

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

WRIT PETITION NO. 7247 OF 2012

Laxmikant S/o. Chandulal Koturkar, Aged 57
Years, Occupation Service, Plot No.8/B,
Scnd Floor, Pagariya Apartment, Opp. Zilha
Udyog Kendra, Station Road, Aurangabad

PETITIONER

V E R S U S

- 1) Scheduled Tribe Certificate Scrutiny
Committee, Through its Vice Chairman,
Kasmira Sadan, Railway Station Road,
Aurangabad
- 2) The Collector, Jalna
- 3) The Executive Magistrate, Jalna
- 4) The Additional Chief Conservator of Forests,
Maharashtra State
- 5) The Chief Conservator of Forersts,
Aurangabad Region

RESPONDENTS

*Mr. Suresh M. Kulkarni, Advocate for the Petitioner
Mr. P.S. Patil, Advocate for Respondent No.1
Mr. V.M. Kagne, A.G.P. for the Respondent Nos.2 to 5 - State*

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

DATE : 4th April, 2016

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

1. The petitioner himself is present before this Court. Learned counsel Shri Suresh M. Kulkarni identified him. We heard the submissions at bar, perused the petition, impugned judgment and annexed documents.

2. The question that arose for our consideration in this case is, whether the Tribe Scrutiny Committee committed any error in rejecting the petitioner's claim that he belonged to a Scheduled Tribe which known as 'Chhatri'.

3. The documents repeatedly referred to him as "Chhatri" (Tailor), thereby indicating that the word "Chhatri" was synonymous to tailoring work. In all the documents, the word "tribe" is not used, but the word "caste" is used. These documents thus did not prove or even indicate that the petitioner's grand-father was a tribal. It indicated that he belonged to a caste which is known as 'Telangi Chhatri' (Tailor).

4. The petitioner did not bring on record anything to indicate that he has similarity with anthropological characteristics of tribals by name "Chhatri". He indicated that his family originally belonged to Chandrapur district. The Vigilance report also indicate that the petitioner and his family

members' ancestors traditionally worked as 'tailor'. It is therefore clear that even affinity test is not satisfactorily passed.

5. What is further peculiar in petitioner's case is that the petitioner and even his near relatives were admitted to School and their caste was not mentioned at all as "Chhatri". He and his relations were described as 'Hindu'. This happened in respect of his all the family members. No one mentioned his or her caste as 'Chhatri'. Everyone avoided to mention caste as 'Tailor' or 'Shimpi' or 'Telgu Shimpi'. In view of these circumstances, we reject the petitioner's claim that he belonged to tribe 'Chhatri'. We do not see any error in the impugned judgment.

6. It is settled position in law that in a case involving proof of caste claim, the burden of proving the caste claim is always upon the person approaching the Committee for validation of his claim. He has to produce the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the petitioner. We have no hesitation in observing that in the present case the material produced by the petitioner do not prove his claim. The Committee is not expected to gather the evidence on it's own to prove or disprove the claim of the applicant. As discussed above, the material placed on record i.e. School record as that of the petitioner, his close relatives and family members do not support the claim of the petitioner. In view of this, we do not find any error in the reasons and findings recorded by the Committee. The reasons and findings recorded by the Committee are found to be quite consistent with the material on record.

We therefore not inclined to interfere with the order passed by the Committee.

7. Learned counsel for the petitioner contended that the petitioner has entered into Government service as a candidate from open category. Throughout his service tenure, he has not claimed benefit as belonging to the Scheduled Tribe. He joined the service as 'Accountant' in the Forest Department on 30th July, 1982. He was promoted as 'Chief Accountant' with effect from 18th August, 1995 from open category. Thereafter, he was promoted as 'Office Superintendent' from open category. Throughout he was treated as candidate from open category. In the year 2011, as the post of 'Administrative Officer' became vacant and reserved for Scheduled Tribe, he was treated as Scheduled Tribe and asked to get caste claim verified. It is contended that till his retirement, the petitioner has not claimed any benefit as 'Scheduled Tribe'. Therefore, even if for some time he claimed that he belonged to a Tribe, he did not take benefit as Scheduled Tribe, and therefore, it is not necessary for him to produce Caste Validity Certificate for seeking the service benefits/pensionary benefits. He has submitted that the pensionary benefits of the petitioner are withheld for want of production of Caste Validity Certificate. In view of this, we are of the view that the retirement benefits cannot be withheld for want of Caste Validity Certificate as the petitioner has joined the service as a candidate from the open category and all the subsequent promotions are claimed to be made from the open category. In case the petitioner has not received any service benefits as a candidate belonging to the Scheduled Tribe, the post retirement benefits cannot be withheld for want of submission of Caste Validity Certificate. In

view of this, we direct the respondent not to withheld pensionary benefits available to the petitioner only because he did not produce Caste Validity Certificate. However, it is clarified that if pensionary benefits are withheld for any reason other than non-production of Caste Validity Certificate, then the department will be at liberty to take the appropriate decision in the matter.

8. In view of disposal of the Writ Petition, Civil Application No. 10775 of 2015 stands disposed of.

(V.L. ACHLIYA, J.)

(A.V. NIRGUDE, J.)

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