

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

WRIT PETITION NO.1411 OF 2016

Rajendra s/o Bapurao Chavan
Age 53 years, Occu. Service,
R/o Swami Samartha, Dhule Road,
Plot No.39, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon ... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
General Health Department,
Mantralaya, Mumbai – 32
2. The Employees State Insurance
Scheme, through its
Medical Administration Officer,
Pune ... RESPONDENTS

.....
Shri S.R. Barlinge, Advocate for petitioner
Shri A.B. Girase, Govt. Pleader for State
.....

CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.

DATED: 4th February, 2016.

ORAL JUDGMENT (PER : R.M. BORDE, J.):

1. Rule. Rule made returnable forthwith. With the

consent of learned counsel for the parties, writ petitions are taken up for final hearing at the admission stage.

2. The petitioner is objecting to the directions issued by respondent No.2 to submit the tribe certificate to the concerned authorities for purpose of making reference of the matter to the competent scrutiny committee with a view to verify the tribe certificate issued in favour of the petitioner.

3. The petitioner claims to belong to Koli Mahadeo - Scheduled Tribe. The caste certificate secured by him prior to 1989, was referred to the Director of Social Welfare, Pune while he was a student, pursuing his M.B.B.S. degree course. The Director of Social Welfare, at relevant time, was entrusted with the powers to verify the caste certificates of the individuals belonging to Backward community. The Director of Social Welfare, Pune rejected the verification claim of the petitioner, which order was subjected to challenge in an appeal presented by the petitioner to the Government. The competent authority decided the matter on 14.8.1981 allowing the appeal presented by the petitioner and directing validation of the caste certificate issued in favour of the petitioner.

4. After completion of the studies, the petitioner was

appointed as a Medical Officer after having been selected by the Maharashtra Public Service Commission and was posted as a Medical Officer, Class-II in view of the order issued on 28.8.2001. The petitioner is continued in employment till this date. In the meanwhile, the issue in respect of validation of the caste certificate issued in favour of father of the petitioner did crop up. The tribe certificate issued in favour of father of the petitioner was referred to the Scrutiny Committee, Nasik. However, the Scrutiny Committee refused to validate the same. As such, the father of the petitioner approached this Court by presenting Writ Petition No.3187/1994. The said writ petition came to be allowed by the Division Bench of this Court on 10.10.1994, on primary consideration of the validation order issued in favour of the petitioner on 14.8.1981.

5. Apart from this, the matter in respect of validation proposal of son of the petitioner was also considered by the Division Bench in Writ Petition No.1134/2010. In case of the son of the petitioner by name Pranav, his proposal for validation of the caste certificate was initially turned down by the Scrutiny Committee. As such, he along with his cousin brother was required to approach this Court by presenting Writ Petition No.1134/2010. The Division Bench of this Court, relying upon

the order directing validation of the caste certificate of father of the petitioner as well as his grandfather, proceeded to allow the Writ Petition and directed the Scrutiny Committee to issue validation certificate to the son of the petitioner. In spite of this overwhelming evidence, and in spite of the fact that the caste certificate issued in favour of the petitioner has also been verified by the appropriate authority which was entrusted with the powers at relevant time, the State authority i.e. respondent No.2 proceeded to direct the petitioner to submit the proposal for validation of the caste certificate.

6. We are of the view that the direction issued by the respondent No.2 on 17.11.2015 is without application of mind to the record of the case and deserves to be set aside. The issue as regards the admissibility and authenticity of the validation certificate issued by the competent authority prior to enforcement of 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 was a matter of consideration in Writ Petition presented in the case of **Raju s/o Pundlikrao Burde Vs. Establishment Officer (III-B), Maharashtra Electricity Board, Mumbai & anr.** reported

in **[2004(4) Mh.L.J. 780]**. The Division Bench of this Court, while dealing with an identical issue, has observed in the judgment in para No.10 as under :

“10. It is unthinkable that legislative intent in enacting section 4 sub-section (2) was to invalidate all the caste certificates issued prior in point of time and to further invalidate, as contended by Shri R.K. Deshpande, all the orders passed by the Competent Officers, Authorities or Committees. While interpreting a provision, legislature is presumed to be just and fair. A just and fair conjoint reading of section 4 sub-section (2) and the definition of caste certificate and Competent Authority contained in section 2(a) and (b) provides for saving of the caste certificates issued prior to the coming in force of the Act by officers or authorities, then competent to so issue the same and similar would be the case in regard to caste validity certificates issued by the officer, authorities or the committees, then validly constituted. In this view of the matter, we reject the submission of Shri R.K. Deshpande, learned counsel appearing on behalf of the respondents, that the caste certificate obtained by the petitioner and the caste validity certificate issued in his favour by the competent authority in the year 1982 does not hold good after the Act comes into force. On the contrary, we hold that the caste certificate and the caste validity certificate issued by the Director of Social Welfare Officer, Pune and the Divisional Commissioner holds good for all purpose and for all time to come. This bring us to the last submission canvassed by the counsel for the respondent, the submission being that selection to the post of Executive Engineer being a fresh appointment, a fresh caste certificate under the new Act, so also a fresh validity certificate can be insisted upon.”

7. In view of the decision of the Division Bench of this Court in the matter referred to above and in view of the fact that the tribe certificate issued in favour of the petitioner has already

been verified by the competent authority dealing with the issue at the relevant time, it is not necessary to direct the petitioner to submit the tribe certificate once again for verification by the competent Scrutiny Committee. The order issued by the competent authority at the relevant time in respect of verification of the tribe certificate issued in favour of the petitioner is perfectly valid and as such, there is no need for the petitioner to tender proposal once again for validation of the tribe certificate.

8. In view of the reasons recorded above, the Writ Petition deserves to be allowed and same is accordingly allowed. The directions issued by the respondent No.2 on 17.11.2015 are quashed and set aside. Rule is accordingly made absolute. There shall be no order as to costs.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)