

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5602 OF 2015

Prakash Vasudev Lade

..Petitioner

Vs.

State of Maharashtra and Others

..Respondents

Mr. R. K. Mendadkar, for the Petitioner.

Ms. Sushma Bhende, AGP, for the Respondent Nos. 1 to 4.

CORAM :- S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.
DATE :- FEBRUARY 22, 2017.

ORAL JUDGMENT (Per S. C. DHARMADHIKARI, J.)

Rule. Respondents waive service. By consent, rule made returnable forthwith.

2 By this Writ Petition under Article 226 of the Constitution of India, the Petitioner has challenged an order passed by the Scrutiny Committee set up for verification and scrutiny of the Schedule Tribe Certificate, namely, the

Scheduled Tribe Certificates Scrutiny Committee, Nashik
Region, Nashik.

3 On 26th July, 2013, the Petitioner Prakash Vasudev Lade applied through Respondent No.4 to this Committee for verification of his tribe claim. He claimed to be belonging to Thakur Scheduled Tribe. The tribe verification was because the Petitioner was seeking a job in Government Health Service. The Petitioner and it is undisputed was employed by the State on the strength of a caste / tribe certificate issued earlier on 25th June 1981 and continued in service on the strength of the later certificate dated 2nd July, 2005. The Petitioner was appointed as a Driver under reserved category of scheduled tribe. The Petitioner was appointed on 25th September, 1981 and we do not think that the Petitioner was appointed against a reserved post but so the Petitioner claims and equally the State does not dispute that his appointment was against a reserved post. Despite the two certificates the Petitioner could not obtain the benefit of Assured Career Progression Scheme (ACPS) etc. for want

of a Tribe Validity Certificate. Be that as it may, the Petitioner having served the authorities, has since retired from the services and in terms of the additional affidavit filed in this Petition, the Petitioner retired on 31st July, 2015.

4 Now, the Petitioner says that none of the terminal benefits would be released to him as he has failed to obtain a caste / tribe validity certificate.

5 On merits, Mr. Mendadkar would submit that this is a strange order of the Committee. This very Committee, on a prior occasion validated the tribe claim of his son, namely Pankaj Prakash Lade. The tribe validity certificate was issued on 17th June, 2005 to said Pankaj.

6 The Petitioner relied upon this certificate of validity issued to the son to urge that he is equally a scheduled tribe candidate and rightly appointed against the reserved post. This tribe certificate which is relied upon therefore needs to be validated.

7 Mr. Mendadkar criticizes the approach of the Committee in discarding this valid piece of evidence by holding that when that tribe validity certificate was issued, the Committee did not discuss the entire merits. The order passed in that regard does not indicate whether merits were discussed at all. Secondly, there are some High Court orders and which mandate that every claimant has to stand on his / her legs and merely because one of the family member's caste or tribe claim has been verified or accepted, by itself could not mean that it is a valid foundation for the claim of the Applicant before it. Mr Mendadkar faults this reasoning as not being sound in law. He, therefore, submits that the Writ Petition be allowed.

8 On the other hand, Ms Bhende, appearing on behalf of the Respondents would support the impugned order by urging that it considers the entire material. There are valid reasons assigned for the ultimate conclusion including for discarding the tribe validity certificate of the son. Therefore,

the Writ Petition be dismissed.

9 With the assistance of both advocates, we have perused the Writ Petition and all Annexures thereto. The Committee has not disputed that there were validity certificates issued and one of which pertains to the Petitioner's own son Pankaj. The precise finding of the Committee and in its own words is as under:-

“3. Thus the grounds on which basis the Validity Certificates were issued is disputed one. Hence, in view of above legal observation, it can not be said that, these Validity Certificates are issued on merits, hence the ratio of these Validity Certificates and above mentioned Hon'ble High Court's orders cannot be given to the Applicant. Secondly, it is the basic principal that “Each claimant has to stand on his / her own legs and mere because one of the family members caste claim has been verified would not by itself be the foundation for validation of candidate's claim.

This issue is discussed in W. P. No.2773/1990 filed by Dharmendra Deoram Patil vs. Scheduled Tribe Scrutiny Committee and Ors. [2004 (I) ALL MR 512]” in which Hon'ble Court is to observe as follows-

10.The above said view of this Court cease to be a good law in view of the decision of the Apex Court in the case of Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and Others (AIR 1995 SC 94), wherein it has been emphasized that each claimant has to stand on his/her own legs and merely because one of the family member's caste

claim has been certified, would not by itself be the foundation for validation of the candidate's claim. In the case at hand, the basis for the validation of caste claims of Dashrath, Devram and Rupchand was never adjudicated by a competent Scrutiny Committee and they were all the beneficiaries of the appellate orders which recorded their findings on the superficial evidence and the certificates/documents which could not be accepted as sufficient evidence in support of the tribe's claim. Under the circumstances, none of these calidatio certificates which the petitioner relied upon before us could be accepted and, therefore, the findings recorded apparent on the face of the record, warranting our interference.”

10 It is strange that the Scrutiny Committee and its members are oblivious that a caste or tribe is derived from the parents or the father. In the present case, if the son is a tribal and Thakur Scheduled Tribe that means he had derived it from his father who is none other than the Petitioner before us. If Pankaj has played any fraud or misrepresented any fact, then, it is evident that it is the Petitioner, as the father, who must be responsible for such an act. The Committee neither holds the father or son responsible for any fraud or misrepresentation. It is pertinent to note that it is a competent scrutiny committee functional under the Act XXIII of 2001 which issued a Tribe Validity Certificate way back on

17th June 2005. This certificate cannot be faulted for want of competence and jurisdiction. Its validity and legality can be ignored not on technical or procedural grounds but on proven case of fraud or misrepresentation. The judgment of this Court relied upon by the Committee in the present case is distinguishable on facts. There were cases even after Madhuri Patil (supra) where certificates of validity were issued liberally and lenient view was taken. There was no proper scrutiny, no verification, no scrutiny committee and complete lack of requisite mechanism. Now, after the Act XXIII of 2001 everything is in place. A Research and Vigilance team involving Revenue and Police officials is set up. The Petitioner's son Pankaj was issued the validity certificate by such a scrutiny committee. To label Pankaj's certificate as a disputed one or issued without adjudication on merits that too after nearly ten (10) years of its issuance is the height of irresponsibility. It is a total non-application of mind. Respondent No.2 forgot that it is acting highhandedly and arbitrarily as it not only blames Pankaj and the Petitioner but its own brother and sister members of the

erstwhile committee/s. At least they ought to be spared. As for Pankaj and his father (Petitioner) we feel very sorry because by one stroke of the pen Respondent No.2 has uprooted not only the Petitioner, his son Pankaj but their progeny as well. Respondent No.2's reasoning is that this Court's order mandates that any person and placed even in a situation like the present Petitioner must stand on his/her own legs and not just rely on any document like a validity certificate issued to any relatives from the paternal side. We do not think that any judgment of this Court laid down such an absolute principle. It only says that it is open for the Committee to scrutinize and verify the claim of the candidate / Applicant before it independent of a caste / tribe validity certificates of the near relatives from the paternal side relied upon by the Applicant before it and the Committee is free to discard them provided it is of the firm opinion in a given case that the material produced evidences a fraud or misrepresentation on the part of those who obtained them or facilitated in obtaining them. These are, therefore, acts attributable to those beneficiaries who have obtained validity

certificates and therefore not only they but their family and progeny must be visited with all adverse consequences. Such is not a case emerging from the record of the present proceedings. Hence, a sweeping conclusion like the above and which has no legal basis or foundation cannot be sustained. The order of the Scrutiny Committee deserves to be quashed and set aside on the ground that it discards and omits from consideration a valid piece of evidence in the form of a tribe validity certificate issued to the Petitioner's son. The Writ Petition succeeds in these terms. Once the order is quashed and set aside, the Petitioner shall be taken to have retired from service after a valid and legal appointment order. He must, therefore, be entitled to all retiral / terminal benefits including pension, if any. All those be released, if not already released, in his favour within a period of four weeks from the receipt of a copy of this order. Rule made absolute accordingly. No costs.

11 Now, the Committee shall issue firstly a caste / tribe validity certificate within a period of two weeks from the

date of receipt of a copy of this order and our direction as above to release the terminal benefits would then follow. Meaning thereby the period of four weeks will commence after the tribe validity certificate is duly handed over to the employee.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)