

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

WRIT PETITION NO.7864 OF 2017

Zaker Hussain Mohammad Hussain
Farukhi ... Petitioner.

Versus

The State of Maharashtra
and another. ... Respondents.

...
Mrs.U.T.Pathan, advocate holding for
Mr.T.W.Pathan, advocate for the petitioner.
Mr.S.B.Yawalkar, A.G.P. for the State.
...

**CORAM : S.C.DHARMADHIKARI AND
MANGESH S. PATIL, JJ.**

Date : 11.07.2017.

PER COURT :

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed on 4.2.2016, by the competent Scrutiny Committee.

2. The Scrutiny Committee-Respondent No.2 invalidated the claim of the petitioner as

belonging to Khatik (OBC). The petitioner obtained a caste certificate from the Sub-Divisional Officer third Respondent to this petition. On the strength of this caste certificate, the fourth Respondent appointed the petitioner in the establishment of the Police as Head constable. The appointment order dated 2.9.2012 indicates that the appointment was made against reserved post, particularly, for Other Backward Class. As required by the Maharashtra Act 23 of 2001, the caste certificate was referred to the second Respondent Committee on 30.8.2013. The petitioner produced number of documents, one of which includes the certificate of validity which was issued to one Mohammad Iliyas Mohammad Ibrahim dated 6.4.2010. It is stated that the relationship with this Mohd.Ilyas is that of cousin cousin nephew. The relationship was proved by producing the family tree and genealogy. While rejecting the claim, the Committee observed that though such a certificate of validity was issued by the second Respondent-Committee to Qureshi Mohammad Iliyas Mohammad Ibrahim, still, the record based on such

certificate was issued and the evidence relied upon by said Qureshi Mohammad Iliyas Mohammad Ibrahim was not produced before the Committee. That is why the certificate of validity has no probative value.

3. Now the petitioner also relied upon a certificate of validity which has been issued to nephew of the petitioner Danish Hussain S/o Jahed Hussain Farukhi by the same Committee on 27.6.2014.

4. Then the petitioner relies upon the certificate of validity issued to Farukhi Irfan Hussain Jaker Hussain dated 21.1.2015. The petitioner asserts that Farukhi is his son.

5. We have perused the impugned order with the assistance of both the advocates. At page 41 para 5 the reasoning of the Committee depicts that it does not apply its mind to a basic tenet of law. This certificate of validity issued in favour of a close relative from paternal side is itself a proof. No independent proof or evidence

has to be led meaning thereby it is not necessary to produce the record or oral and documentary evidence based on which this certificate of validity is issued. If that is the correct principle and the principle invoked and applied by the Committee is upheld that would mean every certificate of validity even if issued to close relative from paternal side, son daughter etc. together with the genealogy and family tree/affidavit placed on record can be easily discarded. We are not satisfied with such reasoning of the Committee.

6. Additionally, we find that the petitioner relies upon the certificates of validity issued to a close relative from paternal side and the petitioner's own son. It will be entirely for the petitioner to establish his relationship with the validity certificate holders.

7. Since, we are not satisfied with the reasoning and the order of the Committee is vitiated by total non-application of mind, we

have no alternative but to quash and set aside the impugned order. It is quashed and set aside. The Writ Petition is allowed. The matter is sent back to the Committee for verification afresh on merits and in accordance with law.

8. If the services of the petitioner are continuing and still not terminated then the petitioner's services shall be continued till the Scrutiny Committee passes the requisite order.

9. The Writ Petition is disposed of with these directions. No costs.

(MANGESH S.PATIL, J.)

(S.C.DHARMADHIKARI, J.)

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