

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

WRIT PETITION NO. 9368 OF 2016

**GANESH BABANRAO BIRHARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Mr. Barlinge S.R.
AGP for Respondents 1 to 4 : Mr. Y.G.Gujarathi
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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 22nd FEBRUARY, 2017

O R D E R :

Rule. Rule is made returnable forthwith.
Taken up for final hearing with the consent of
learned counsel for the respective parties.

2. Mr. Barlinge, learned counsel for the
petitioner submits that the tribe claim of the
petitioner has been invalidated without serving
the report of the vigilance to the petitioner and
without even issuing notice to the petitioner for
hearing. Learned counsel submits that it is writ

large from the judgment itself. According to learned counsel, such an order cannot be sustained.

3. Learned A.G.P. states that the facts were so clear and explicit that there was no need to issue notice to the petitioner. The Tribunal rightly relied upon the judgment of the Apex Court in the case of **S.P.Chengalvaraya Naidu vs Jagannath [AIR 1994 SCW 243]**.

4. We have gone through the judgment of the Committee. The Committee on the basis that the word 'Mahadev' is in different ink in the school record of the real brother and real sister of the petitioner concluded and held the tribe claim of the petitioner as invalid. The Committee was required to give opportunity to the petitioner to explain about the entry in the different ink in respect of the school record of the real brother and real sister of the petitioner. It is trite that when an order adverse to the interest of any

party is being passed, adherence to the principles of natural justice is mandatory. After offering explanation by the petitioner the Committee could have decided the matter considering the explanation offered. However, the impugned decision is flouting the cardinal and fundamental principles of natural justice. Such a judgment cannot sustain.

5. In the light of above, we pass following order.

(i) The impugned judgment of the Committee dated 25.7.2016 and the order, dated 29.8.2016 (page 44) stand quashed and set aside.

(ii) The Committee shall give copy of the vigilance report to the petitioner.

(iii) After getting say of the petitioner on the vigilance report and hearing the petitioner the Committee shall decide the validation proceedings afresh.

(iv) The petitioner shall appear before the Committee on 7.3.2017.

(v) Considering the fact that the matter is remitted back, the committee shall decide the said proceedings preferably within six months from the date of appearance.

(vi) The respondent shall not take any adverse action against the petitioner only on the ground that the validation proceedings are pending. However, the employer can take further course of action depending upon the judgment that may be delivered by the Committee in validation proceedings.

6. Rule is made partly absolute. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)