

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

**WRIT PETITION NO.7435 OF 2008
WITH
CIVIL APPLICATION NO.13064 OF 2009.**

Ku.Suman d/o Dattatraya
Narwade, Age 28 years,
Occ.Household, R/o Karkin,
Taluka Paithan, Dist.
Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.

2. The Scheduled Tribe
Certificate Scrutiny Committee,
Aurangabad Division, Aurangabad.

3. Zilla Parishad, Aurangabad,
through its Chief Executive
Officer.

4. The District Health Officer,
Zilla Parishad, Aurangabad. ... Respondents.

...
Mr.S.R.Barlinge, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for
the State.
Mr.U.B.Bondar, advocate for Respondent Nos.3 and
4.

...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

**Reserved on : 20.04.2018.
Pronounced on : 08.06.2018.**

PER COURT :

1. The petitioner assails the judgment of the Scrutiny Committee invalidating the tribe claim of the petitioner as Thakur Scheduled Tribe. The petitioner also seeks directions against Respondent Nos.3 and 4 to appoint her as Arogya Sevak (Female) on the basis of her selection by the Selection Committee on 28.6.2007.

2. Mr.Barlinge, learned counsel for the petitioner strenuously contends that the petitioner is selected as Arogya Sevak (Female) by the Selection Committee pursuant to the selection process, however, was not issued appointment order on the ground that the petitioner should get the validity certificate as she is selected from Scheduled Tribe category. The caste claim of the petitioner was referred to the Scrutiny Committee. According to the learned

counsel, the Scrutiny Committee did not consider the validity certificates issued in favour of real brothers of petitioner namely Mangesh Dattatraya Narwade and Rajendra Dattatraya Narwade. The validity certificate was issued in favour of Mangesh Dattatraya Narwade, by the Committee at Aurangabad. In case of Rajendra Dattatraya Narwade, the Committee rejected his tribe claim. Rajendra filed Writ Petition before this Court challenging the judgment of the Scrutiny Committee. This Court allowed the Writ Petition and directed the Committee to issue validity certificate to Rajendra Dattatraya Narwade, still, the Committee in case of present petitioner invalidated the tribe claim. There is not a single contra evidence on record. The School record of the petitioner, her brothers and all relatives record the caste as Thakur. 51 documents were submitted. The entire School record of the petitioner, her brothers record the caste as Thakur. Even the petitioner had given proper answers in the affinity test. The reasoning adopted by the Committee is erroneous. According to the learned counsel, there was no

ground to invalidate the tribe claim of the petitioner.

3. Learned counsel further submits that the judgment of the Scrutiny Committee deserves to be set aside. The Respondent Nos.3 and 4 be directed to appoint the petitioner as Arogya Sevak (Female) pursuant to her selection.

4. Mr.Patil, learned Additional Government Pleader, supports the judgment of the Committee and submits that the Committee has taken a proper view. The petitioner could not succeed in the affinity test. The documents though record the caste as Thakur, however, none of the documents record caste as Thakur - Scheduled Tribe. Thakur are found in Scheduled Tribe as well as upper caste. The Committee has properly rationalised all these aspects and has rightly invalidated the tribe claim. Only because the real brothers are issued with the tribe certificates, the petitioner can not be automatically issued with tribe certificate.

5. Mr. Bondar, learned counsel for Respondent Nos. 3 and 4 submits that the selection process is of the year 2007. The select list/wait list is maintained only for one year. The claim of the petitioner can not be considered after 11 years, nor the petitioner gets any right for issuance of appointment order.

6. We have considered the submissions canvassed by learned counsel for respective parties and have also gone through the evidence produced before the Committee.

7. It is a matter of record that real elder brother and younger brother of the petitioner are issued with the validity certificates of Thakur - Scheduled Tribe. One real brother namely Mangesh Dattatraya Narwade, is issued with the validity certificate of Thakur - Scheduled Tribe under the order of the Scheduled Tribe Scrutiny Committee, Aurangabad Division, Aurangabad on 6.12.2004. The Committee had invalidated the caste claim of the petitioner's another real brother namely Rajendra

Dattatraya Narwade. Said Rajendra Dattatraya Narwade, assailed the judgment of the Scrutiny Committee by filing Writ Petition bearing W.P.No.334/1994. This Court under judgment and order dated 18.8.2003, allowed the Writ Petition holding that Rajendra Dattatraya Narwade, belongs to Thakur - Scheduled Tribe and directed the Scheduled Tribe Scrutiny Committee at Aurangabad to issue the validity certificate to the petitioner. Consequently, the Committee has issued the validity certificate in favour of Rajendra Dattatraya Narwade, the real brother of the petitioner.

8. This Court has examined the case of the real brother of the petitioner Rajendra Dattatraya Narwade and has arrived at a conclusion that he belongs to Thakur - Scheduled Tribe. When this Court has considered the documents on record in case of Rajendra Dattatraya Narwade, the real brother of the petitioner then certainly the said aspect was required to be considered by the Committee. The Committee could not have brushed aside and

ignored the judgment of this Court delivered in Writ Petition No.334/1994 in the case of petitioner's real brother. It is also to be considered that subsequently, the same Committee in the year 2004, issued validity certificate in favour of another real brother of petitioner namely Mangesh Dattatraya Narwade.

9. We are not oblivious of the fact only because the Committee has issued validity in favour of real brothers, the Committee may not axiomatically issue validity certificate in favour of another without examining all the aspects of the matter. However, in the present case this Court had an opportunity to examine all the documents and the relevant aspects while setting aside the judgment of the Committee and allowing the Writ Petition filed by real brother of the petitioner bearing W.P.No.334/1994 and directed the Committee to issue validity certificate in favour of real brother of petitioner. The judgment of this Court is accepted by the Committee and subsequently in the year 2004 validity is issued in favour of another

real brother of the petitioner.

10. There are no contra evidence on record. The affinity is only a corroborative piece of evidence.

11. Considering that this Court has examined the caste claim of the petitioner's real brother and had directed the Committee to issue validity certificate in favour of real brother of petitioner. The said judgment was binding on the Committee, more particularly, when there is no finding of any fraud given by the Committee.

12. In light of the above, the impugned order delivered by the Committee is quashed and set aside. The Scrutiny Committee shall issue validity certificate to the petitioner of Thakur - Scheduled Tribe within four (4) weeks.

13. It is not disputed that the petitioner was selected for the post of Arogya Sevak (Female) by the Selection Committee pursuant to the selection process undertaken by the

Respondent Nos.3 and 4. The Writ Petition is pending in this Court since August 2008. No doubt, merely because the name of the candidate appears in the select list, it does give the candidate an indefeasible right to be appointed, however, pendency of the case for a long duration in this Court should not be an impediment for considering the claim of the petitioner.

14. We have already directed the Committee to issue validity certificate to the petitioner as Thakur - Scheduled Tribe. The Respondent Nos.3 and 4 shall consider the case of the petitioner for appointment as Arogya Sevak (Female), in case there is no other impediment and the petitioner satisfies all the legal requirement and so also if the vacancy is available.

15. Rule accordingly made absolute in above terms. No costs.

16. The Civil Application also stands

disposed of.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

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