

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 1051 OF 2016

Narsappa S/o. Narayanrao Raulwar, Aged 57 **PETITIONER**
Years, Occupation Service, Resident of
Degloor, Taluka Degloor, District Nanded

V E R S U S

- 1 Scheduled Tribe Certificate Scrutiny Committee, **RESPONDENTS**
Aurangabad, Through its Member Secretary
- 2 Zilla Parishad, Nanded, Through its Chief
Executive Officer
- 3 Executive Engineer, Construction Department,
Zilla Parishad, Nanded
- 4 Block Development Officer, Panchayat Samiti,
Degloor, Taluka Degloor, District Nanded

Mr. Sagar S. Phatale, Advocate for the Petitioner
Mr. A.G. Magre, A.G.P. for Respondent No.1 – State
Mr. R.K. Ingole, Advocate for Respondent Nos. 2 to 4

**CORAM : A.V. NIRGUDE &
V.L. ACHLIYA, JJ.**

DATE : 30th March, 2016

ORAL JUDGMENT (Per: V.L. Achliya, J.) :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for the parties, the petition is heard finally at the stage of admission.

2. Heard the learned counsel for the parties.

3. In view of the limited relief claimed in the petition seeking direction to expedite the process of verification of Caste claim of the petitioner and extend the benefit under the Assured Career Progression Scheme, the petition is heard and taken up for final disposal at the stage of admission with the consent of both the sides.

4. In brief the facts of the case are that the petitioner was appointed in the year 1981 as a Tracer with respondent no. 2 and subsequently posted as 'Junior Draftsman'. Since joining of service in the year 1981, the petitioner was never asked for submission of Caste Validity Certificate. Pursuant to the Government Circular dated 8th May, 2013, the petitioner was asked to submit the proposal in prescribed proforma for verification of Caste Certificate that he belongs to 'Manerwarlu' i.e. the caste included as Scheduled Tribe. Accordingly, the proposal was forwarded to the Caste Scrutiny Committee, Aurangabad. The proposal for verification of Caste Certificate of the petitioner is pending with respondent no. 4 – Committee. Although the petitioner has completed more than 12 years his service, the Department has not extended the benefit of 12 years Time Bound Promotion under the Assured Career

Probation Scheme. Vide letter dated 29th October, 2015, the petitioner was communicated that benefit of the said Scheme will not be granted to him unless the certificate of validation of caste claim is produced before the competent authority. In view of the communication dated 29th October, 2015, the petitioner has filed the petition and claimed the direction to respondent no. 1 – Caste Scrutiny Committee to expedite and decide the caste claim of the petitioner with further direction to respondent nos. 2 to 4 to extend the benefit of 12 years Time Bound Promotion under the Assured Career Probation Scheme without insisting for submission of validity certificate.

5. Learned counsel for the petitioner has argued that the State Government has taken policy decision to extend 12 years Time Bound Promotion under the Assured Career Probation Scheme to its employee only with a view to avoid stagnation. In the said Scheme, nowhere it is stated that the Time Bound Promotion of the employee, who has completed 12 years service in one cadre, should be withheld till the submission of Caste Certificate on subject to validation of caste certificate. It is further contended that the impugned communication dated 29th October, 2015 is improper and contrary to object of the Scheme.

6. Learned A.G.P. for respondent no.1 – Caste Scrutiny Committee submits that the petitioner has submitted the proposal for validation of the Caste Certificate in the year 2015 and inquiry is in progress. It is further submitted that looking to the pendency of number of cases before the Scrutiny Committee, it may not be possible to complete the enquiry in short time.

7. We have perused the copy of appointment letter dated 29th July, 1981, placed on record as Annexure 'B' of the Petition. The appointment of the petitioner was not made subject to submission of Caste Validity Certificate. The fact is not in dispute that the proposal for verification of the caste claim of the petitioner has been first time forwarded in the year 2015 pursuant to the direction of the State Government. Learned counsel for the petitioner has argued that the initial appointment of the petitioner is not made against vacancy/post reserved for Scheduled Tribe. In our view, the insistence of respondent nos. 2 to 4 to produce the Caste Validity Certificate in order to examine the case of the petitioner to extend the benefit under the said Scheme, is totally unwarranted. It has been rightly argued by the learned counsel for the petitioner that the Assured Career Probation Scheme has been framed by the Government with the object to avoid stagnation. The employee to whom benefit of such scheme is extended, he has to work in same cadre. He is only entitled for next higher pay scale. Thus there is no nexus between the extension of benefit of the Scheme and submission of Caste Validity Certificate. The extension of benefit under the scheme not results in promotion to higher post. Therefore, the insistence of respondent nos. 2 to 4 to withhold the extension of benefit of the Assured Career Probation Scheme is totally unjustified.

8. As per the Scheme framed by the Government, the benefit of the Scheme deserves to be given to a person who has completed 12 years of service and fulfills criteria laid down under the said Scheme. Under the Scheme, the submission of Caste Validity Certificate is not laid

down as one of the condition precedent to avail the benefit of the Scheme. Since the extension of the benefit is not of promotion from the post of lower cadre to higher cadre, the insistence of Caste Validity Certificate by respondents appears to be improper.

8. In view of above, we are inclined to allow the Petition in terms of prayer clause 'A' and 'B'. Caste Scrutiny Committee, Aurangabad, the respondent no. 1 is directed to expedite the proposal of caste verification of the petitioner and decide the same as expeditiously as possible and preferably within 12 months from the date of passing of this order. We further direct respondent nos. 2 to 4 to consider the claim of the petitioner for extending the benefit of Service Assured Career Progression Scheme without insisting for submission of Caste Validity Certificate. The decision in this behalf be taken as expeditiously as possible within a period of six months from the date of passing of this order. Accordingly, Writ Petition is allowed in terms of prayer clauses 'A' and 'B'.

Rule made absolute in above terms.

(V.L. ACHLIYA, J.)

(A.V. NIRGUDE, J.)