Committee did not accept her case and referred her case to the Vigilance Cell. The Vigilance Cell submitted a report and gave its opinion. The Scrutiny Committee then delivered the judgment holding that the petitioner could not establish her affinity towards 'Chhatri' - Scheduled Tribe.

5. The learned Counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of ***Kum. Madhuri Patil & another Vs. Additional Commissioner, Tribal Development and others***, reported in **(1994) 6 SCC 241**, contending that this judgment was delivered in 1994 and was holding the field at the time when the impugned judgment was given by the Scrutiny Committee. The Honourable Supreme Court very clearly mentioned in the judgment, that in case, the Scrutiny Committee refers a case to the Vigilance Cell and if the Vigilance Cell gives adverse report, the candidate must be given an opportunity of hearing along with copy of the Vigilance Report. This crucial step has not been followed. The learned Counsel for the petitioner, therefore, asserted that this is a fit case, even now, to refer the case back to the Scrutiny Committee so that the petitioner would get the opportunity to explain her position vis-a-vis the Vigilance Report.

6. We are not inclined to accept this submission. When a person claims that he belongs to a particular caste or tribe, he should certainly narrate the peculiar socio-cultural traits, practices followed in such caste or

tribe. He would also try to show that some of the traits and practices are still followed by his or her family. There are various methods to show one's affinity to one's caste or tribe, but, in this case, besides bare word of the petitioner and her family members, nothing came on record to prove, even *prima facie*, affinity of the petitioner towards that particular Scheduled Tribe. Even in the petition, there is no mention about the peculiar traits, practices, customs, rituals of the '*Chhattri*' - Scheduled Tribe. We are all aware that Scheduled Tribes in India have peculiar customs, rituals. Such tribals are identified on the basis of such customs, rituals and practices. The petitioner did not come with a case that her parents or elder siblings had secured Validity Certificates from the Scrutiny Committee. Apparently, the petitioner is the first person from her family to claim that she belongs to a particular Scheduled Tribe. In this situation, she was under heavy burden to prove her caste claim, at least, *prima facie*. If this was not done, we find it unnecessary to refer the case back to the Scrutiny Committee, so that Vigilance Report would be given to the petitioner.

7. Even otherwise, petitioner's claim is now stale. In 1989-90, the petitioner was about 30 years old. She sought employment. She lost her employment in 1997 or so, and at this stage, when she would have almost completed her career as a typist, there is no point in reviving this case. Instead, we find it necessary to close this litigation forever.

8. The learned Counsel for the petitioner also mentioned that the outcome of this petition would be beneficial to the petitioner's children, etc. We are afraid, that such contingency would not pursue us to reopen

this case. If at all the petitioner has children, they would be able to prove their case independently. Rejection of their mother's claim would certainly not come in their way.

9. The learned Counsel for the petitioner, however, suggested that his client is entitled to at least reinstatement. Indeed, the petitioner is not branded as a fraud. Her case was not found to be false claim. Her employer gave her show cause notice as to why her services should not be terminated. To this notice, the petitioner made a submission that she was entitled to reinstatement as per the Government Resolution issued by the Government of Maharashtra, dated 15th June 1995. The learned Counsel for the petitioner also placed reliance on judgment of the Supreme Court in the case of *Shalini Vs. New English High School Association and others*, reported in (2013) 16 SCC 526.

10. In view of the law laid down by the Supreme Court on the subject of reinstatement, we are convinced that the petitioner is, at least, entitled to reinstatement, without back wages and other benefits assigned to Scheduled Tribes.

11. By our order dated 8th June 2015, we asked the learned Counsel for the petitioner, as to whether his client would be interested in joining service as Typist at this stage of her life. Pursuant to the said order, the learned Counsel for the petitioner has filed affidavit of his client, dated 15th June 2015, in which she has categorically stated that she would like to take advantage of reinstatement as Typist.

12. We, therefore, pass following order :

(A) The petition is partly allowed.

(B) The order dated 26th October 1999, passed by respondent no.4 -
Superintending Engineer, Exhibit "K", is quashed and set aside.

(C) The petitioner shall be reinstated in service, but there shall be no
back wages payable to the petitioner. The petitioner is also not entitled to
continuity in service and other seniority benefits. The petitioner shall also
file an undertaking in this Court, within a period of four weeks from today,
that she would not claim any benefit on the basis of her caste / tribe claim
ever in rest of her life.

13. Rule is made absolute in the above terms. In the
circumstances of the case, there shall be no order as to costs.

(A.M. BADAR)
JUDGE

(A.V. NIRGUDE)
JUDGE

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