

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 5533/2013.

Sanjay Sohansingh Thakur

VERSUS

State of Maharashtra and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
AND A.P. BHANGALE, JJ.

DATE : FEBRUARY 26, 2015.

Heard Shri S.S. Dhengle, learned Counsel
for the petitioner, Mrs. K.S. Joshi, learned A.G.P. for
respondent nos.1 and 3 and Mrs. B.H. Dangre, learned
Counsel for respondent no.2.

Caste claim of petitioner as belonging to
“Thakur Scheduled Tribe” has been invalidated on
24.09.2013. Caste claim was referred on 26.03.2012.

Petitioner has joined employment on

03.06.2013, and his employment is protected by this Court on 15.10.2013 while issuing notice.

Shri Dhengale, learned Counsel for petitioner submits that all documents record caste as 'Thakur' and those documents are not found either interpolated or tampered with. He submits that in this situation, merely relying on affinity test, caste claim cannot be invalidated. He relies upon a judgment of Hon'ble Apex Court in case of Anand .vrs. Committee for Scrutiny Verification of Tribe Claims and another (2011 (6) Bom.C.R. 752).

He also adds that the petitioner is the first person in the family to get such employment, and as such there is no validity or invalidity in the family. He further submits that due to migration of family from one place to another and modernization, old customs and rites may not have been followed. The traditions within knowledge of the parents were placed for consideration before the Scrutiny Committee.

Mrs. K.S. Joshi, learned A.G.P. and Mrs. B.H. Dangre, learned Counsel appearing on behalf of respondents are opposing the petition. They submit

that existence of “Thakur” in higher caste and “Thakur Scheduled Tribe” is not in dispute. Hence, in this situation, the documents cannot be decisive and, therefore, anthropological test needs to be applied. Petitioner was given full opportunity, and it was open to the petitioner to bring on record the material demonstrating adherence to old traditions in his family in past, however, that has not been done.

They submit that the Hon'ble Apex Court in case of *Anand .vrs. Committee (supra)* does not rule out use of affinity test.

Perusal of the judgment in case of *Anand .vrs. Committee (supra)*, does not show that affinity test cannot be relied upon. The Hon'ble Apex Court has held that if there are documents which clinch the issue, only because of affinity test, the caste claim cannot be negated.

In facts before us, existence of Thakur amongst higher caste is not in dispute. In this situation, the burden was upon the petitioner to show that he was not from a higher caste Thakur. For that

he could have lead evidence. It is not the case of the petitioner that opportunity to lead such evidence was not given. Contention that due to modernization, old traditions may not be followed in the family, though correct, in this situation when reservation is being claimed as a Scheduled tribe person, evidence of other relatives could have been very well pressed into service to point out old traditions and customs. It is not the case of petitioner that he was not given such opportunity.

Full Bench of this Court in case of **Arun Vishwanath Sonone .vrs. State of Maharashtra and others (2015 (1) Mh.L.J. 457)**, has already held that after coming into force the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act, (Act No. 23 of 2001), service cannot be granted, except on the strength of validity. Here petitioner has been given appointment only on the basis of caste certificate, contingent upon verification thereof by the Scrutiny

Committee.

In this situation, as we do not see any perversity in the approach of the Scrutiny Committee, Writ Petition is, therefore, dismissed. No costs.

Upon request of the learned counsel for the petitioner, the interim order granted by this Court on 15.10.2013, is continued for a period of 12 weeks more from today, and the same shall cease to operate automatically thereafter.

JUDGE

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